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# Improving Regulatory Effectiveness in Federal/State Siting Actions

# State Perspectives on Energy Facility Siting

March 1978

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National Governors' Association for
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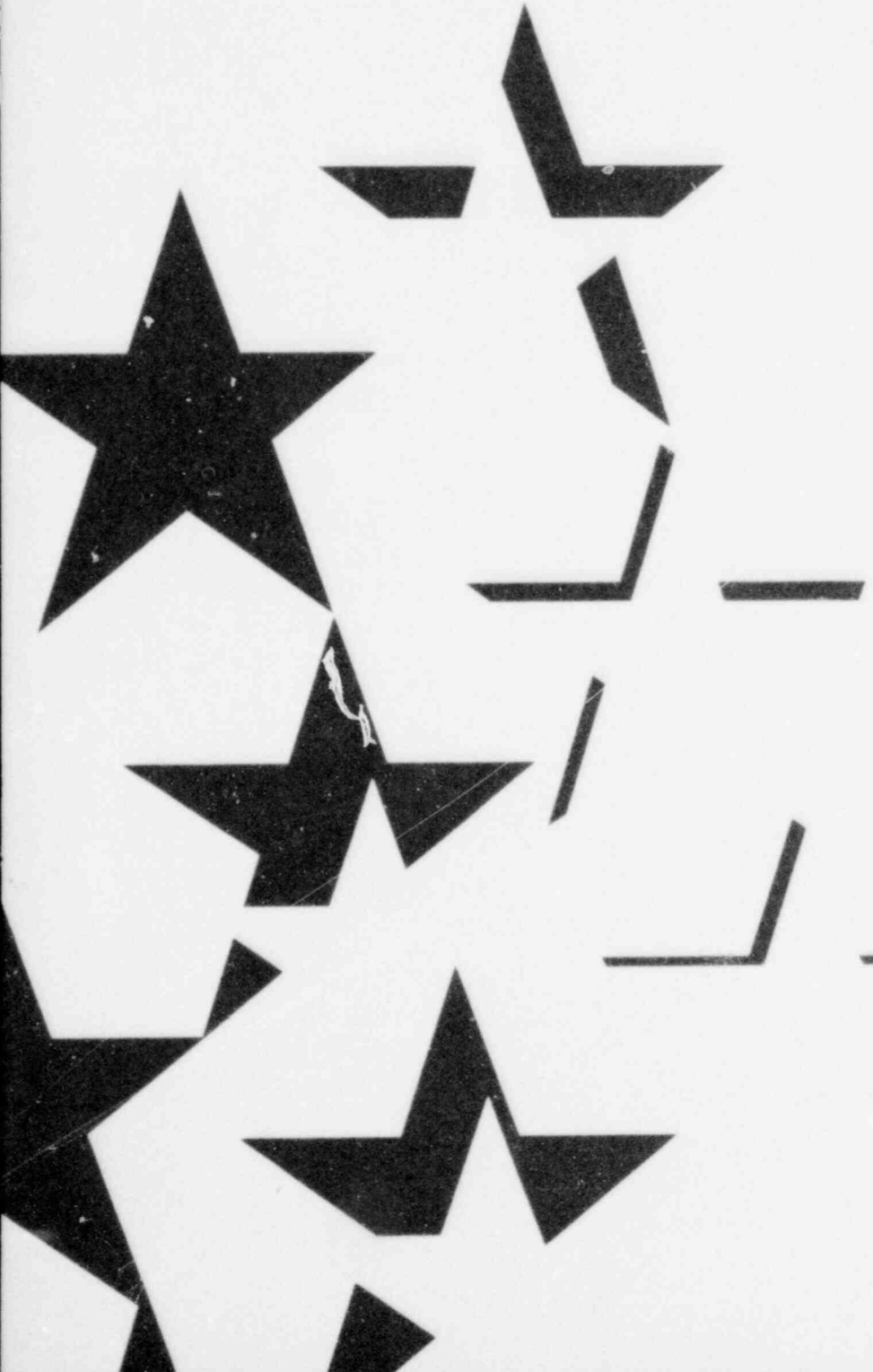

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# State Perspectives on Energy Facility Siting

David W. Stevens and
Edward L. Helminski

## Improving Regulatory Effectiveness in Federal/State Siting Actions

Prepared for the U.S. Nuclear Regulatory Commission under contract No. AT(49-24)-0327 by Energy and Natural Resources Program, National Governors' Association, 444 North Capitol Street, N.E., Washington, D.C. 20001

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## FOREWORD

The National Governors' Association,* through its Committee on Natural Resources and Environmental Management, has been concerned with the growing administrative difficulties, both at the federal and state levels, of certifying sites for new major energy facilities. This concern led, early in 1977, to the creation of a Subcommittee on Energy Facility Siting to comprehensively analyze current conditions and determine how basic improvements might be made to the process.

The basic objectives of this working group of Governors and staff representatives have been to:

(1) Analyze specific siting concerns and recommend action to resolve delays and administrative problems that are inhibiting timely certification of needed energy facilities;

(2) Develop a program to assist States in strengthening their siting policies and management systems;

(3) Work with Federal agencies in developing siting policies, administrative improvements, and appropriate legislation recognizing state interests;

(4) Explore the feasibility of multi-state arrangements for dealing with energy planning and siting questions;

(5) Explore the various State/Federal processes for site planning and analysis, financing, need for power determinations; pre-site selection procedures, effective public participation measures, air and water standards and constraints, and methods of dealing with the siting implications of waste management and disposal programs.

In developing a program to meet these objectives, the Committee established a close working relationship with the NRC Office of State Programs and has been an active participant in the NRC preliminary staff study, "Improving Regulatory Effectiveness in Federal/State Siting Actions."** The report resulting from this study included a number of recommendations and observations that recognize the importance and priority of the States' authority in siting matters and the need for States to further improve their systems for licensing and certification of energy facilities.

This report, "State Perspectives on Energy Facility Siting," is meant to further clarify the issues that confront States and the Federal government. The material is drawn from the discussions and recommendations of the two NGA/NRC workshops, various Facility Siting

*Formerly the National Governors' Conference.

**Office of State Programs, U.S. Nuclear Regulatory Commission, USNRC Report NUREG-0195, May 1977. Available from the National Technical Information Service (NTIS), Springfield, VA 22161.

Subcommittee meetings, and an NGA/NRC case study of several State siting efforts. This report was prepared under the direction of Edward L. Helminski, Director of the NGA Energy and Natural Resources Program, and was written by David W. Stevens, Director of the NGA Energy Facility Siting Project.

Governor Robert W. Straub
Chairman, NGA Subcommittee
on Energy Facility Siting

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# EXECUTIVE SUMMARY

## INTRODUCTION

The National Governors' Association responded enthusiastically to the request of the Nuclear Regulatory Commission, in the latter part of 1976, for assistance in gathering information for State officials, industrial representatives and public interest groups concerning how the nuclear power plant licensing process within NRC could be made more effective. The existing difficulties were obviously thwarting the making of timely decisions, and the time and effort expended in licensing activities were steadily increasing.

Through joint efforts of the NGA and NRC, two national workshops -- composed primarily of State officials, but including Federal representatives and other participants, including private industry and environmental groups -- were held in Atlanta in December 1976 and in Chicago in April 1977. The NGA/NRC workshops were designed to provide an opportunity for State representatives to discuss with Federal officials and representatives from private utilities and environmental interest groups basic problem areas in nuclear power plant siting procedures and potential solutions.

State officials focused on expanding the means by which states can contribute to the improvement of siting policies, plans, and programs. Participants generally recognized the positive role State governments can plan in responsive facility site planning programs. Out of those discussions, many key siting issues were identified and analyzed and a growing concensus on many has developed.

This publication is a composite of views expressed by States participating in NGA Energy Facility Committee workshops and in other NGA sponsored meetings. Out of the joint efforts with NRC, measurable progress has been made in identifying the negative features of current siting practices and in recommending remedial action. As a result of this study, Federal and State actions, necessary to establishing timely planning processes, thorough analyses of site suitability, and necessary public participation mechanisms, have been identified and should begin to be implemented.

The Office of State Programs, within the Nuclear Regulatory Commission, has provided financial support to the NGA for its study, "State Perspective on Energy Facility Siting." The NRC also has made strong efforts to assure that the views of the Governors were integrated into the NRC preliminary staff report, "Improving Regulatory Effectiveness in Federal/State Siting Actions," NUREG-0195. The NGA has not endorsed all of the views and positions set forth in the published report. Nevertheless, its conclusions represent many of the concerns of the States. It does recognize the desirability and the practicability of stronger State participation and responsibility in the siting process. That carefully

prepared document addresses key issues and makes many logical recommendations for administrative and legislative action.

The study product was obviously influenced by the NGA/NRC workshops, held to provide State input. In nearly every major recommendation the influence of State officials is apparent. The dialogue developed between State and Federal officials, if maintained as productively as has been demonstrated by the NRC during the past several months, can measurably assist in implementing suggestions for improvement. Rightly, the study points to the fact that States are the principal means for delivering major programs of national interest.

The interest of the Governors has been a pragmatic one; that is, to determine the consequences of continuing on our current path, or the expected results of making positive policy and administrative alterations to impact the siting process. It appears clear that action must be taken to establish a more effective means of making needed energy available to the growing requirements of our Nation's people.

The Governors are individually and collectively committed to dealing with this basic aspect of national energy policy. The present burden, working without an adequate national energy policy, with blurred lines of State/Federal responsibility, inadequate opportunities for public participation, and a lack of certainty and timeliness in energy supply planning, can be lifted only through appropriate administrative and legislative actions at both State and Federal levels.

## WORKSHOP CONCLUSIONS

The workshops' discussions focused on a number of issues that were perceived to be making the greatest impact on siting programs. Out of the discussions a number of conclusions were reached.*

Among these were proposals recognizing that:

1. The licensing decisions relating to nuclear plant licensing can be made more efficient and effective. Speeding up the licensing activity, however, cannot be made the expense of the quality of site analysis process. That process must be comprehensive and inclusive of all environmental costs and impacts.

2. A clearer delineation of State/Federal responsibilities in energy facility siting activities is needed. The States have a primary role in the planning for facilities, making binding need for power determinations, determining the types of power facilities, land use patterns, nonradiological health and safety impacts, and socioeconomic and environmental impacts. Federal responsibilities for national security and radiological health and safety, with appropriate State involvement, were suggested.

*More detailed language of the workshops' conclusions may be found in Appendices B and C.

3 Devising a better apparatus for basic planning for facilities within a national fuels policy was of vital importance in making a needed separation between generic issues relating to need, fuel availability, types of facilities and site specific issues.

4. Providing greater opportunities for timely public participation in siting matters is an essential ingredient of the siting process. Participation should occur at the earliest time possible in energy planning, energy growth questions, load forecasting, and in site identification and analysis activities. Emphasis was placed on formal public notice of each step in the planning and decision process and the use of adjudicatory hearings to contest issues as early as possible.

5. The role that regional bodies can play in accomplishing planning and site analysis activities must be recognized. Such entities can be concerned with advance planning projections, the extent of electrical capacity growth, a general regional review of energy facility sites in advance of license applications, and in trade-offs of tax benefits and environmental impacts among States and communities within marketing areas.

6. Delegation of environmental review responsibilities for site analysis to the States, through Federal legislation, is an important step. This would be accomplished through the assigning of such activities to those States or combinations of States that wished to assume the responsibilities consistent with national goals. State site approval processes should contain provisions for: formal site reviews with specific time period; broad opportunities for public participation; making a decision binding on all parties; and including an appeal mechanism with a statute of limitation, with exceptions based on material new evidence, or significantly changed circumstances.

7. Increased integration of licensing review activities at the Federal level should be accomplished through appropriate Federal legislation. Sharpened Federal coordination requirements should be the very least required for more effective action. Unification of efforts and the designation of lead responsibilities are two objectives that should be accomplished.

8. A better recognition of the sequencing of site planning, review, and approval actions is mandatory for effective decisionmaking. The decision process should proceed in an orderly way and should deal with the following elements:

   a. Overall national energy policy
   b. Energy growth policy
   c. Forecasts of need for power
   d. Choice of electric versus nonelectric sources
   e. Proportion of power to be produced by baseload stations
   f. Choice between nuclear and nonnuclear facilities
   g. Site decisions including alternative sites
   h. Specific construction criteria and permits
   i. Plant operation and monitoring activities.

9. A unified one-stop licensing process with centralized leadership is desirable, both at the State and Federal levels. Where this might not yet be achieved due to organizational, political, or financial reasons, at the very least, a coordinated program with a designated lead agency is important.

10. Development of a common data base is essential to achieve a satisfactory policy on energy facility siting. Such a data base must be national in scope (although able to be used at a regional State or sub-State level), have uniform systems of measurement and definition of terms, and have a means of broadcasting information to all users and the public.

## THE NRC REPORT ON SITING

The establishment of the NGA Subcommittee on Energy Facility Siting provided an organized means for the Governors to respond to the invitation of the Nuclear Regulatory Commission for assistance in determining State attitudes and perspectives on facility siting, State/Federal relationships and responsibilities, and for insights on how to improve a beleaguered and murky nuclear licensing process. The NRC has acknowledged that an improved siting process is dependent upon a number of factors, some of which exist outside the narrow framework of the nuclear licensing activity.

The NRC preliminary staff report, for example, indicated the importance of the Federal government developing, with State assistance, a national fuels policy. Such a policy is critical in the developing of sufficient energy supplies and transcends the narrower issue of providing electrical power by additions only to the Nation's nuclear capacity. Accordingly, the importance of such a policy was emphasized in the NRC study as it has in the NGA inquiry.

In order to satisfactorily "fit" a comprehensive siting policy there must be cognizance of the need for separating general policy development and analysis from specific licensing or siting actions. Therefore, the recognition that an examination of the existing difficulties of the nuclear licensing process is a part of a larger whole fits into the context of the Subcommittee's investigation. While it could not be expected that an extended analysis of non-nuclear siting issues would be a part of the NRC effort, is was useful for the study to include language that provided some perspective concerning the general planning process that must accompany an ordering of the nuclear siting process.

The study indicates strongly that early disclosure and review of utility plans can reduce licensing delays. Establishing a specific responsibility at the State and regional levels for the determination of facility needs also reinforces the need for broadened planning capability. A merited observation indicated that the establishing of an advance planning activity would make it unnecessary to discuss generic planning issues during facility review proceedings except to determine site and facility conformance to th tate or regional plan. Planning and need issues now often discussed after the fact, during te

analysis hearings and examinations, indicate that there is a substantial amount of institutional and procedural changes necessary to make planning investigations more timely and effective. As the study indicates, a better order of planning and site analysis activities can help to reduce existing time requirements.

Many of the significant characteristics of advance planning are adequately set forth in the report. Early disclosure by utilities, State need for power determinations, early site reviews (which can include advance site identification and preliminary inventorying), comprehensive analysis of all feasible fuel forms, and regional planning mechanisms are all important components.

The present language would appear to sanction a site identification process by either States or utilities, or both. However, the existing, sometimes isolated and independent site selection process undertaken by utilities has impacted the nuclear licensing and permitting process. It is recommended in the report that mechanisms be established to assure early disclosure, wider public participation early in the process, and effective public planning and siting processes to assist existing activities in making necessary public policy decisions. The suggestion that States could exercise an option to have the lead Federal agency undertake the process of site certification would not enhance Federal/State relations, nor is it consistent with the primary thrust of the overall recommendations.

The study calls attention to the need for encouraging regional action on planning questions, including need for power studies. The NGA supports the concept of regional combinations of States in an institutional form of the affected States' choosing. Such institutional arrangements would be politically accountable to the Governors within the region. Regional entities would have the capability to recognize the interstate implications of many new energy facilities and the impacts of the interconnected grids existing in many marketing areas throughout the country.

The study recommends encouraging Federal agency coordination through the designation of a lead agency (other than NRC), coordinating councils, and the establishment of review time limits.

All of these actions would be significant and appropriate; however, they fall short of true integration of federal programs that may be necessary if effective licensing reform is to become a reality. The suggestions for improvement are tempered by the comment that stresses that "no basic change in the organic statutes of the agencies involved would be contemplated (1). There appears to be little consistency between the study recommendations that States be encouraged to adopt "coordinated or single-permit (one-stop) procedures" with the parallel recommendation that the best we can hope for at the Federal level is a coordinated process under a lead agency. It may be difficult to accomplish, but the same perception that would see unified management at the State level as a preferable approach is valid in viewing the Federal administrative structure. While diversity of administrative approach may be necessary, and in some cases desirable, there appears to be no greater rationale for program integration in the State administrative procedures than there is in

the Federal. Focusing the integration of administrative procedures is important. Many states have accomplished this objective. Aggressive Federal action is warranted, as is continued State activity.

The NRC staff report makes a progressive recommendation in suggesting Federal legislation that would modify the National Environmental Policy Act to "permit the Federal government to accept State site certification, including environmental impact statement preparation, under certain carefully considered Federal guidelines." This proposal differs slightly from NGA policy which recommends delegation of authority to States under Federal guidelines. Under the State approach, environmental reviews, undertaken by States meeting with NEPA requirements, would be utilized by Federal agencies, rather than just permitting Federal agencies to judge whether to "accept" State site analyses and certification. The distinction is an important one from the State standpoint. States concur in the specific statement, "we see no need to waste time, money, and talent on repetitive reviews of this sort" (2). The principle of a single program of environmental reviews is clearly consistent with State assessment of appropriate actions to provide a quality, single analysis.

In the absence of State interest in carrying out environmental reviews, the report recommends that the lead Federal agency would act for the States in providing environmental certification of electrical generating sites. This preemptive suggestion is incompatible with the rest of the report. For those States declining to exercise their option of undertaking federally delegated environmental reviews, no usurpation of State authority should be considered. Obviously, where there is no State interest, necessary NEPA reviews would be undertaken as is provided under current legislation. To preempt State environmental review procedures, simply because the State chose not to participate for whatever reason, would not only prove ineffective, but may involve constitutional questions as well. State governments believe that, while it is appropriate to delegate certain review responsibilities, the absence of a State program to fulfill Federal environmental analysis should not be an authorization to expand Federal influence over State site suitability reviews. Existing State determinations should remain State responsibilities.

The study concludes that success in the reform of nuclear licensing lies in the enlarged role of the States in energy need determinations and in site suitability decisions. This assessment is in accord with the Governors' policy statement on this issue. The Governors have expressed deep concern over current problems inhibiting timely and orderly facility siting decisions. They have made a thorough examination of the various facets of the problems to determine appropriate courses of action. Major attention was given to the development of policy positions which could be supported by all Governors and which could be implemented thorough administrative and legislative actions, both by States and the Federal Government. The Governors unanimously adopted a policy on Energy Facility Siting suggested by the NGA Subcommittee on Energy Facility Siting.*

*Ratification of the policy came during the Governor's annual conference in Detroit, Michigan, September 10, 1977. The text of the policy statement may be found in Appendix A.

A number of major recommendations made in the NRC staff study are consistent with the Governors' siting policy. Among these are:

1. Establishing a comprehensive planning process for all fuel forms

2. Providing for early disclosure of utility planning

3. Encouraging multi-state planning through State-determined regional associations

4. Acceptance by Federal agencies of State-determined need for power decisions

5. Delegation of environmental review responsibility to States under Federal guidelines

6. Instituting improved siting management systems at both the Federal and State levels.

The study addresses the critical points of State involvement that can result in a more effective siting process. Providing authority for delegated environmental reviews, need for power determinations, an expanded planning mechanism at the State and multi-state levels, coupled with opportunities for early and continuing public participation and an on-going predictable source of revenue can, if appropriate Federal actions are taken, make the siting process more responsive to current needs. Other elements, including early site review, early disclosure of utility plans, greater Federal agency coordination, are also needed components of an improved system.

The report identifies the lack of early information as one deterrent to a public planning process which can better deal with the public policy implications of energy facility needs. A planning system must be comprehensive, and the report recommends encouraging multi-state approaches to carry out energy planning activities. Such a system would be insufficient if established only for nuclear facilities. A comprehensive analysis of alternative electrical generating options must be a part of the planning process. Federal support in easing operational options and in financing are supported. The report recognizes that regional institutions should not have preemptive authority over States unless specifically vested with such authority by the involved States.

## THE PROPOSED REGULATORY ALTERNATIVE

The NRC report suggested a revised regulatory system of several elements incorporating specific changes to improve the effectiveness of the nuclear siting process. The designation of a lead Federal agency, other than NRC, has substantial merit as it recognizes the need for developing and implementing a comprehensive national energy (fuels) policy that goes beyond nuclear power considerations. An adequate outline of suggested activities in the formulation of a national policy is proposed. It should be made clear, however, that in many respects, the national plan should be a composite of State and regional information and planning alternatives. States feel that a stronger and more practical national energy policy will result if the plan is developed "from the ground up" and reflect local, State, and regional input. Information should also be aggregated on a State basis for maximum usefulness.

Regional planning is an important concept and a number of tasks are suggested for regional efforts, including forecasting, identifying electrical system design alternatives, location for facilities and transmission corridors, certification of proposals as being in conformance with regional plans, and others.

The study proposes a number of actions to enhance the identification and analysis of energy planning information through the designation of a lead federal agency, other than the NRC. The lead agency would be responsible to prepare, based on State and regionally developed data, a national electrical forecast and would report to Congress on the adequacy of the planning efforts carried on by States. It would authorize the lead Federal agency to encourage States to undertake, individually or collectively, (1) the definition of electrical planning areas, (2) energy forecasting and electric system design activities, and (3) site identification and inventorying programs. The encouragement of such functions by the lead Federal agency could be beneficial. However, the advantage of such an approach is tempered by the suggestion that where States were not inclined to participate, or would not qualify to participate under federally prescribed regulations, then the Federal agency could perform these functions instead of the State. Substitution of Federal responsibility for State action is questionable. A primary role of the Federal agency should be to stimulate State and regional actions where needed. The language contained in the regulatory scenario to substitute Federal perspectives for State views, under certain conditions, is not totally consistent with other proposed changes to maximize the State role in the siting process.

States are supportive of the scenario's recommendation that nuclear power plant applicants would need to have State site certification before proceeding to construction of a proposed facility. Maintaining State authority for issuing a site certification and ensuring conformance with it are essential in any revised system.

States would not approve of any Federal assumption of site certification authority traditionally exercised by States. Federal preemption is not consistent with the primary thrust of most of the study's observations and recommendations. In the case of a nuclear facility, NRC should take action only after the State has made a positive determination of need and has issued a site certificate.

The proposed regulatory scenario builds upon existing State regulatory authority in site matters and suggests many areas of simplification.

The study provides substantial background information, needed if we are to remedy existing difficulties. It was an effort well worth undertaking. The Commission and their staff deserve considerable credit for the forthright approach and strong desire to elicit State officials' views during the preparation of the Office of State Programs report.

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## SUMMARY OF POLICY ISSUES

The facility siting policy issue of primary concern to the States generally falls into the following categories:

1. Need for a clearer and definite planning and review process which allows for timely public participation;

2. Responsibility of the States for planning need for power determinations and early site analysis;

3. The delegation of environmental review responsibilities to the States;

4. Improving administrative and coordinate systems at both State and Federal levels;

5. Development of multi-state entities; to facilitate energy planning need and forecasting;

6. Providing for timely public participation throughout the planning and review process.

### Planning

The establishment of more systematized energy planning processes to assure full deliberation on all pertinent public policy questions is recognized as the most important element in improving existing siting mechanisms. The early identification of issues, the eary disclosure of utility plans, and the development of reliable forecasting methodologies, including all factors impacting on energy use, are necessary. The assurance of early involvement of the general public can assist in raising salient issues and in determining the kinds of relevant information needed for public awareness and understanding. The capacity of the State to be able to scrutinize, integrate, and validate energy projections, developed from a variety of sources, needs to be improved. A strengthening of public energy planning capability would alleviate the confusion of trying to resolve overall policy issues when considering applications and site reviews for a specific facility. The development of improved energy planning processes would allow for all interested parties, including the general public, to have the necessary foreknowledge to participate in the siting process in a responsive manner. A good advance planning system will also enable the early designation of appropriate sites for future use.

### Need for Power Determinations

Closely related to State and regional planning efforts is the positive determination of the need for electrical power. With competent State or regional planning programs in place, need for power determinations could be carried out to serve both Federal and State needs. Determining electrical capacity needs, most sources conclude, ought to be a State responsibility. The only limitations would be that such determination be made within the outlines of broad national energy policy. In terms of nuclear generating capacity, an NR

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advisory panel concluded that "the need for power ... should be determined by the States." The reasons set forth included the States' authority to issue plant certifications, its perspective in determining what power is needed, and the States' role in permitting a return on investment (3).

Environmental Review Delegation

One of the most useful suggestions for improving the licensing and certifying process for energy facilities has been to eliminate the duplication of environmental impact statements. With the growing numbers of States expanding their systems of review to encompass all or substantial parts of the analysis required under the National Environmental Policy Act, it is evident that not only is much time wasted, but expensive duplication occurs. Since the objective of the environmental impact process is to identify and deal with the environmental aspects of the proposed facility, little is gained by parallel or duplicate State and Federal review, provided that the States have the capacity to conduct the required analysis. The NRC study recommends expanding the States' role in the environmental review process to avoid such duplication. State officials generally concur, providing such delegation would be initiated by the States and that the States would be able to participate in the development of minimum Federal standards to enable the program to be carried out.

Management of the Licensing and Certifying Process

While much of current difficulties seem to be due to inadequate energy planning, capability, duplicative analysis and review of facility proposals, and other uncertainties, a substantial amount of adjustment and improvement can be made in the management of site planning and review activities at both the State and Federal levels. An examination of current State administrative systems shows considerable attention in the past several years to improving the process. Over one-half of the States have enacted specific facility siting legislation improving internal administrative procedures. A number of States have established unified systems of review and analysis (i.e, one-stop siting processes). Others are establishing better mechanisms of coordination among State agencies.

At the Federal level, coordination among various agencies is sorely needed. At present, multiple Federal permits are required and there appears to be little incentive to develop a coordinated approach. The existing regulatory framework at the Federal level, and in some States, impedes the siting of facilities necessary to meet present energy needs. The development and implementation of consistent Federal regulations and an effective coordination process among all agencies involved in the review and licensing process is essential.

Improving the regulation of the siting process can be accomplished, in part, through administrative action. However, federal legislation must be adopted in order to accomplish a number of needed objectives including stimulating additional State planning capacity, emphasizing regional approaches as determined by States, and providing for additional State responsibility for environmental analysis.

## Consideration of Regional Needs

The size and location of most electrical generation plans requires the assessment of regional energy needs. The impact and availability of a number of resources, such as water, must be explored by joint State action. The need for States to examine and develop mechanisms for regional planning is recognized by the Governors. Regional bodies could facilitate:

- the formulation of projections of energy supply and demand and the types and number of electricity-producing plants;
- the review of acceptable sites; and
- the analysis of interstate impacts of facility development.

Multi-state agencies that presently exist could provide an analysis of regional energy issues and identify impacts upon member States. Data, aggregated on a regional scale, would provide an opportunity for forecasted electrical energy production capacity to be examined in marketing areas which generally cross State lines. Regional structures would enable affected States to deal on an equal basis with the utilities which ordinarily develop marketing strategies on a multi-state basis. The establishment of regional mechanisms for the purpose of the planning and siting of energy facilities must, however, be a prerogative of the States. The Federal government's role should be one of assistance, possibly financial aid when warranted and specifically requested by the involved States.

## Federal Legislation

In response to the chronic ed shortcomings of the existing energy facility siting process, Federal legislation is being proposed to reform existing procedures and deal with State/Federal relationships. There is a recognition of the need for increased State participation and responsibility. Provisions for State involvement in need for power determinations and environmental reviews parallel State thinking. However, the present language does not provide a comprehensive treatment of energy facilities, but focuses only on nuclear power plants. The proposed legislation attempts to deal with the improved interagency coordinative mechanisms necessary and for increasing the cooperative relationships with state governments, both important concepts. The recognition of the States' role in siting matters also encourages Federal supporting efforts rather than preemptive authority, an important consideration to retain in the legislative bill. Several progressive ideas are contained in current drafts and any adopted legislation must provide for a full State role and be structured in such a way that subsequent acts provide a more comprehensive approach.

# POLICY ISSUES ON FACILITY SITING

Recent studies of energy facility siting process have identified several factors inhibiting timely and responsive siting decisions. In recent years, a growing recognition of the importance of State participation has been evident in solving problems of national interest. Numerous pieces of Federal legislation have placed additional authority on State

governments to carry out programs with a national focus -- water quality planning, 701 planning (HUD), implementation of clean air standards and coastal zone management plans, among others. But such legislative actions have not always focused on the authority necessary to integrate the management structures needed to deal with overlapping issues.

In 1970, the first comprehensive one-stop power plant siting procedure was adopted by Washington State, and in the intervening years over one-half of this country's States have taken action in some form to expedite the process and make it more responsive to the public need. But the improvement of State management systems alone does not solve those administrative and legislative issues. Many must be addressed at the Federal level. States recognize the need for comprehensive change and are anxious to assist in the development and implementation of energy policies consistent with the national interest.

To accomplish these objectives, Federal attention must be directed to the possibilities available for making facility siting procedures effective, timely, and applicable to current and future needs. Many State administrative and legislative "houses" are in good order and carefully reasoned federal action is now essential to support these progressive efforts.

As the NRC staff study suggested, a number of opportunities are available at the Federal level to impact favorably upon the complex and difficult siting processes that have evolved over the past several years. Positive action, both executive and legislative, which recognizes the advantages of State government involvement is not only timely, but essential. Constructive cooperation and a clearer delineation of responsibilities at both levels can minimize present overlapping, duplicative, and uncertain activities. It should not be assumed, however, that only Federal action is required. Attention to State structure and process is important and necessary if Federally-approved options are to be implemented. Unilateral action at either level leaves a substantial amount of unfinished attention to the government interrelationships that characterize existing site planning and analysis procedures.

Joint action and the buttressing of existing State responsibilities can aid in diminishing duplicative efforts at the Federal level. Clarification of procedures resulting from Federal enabling legislation is a touchtone for simplification. With additional States maturing their own environmental analysis activities, it seems a needless additional exercise for parallel, similar reviews to be undertaken Federally. If the review procedure can, under appropriate guidelines, be delegated to States without reducing the scope or quality of the review, such action can eliminate much redundant effort and expense. Respective roles, under this procedure, become clearer and the effectiveness of this portion of the administrative process concerning facility licensing or certification is enhanced. In similar fashion, other administrative requirements can be similarly analyzed and dealt with.

The studies undertaken and the workshops held, particularly during the past year, have identified numerous ways in which an orderly, systematized approach for the planning and analysis of energy facilities can be conducted. The Office of State Programs report, NUREG-0195, the National Governors' Association investigations, and other efforts have set

forth many similar notions of how the process can be more effectively structured and operated.

Some advances would be possible, even if attention is limited to resolving some of the existing difficulties through administrative actions. However, efforts excluding a comprehensive examination and treatment will not enable the building of an overall, effective process. Focusing exclusively on development of a common data base, for example, will not alleviate the duplicate environmental reviews nor the conflict and overlap of the existing administrative actions. A responsive siting policy will not evolve unless a comprehensive approach is taken. The basic elements that need to be considered are:

1. The development of a common data base;

2. The development and maintenance of a National Fuels Policy;

3. The responsibility for determining the need for electrical power and other fuels;

4. Capacities for analyzing and inventorying plant site and transmission corridor locations;

5. Federal and State site approval and certification procedures;

6. Ongoing capacity for construction supervision and management of secondary environmental impacts;

7. Continued monitoring and compliance with certification requirements.

In addition, for the overall siting process to work satisfactorily, lead responsibilities for each element of planning, policy making and operational activity must be defined and a means for adequately financing each aspect must be established.

## FINANCING THE SITING REVIEW PROCESS*

No reform on the siting process will be effective unless adequate resources are available to make certain that the required actions can be taken. Sporadic, uncertain financing of basic energy planning will not enable the assembly of needed staff and information, provide for the necessary continuity of effect needed, nor establish essential public confidence; all factors which heavily influence the value of the planning product. Financial instability would inhibit any and all actions necessary to establish a comprehensive siting process. A predictable and sufficient financial resource must be available to finance each stage of the siting process.

*The material on financing is drawn in part by a paper prepared by Daniel J. Evans, former Governor of Washington State, for the NRC. A summary of the paper is included in Appendix E. The publication, "Alternative Financing Methods," USNRC Report NUREG-0204, is available from the National Technical Information Service (NTIS), Springfield, VA 22161.

The allocation of principal tasks can suggest where resources can be secured to fund various components of the process. Lead role designation should not, however, necessarily dictate funding responsibilities. For example, in developing a national fuels policy, primary action must be undertaken by the Federal government through extensive hearings, interagency and interlevel governmental consultation, and substantial coordination throughout the process. Such activity should be financially supported through Federal resources. However, much of the data and information to be integrated into a national fuels policy will be developed at local, State, and regional levels. Federal support should be available to support these activities as well.

State and Federal officials alike strongly recommend that the lead role for electrical need determinations be assumed by the States, either individually or on a regional basis. Plant site and transmission corridor locations offer opportunities for State and regional action, with Federal participation necessary where States may choose not to act. Such actions are necessary, support State and Federal objectives, and warrant joint funding.

Site analysis, including an early site approval program, and construction supervision are essentially State responsibilities with a necessary Federal role in the analysis and approval of nuclear power plants from the safety standpoint. Financial support should be allocated accordingly.

Finally, there is a growing need for continued environmental monitoring of operating plants. This should be primarily a State responsibility With respect to radiological discharges from nuclear plants, where the NRC has primary jurisdiction, joint programs should be encouraged.

The foregoing list of activities calls for the identification of lead responsibilities, shared action and support, and an assured revenue base, so that these activities are carried out consistently and in a timely fashion. A number of funding sources can be identified, including Federal general appropriations, trust funds, energy production or consumption taxes, State general funds, and applicant fees. No one single source is sufficient for the carrying out of the multiple tasks necessary in energy planning, site analysis, certification, and facility monitoring. A number of options in securing Federal funds are available, including yearly appropriations, annual grants, establishment of a trust fund, or an energy tax with tax credits to encourage State involvement.

The most common type of Federal assistance may be an annual Congressional appropriation to support Federal responsibilities in developing and maintaining a national energy (fuels) policy and in supporting State planning efforts. While this has some simplicity, it does not provide secure funding on a long-term basis and could lead to undesirable centralization of the process by complete dependency on Federal funds. Congressional annual appropriations, however, could be utilized to initiate activity, with long-term reliance on other types of funding that would assure continuity.

Direct Federal grants could also be utilized to provide seed support over a several-year period and to stimulate additional funding through State legislative action. Matching funds might or might not be required. Additional incentive grants could be included to encourage regional approaches by States for energy planning purposes.

The establishment of a trust fund, similar to the existing Highway Trust Fund, is possible and could provide continuing revenues for energy planning and site analysis purposes. Resources could accrue to the trust fund from the levying of a tax on the consumption or use of energy. The development of a formula for distribution of revenues is a critical element if this type of funding base is to be utilized. There must also be assurances for multi-year funding so that planning and analysis activities can be carried forward without interruption. The trust fund concept may, however, face strong political opposition from the factions that are concerned over the operation of the Highway Trust Fund.

The establishment of a Federal energy consumption tax could provide adequate and assured revenues for the several tasks that must be accomplished in energy planning and site analysis. The tax would be levied by the Federal government on a uniform basis. States would have the opportunity to receive revenues within the context of national objectives through a tax credit to carry out State and regional energy planning responsibilities. Together with other funds to carry out primary State objectives, the siting process could be undertaken with adequate funding backup to support proper organizational structures. Federal support from such a tax could be designed to provide a stimulus for creation of multi-state entities (through State initiation) to carry out regional analysis. With tax credit provision, the intergovernmental process of transferring funds would also be simplified.

There are a number of State responsibilities in energy planning and management that should be supported solely through State revenues. While general revenues can be utilized, other approaches are also possible. Two States, Maryland and California, have enacted State taxes on electrical consumption to provide continuity and stability to their energy planning and management program. Whatever source is utilized by the State, funds should be available for the tasks that require State action.

Application fees are utilized in several States and the amounts required vary widely. Current practice leans towards fees that are sufficient to cover all or a major portion of the extensive hearing and analysis process. Additional financial requirements may be necessary from applicants to develop baseline environmental statistics and provide resources necessary for on-going monitoring capability during plant operation. Support for "Public Counsels" or "Counsel for the Environment" is provided in some States to assure adequate representation of citizens' concerns.

Financial support must also be available to deal with social, economic, and environmental impacts caused by the location of facilities until such time as expected tax revenues from a new plant are available to cover such costs. Advance tax payments may be applicable or in-lieu payments may be made. Other supports may be necessary to insure that communities are "held harmless" for the added, at times severe, socioeconomic impacts that occur to communities surrounding or adjacent to major energy facilities.

## ENERGY FACILITY PLANNING NEEDS

Nearly every commentator on facility siting has recognized that the lack of structured energy planning processes has significantly deterred the orderly siting of energy facilities. State and federal officials recognize that a rational siting process cannot be formulated without a responsive planning framework that included, when available, pertinent aspects of national policy. There has been too little anticipatory planning to deal with potential energy problems. Energy policy efforts are largely impacted by the complexity of the issues and by the limited governmental dollars that are available. Devising and implementing satisfactory planning structures to deal with the public policy issues is difficult but necessary to deal with the public policy issues, and is difficult but necessary in order to properly determine the need for and in achieving a balanced and efficient energy supply.

It is of utmost importance to move away from a case-by-case analysis of proposed facilities to a system whereby generic appraisals can be made of total electrical energy needs well in advance of specific plant applications. The identification of energy needs, while carrying out simultaneous analysis of a specific plant application, is neither timely nor the proper forum in which assessment of overall need can realistically be made. Given the absence of adequate planning structures, only rough estimates of need can be made, usually based on historic trends. Without an established overall need, the pressure for validation of supporting need documentation by an applicant becomes a significant factor in the public policy determination of site suitability to be made by the siting agency. An advance need identification and certification process can add certainty since, in the absence of new relevant information, a belated inquiry as to whether the plant "really is needed" would be unnecessary.

Historically, energy planning has been accomplished by utilities in much the same way that major corporate planning activities have traditionally been made. Long-range plans are developed as essentially non-public activity and announced at the time applications for necessary public permits are requested. With the advent of increasingly costly electrical generation plants, together with the growing impact of such plants on land use, development patterns, air and water, public interest has reached an awareness that must be accommodated through a well-defined open siting process.

The determination of the public interest in energy matters sometimes transcends the interests and development objectives of utilities. The goals of private, and in some cases public, utility organizations may not always conform to the broader context of public interest in energy use and development matters. It is imperative that the increase in attention to public policy issues be met and dealt with in an institutional context.

The development of increased State planning competence in the field of energy does not necessarily mean that government action should be undertaken in place of or duplicate all the existing and historic energy planning carried out by utilities. To insist that there be a counterpart staff at the State level as a mirror image of existing utility capacity would be redundant. The capacity of States to be able to validate utility and industrial estimates of

energy needs is an appropriate objective. In addition, State planning activity should be to interrelate alternative fuel mix issues and to incorporate conservation programs and initiatives.

The addition of State energy planning components will provide (where it does not now exist) for a capacity to integrate national and State policies and will enable a comprehensive look at how the energy supply within a particular area can best be developed and located with a minimum of negative impact.

## NEED FOR POWER DETERMINATIONS

Presently, there is an unfortunate mixture of need for power reviews with the analysis of power plant suitability. This encourages confusion and can inhibit the sorting out of issues and their resolution. Need for power determinations must be more generically examined, with the time for planning decisions made well in advance of specific energy facility applications. The need factor involves many ingredients of policy and data -- but incorporating specific plant and site reviews at the same time merely confounds and delays the process. Providing for a separation of issues allows clearer and timely examinations to be made and also permits individuals and groups interested in those generic issues to be heard. It also lessens the possibility that a determination of need becomes an exercise that is mechanically fulfilled by the filing of an application to the NRC for a license or to the State for a site certificate.

An independent analysis of need is required at the State and regional levels. The entity responsible can utilize information derived from utilities, major industrial users, as well as that available from other sources. This planning agency will be able to serve the Governors and Legislatures in addressing energy need issues in a total context.

From the standpoint of the States and many others, the determination of electric power needs should be a State responsibility which is accepted by federal agencies in carrying out their responsibilties. While there are numerous forces impacting on potential power needs, State and regional policies can identify and influence energy demand and supply growth rates and these can impact on the generation capacity needed. Preferably, need forecasting should be accomplished by marketing areas, and States should be encouraged to develop and utilize institutions that can carry out regional analyses.

One additional benefit of State-determined energy needs could be to remove the burden of potential liability from project sponsors. In the case of electrical energy short-falls due to inadequately developed and acted upon publicly validated forecasts, utilities presumably would not be responsible if they responded, on a timely basis, to meeting forecasts determined and certified by States. Under current arrangements, utilities appear to be responsible for electric supply inadequacy and can be held accountable, except in conditions created by an "Act of God."

Some observers have also indicated that the reserve margins for power are unnecessarily high in order to avoid a potential shortage of electricity. They maintain that a more realistic appraisal of consumer and industrial energy needs can be made by taking the full range of policy options into account while formulating or validating forecasts. Requiring States to be responsible would place the burden of accurate forecasting directly upon a public agency with the scope (if States are organized on a marketing area basis) necessary for effective performance.

The States' position is that need for power decisions should be final and not subject to adjustment or Federal override. This responsibility should provide for the needed flexibility to allow regional diversity and alternative institutional approaches to meet planning and forecasting objectives. In order to be most effective, regional energy planning should be compatible with national energy policies which encompass broad societal goals, which balance economic and environmental necessities, and which includes a legislatively recognized national fuels policy.

## EARLY SITE REVIEW PROGRAMS

The approval of specific geographic sites, in advance of facility applications for necessary permits and licenses, has the potential of greatly improving the siting process. Programs of this nature would allow advance determination of the suitability of a particular site and would enable quicker resolution of a facility application, since a major portion of the site issues would already be resolved. Prequalification of suitable sites and the elimination of those judged unsuitable would also be substantial benefit in shortening the time span and minimizing expense. In the consideration of a site, it is also appropriate to consider the off-site areas need for support facilities and transmission corridors.

However, in order for an advance site selection program to work, there must be some type of defined standard plant design developed so there will be some specific project facility system against which impacts can be measured. This should apply to fossil as well as nuclear power plants. Any program of early site inventorying, including banking, should be accomplished at the option of the States, that can judge the appropriateness of the program.

In carrying out a prequalification program, various factors should be addressed, including the length of time prequalifications would be valid and what controls would need to be imposed on the site and adjoining areas to preserve site suitability. Some States now require the proposal and analysis of alternative sites so that the most suitable site may be identified and used. The location of alternative sites in different States within a regional marketing area suggests the involvement of a regional agency.

The identification and review of potential sites should also include those that might be located on Federal lands. There should be no artificial exclusions in determining suitable areas as long as all relevant factors are considered in determining the suitability of a site for a major electrical power generating plant. Sites, when identified and analyzed, should be clearly designated as being compatible with long-range State and regional energy and site

plans. The present lesiglative authority vested in the NRC for radiological impacts of proposed nuclear facilities should also be recognized.

## ENVIRONMENTAL REVIEWS - REDUCING THE REDUNDANCIES

There is substantial documentation that the existing plethora of environmental reviews are expensive, time-consuming, and add little to the information needed for analyzing facility impacts. The existing situation may be of benefit only to those who seek to indefinitely delay decisions. Continuing this course of action has little to speak for it. The ordering of the process and the reduction of duplicate environmental reviews is a high priority need.

Necessary action to authorize the delegation of authority for interested and qualified States to make environmental analyses of proposed energy facility sites and power plants consistent with national policies should be taken promptly. A program should be developed, meeting minimum Federal guidelines developed in close consultation with the States. State reviews should then be accepted by Federal agencies and no additional reviews ought to be required. Such reviews should constitute conformance with the requirements of the National Environmental Policy Act and numerous State acts now in existence.

## ENHANCING PUBLIC PARTICIPATION

Opportunity for public participation must be an integral part of any energy facility planning and site analysis program. While access is now available, too often site decisions have been made before interested individuals and groups have the necessary information to access site or project impacts. As a result, the public at times is forced into raising basic issues relating to the need for a facility or the timeliness of a proposal at a point in the process when such issues should already have been decided. Consequently, citizen influence has not always been adequately considered.

With fuller information available earlier in the process, relevant issues can be identified early and dealt with and resolved on a timely basis. Delays resulting from minor insignificant objections should be reduced through a better siting system. A reexamination and reopening of issues that have been settled should be avoided in the absence of pertinent, new information or changed circumstances. Repetitive hearings are frustrating and shed little light.

The right of intervention by interested groups and individuals should be secured and there may be occasions where Federal funding of intervenors is appropriate. The concept of intervenor funding should be viewed in the context of whether such funding is needed, will enhance the identification of issues, provide needed information, and allow the full participation of those adversely affected.

## IMPROVING STATE SITE MANAGEMENT PROGRAMS

Over one-half of the States have taken legislative action to improve the methods and procedures of dealing with site certification issues. The approaches taken by the several States vary according to their respective needs. Some States have enacted a unified one-stop siting system which integrates all site review and analysis into a single administrative process. This has enabled the development of a site certification program that involved all affected State agencies and other interests and identifies and interrelates the issues so that a total perception of impact can be gained. Other States have developed lead agency or coordinative mechanisms to deal with site questions that affect a number of state agencies. When the analysis of issues is the responsibility of individual State departments, coordinations and time schedules have had a unifying impact upon review activities.

In other States, each issue is dealt with separately and individual permits and licenses must be secured independently. In some situations, varying time schedules are involved. Developing and implementing minimum standards for coordinative activities can be of substantial benefit for some States.

Optional approaches to carrying out an integrated one-stop or more fully coordinated process have included: (1) creation of a new agency to carry out principal siting responsibilities, (2) utilizing an existing agency with siting authority assigned to it, and (3) the establishment of an interagency committee or council composed of directors or their representatives and/or public members, ordinarily selected by the Governor. The use of new agencies has been the pattern when the regulatory and review responsibilities covered have been comprehensive in nature or when substantial expansion of energy management and development activities occurs. A number of additional States are currently considering actions to improve and expand their siting management programs, adding reinforcement to the view and that many States now are able to accept increased responsibility in facility siting activities. States are not static in their developing competence and delegated Federal authority will enhance the providing of better order to the site certification and licensing process.

Whatever the overall legislative framework for carrying out state siting authority, it is important to have an administrative process in place that will enable a thorough analysis of site and facility impacts. Basic objectives to meet are timeliness, credibility and efficiency (including use of resources). The process should have clearly identified elements and a set of administrative rules of procedures which foster clarity and coordination efforts (4).

Organizational staffing should be sufficient to carry out the responsibilities placed upon the siting agency. General staffing requirements are impacted by the availability of technical staff support, provided by the agencies or through the use of independent consultants.

The State facility siting agency can be designated as the entity to coordinate applicable technical roles of agencies, so that there is consistency in approach. A set of overall performance standards developed within the total siting process is an appropriate step. Thought should also be given to integrating the various components of State/Federal procedures insofar as practical.

The State administrative system devised should have the capacity to establish technical review groups to look at applicant plans and make recommendations to the siting agency for action. Monitoring and surveillance functions to determine project sponsors' adherence to the site certification agreement can be contracted to State agencies. This can be of considerable benefit, since many State agencies have personnel aware of potential problem areas, and often agencies are structured so that there are field units in proximity to energy facility sites. Utilization of State agency personnel is also possible during the review of applications as well. Assignment of primary responsibility to a project officer can assist specific interagency coordinating needs. Coordination with the NRC in its conduct of radiological safety inspections can also be carried out.

The siting authority must have available pertinent planning information on energy use trends and forecasts in carrying out its responsibilities and it should maintain close liaison and coordination with the state energy office or other agency responsible for planning activities and with any appropriate multi-state energy agency.

## INTEGRATION OF FEDERAL SITE MANAGEMENT ACTIVITIES

Similar to the observation on achieving cohesive state management programs is the need for improvement of Federal administrative efforts and responsibilities. The fragmented activities, now characteristic of Federal actions, are not conclusive to an effective management system. As the NRC study indicated "the current level of coordination among Federal agencies is a serious deficiency of the present process" (5).

The establishment of coordinating mechanisms to bring together agencies with responsibilities in site and facility reviews and permits is an important and immediate step to take. Instituting a central focus, and perhaps a one-stop siting process, is no less appropriate at the Federal level that it is in the State administrative structure. It is generally assumed that this is impossible of achievement. However, that point of view should not discourage those efforts that can be undertaken to minimize roadblocks to an effective management process.

The designation of a lead Federal agency to coordinate agency efforts and to suggest time frames for analysis of applications or permits would be quite helpful. Action to remedy the relative laissez faire methods of present interagency coordination efforts should be promptly initiated and persisted in until substantial improvements are in place.

## CLEAN AIR LEGISLATION - IMPACTS ON FACILITY SITING

The recently enacted amendments to the national Clean Air Act can strongly impact energy facility siting needs. Under some administrative interpretations, the provisions could severely and adversely affect the location of needed energy facilities and, indeed, could prohibit them in certain areas. The issues relating to the prevention of significant deterioration of air quality, the utilization of best available control technology to achieve new source performance standards, the impacts of new facilities in non-attainment areas, and the role of the States in energy facility siting all are pertinent to the question of site availability and suitability.

It is highly important that the nation move forward in achieving needed clean air standards. At the same time, however, it is also necessary to have an adequate supply of electrical energy. How to achieve both without adversely impacting either our energy supply base nor in retreating from essential clean air standards must be dealt with definitively. Through a delegation of responsibility for plan implementation to the States, and with the development and use of new technology, an appropriate balance of clean air objectives with social and economic changes can be achieved. Better definitions of clean air objectives and standards, more certainty in the types of control technology that can be used, and flexibility in approaches to attain clean air objectives are all important elements.*

## A FEDERAL RESPONSE: PROPOSED LEGISLATION

Concurrent with the NGA study to formulate ways to make siting processes more workable, for both State and Federal governments, has been the development of draft siting legislation by the Administration. Initial drafts have incorporated many of the major concerns and needs of State government.

The proposal is not as comprehensive as States desire, since the primary thrust deals with the nuclear power plant licensing process. Even so, the proposed language incorporates a number of concepts and authority for increased State involvement in energy planning and environmental analysis. The Federal support of increased energy planning competence at the State and regional levels would allow analysis of the need for electric power (within the parameters of a national energy policy yet to be developed), the determination of fuel mixes, the impact of conservation techniques and programs, and the types of electrical generating facilities appropriate for the various electrical marketing areas. This is an important component of any revision of site and facility analysis procedures. It would be incomplete to encourage a planning program that would deal with nuclear power plant planning exclusively. Planning requirements must be inclusive of all reasonable power sources available to be utilized. Comprehensiveness is essential for an adequate planning function if national and State objectives are to be achieved.

*See Appendix D for a summary of the National Governors' Association/Department of Energy Workshop held to examine the impacts of the Clean Air Act and its amendments on energy facility siting questions.

The stimulation and encouragement of State and regional planning programs through financial support and technical assistance would be timely, productive, and would be in accord with the views of the Governors' policy statement on the issue. The energy planning concept is integral to both the development and the implementation of energy policies that provide for sufficient energy at reasonable prices with a minimum of environmental disruption. In the context of current concerns with facility licensing and certification activities, the establishment of increased planning competence permits the separation of basic planning issues from specific site or facility analysis, an objective sought by many. Adequate planning actions undertaken by the States will enable an improved capacity to implement energy supply and management options to deal with site selection and facility analysis activities.

The administrative responsibility for carrying out the planning assistance support and monitoring activities would be the newly established Department of Energy. The language also authorizes the Nuclear Regulatory Commission to establish a program for open and advance planning for nuclear power plants. This suggested authority must be integrated with the proposed DOE responsibility, so that State and regional efforts can be related to the planning requirements made of applicants by the NRC. It does not appear to be useful to have two differing independent systems of energy planning; one dealing with energy planning related to energy management programs and to major energy facilities, generally, and another system relating specifically to nuclear power plants. Close coordination is essential if the current bifurcated concept is adopted.

Environmental determinations could be delegated to qualified States under NRC guidelines under the proposed language. The provision could be further strengthened by the inclusion of the Department of Energy, the Council on Environmental Quality, and the Environmental Protection Agency in the development of the State environmental review program guidelines. Such involvement could assist States as the program matures and is extended to include other types of major energy facilities. The State position supports the delegation of environmental review responsibilities under minimum standards which should then be accepted by Federal agencies.

NGA policy does not deal only with nuclear facilities but covers other energy facilities which will form a part of the country's additional electrical energy capacity in the years ahead. Narrowing the focus of planning and review efforts to one energy form does not provide the comprehensive framework which States feel is necessary.

Unfortunately, there may be vestiges of potential Federal preemption of State authority remaining in the legislative draft. It should be clearly indicated that the changes recommended deal with the delegation of Federal responsibilities to those States qualified and interested in undertaking those tasks. It should not suggest nor authorize that where a State might not carry out a delegated Federal function, that the Federal government would summarily preempt existing State responsibility and authority under its own powers. That concept would prove to be unworkable, difficult to achieve, and could raise serious constitutional questions.

The lead agency designated to develop criteria and approval of State programs would be the Nuclear Regulatory Commission. While this may be suitable for nuclear power plants, it is also important to develop environmental review procedures on a generic basis for other types of energy facilities. This would infer the designation of an appropriate lead Federal agency to coordinate reviews for energy facilities generally.

Overall, there are major supportable concepts included in the draft language providing for substantial increased State involvement in planning, environmental reviews, in encouraging multi-state activity and also encouraging broader citizen participation. The proposal is clearly responsive to a number of elements contained in the NGA policy position even though it deals primarily with the nuclear power station siting process.

## MULTI-STATE ISSUES

The planning requirements, size, timing, and location of new major electric generating facilities ordinarily impact more than one State. Existing marketing areas often cross State boundaries as do significant portions of new generating capacity of many new plants. Regional distribution requirements, rates, transmission facilities, and environmental impacts are all factors suggesting organized multi-state activity.

To deal with these issues, States should seek ways to establish (or utilize existing) regional coordinative agencies in order to carry out the definition and analysis of regional siting questions and to deal with the many interrelationships that necessitate multi-state attention.

The precise organizational form for regional energy planning agencies, however, should be left for State design. There is little merit for Federal prescription of the kinds of regional agencies appropriate for carrying out energy planning and analysis. There is less feasibility that a Federally mandated agency would be effective. What is relevant for Federal attention is the stimulating and encouragement of regional mechanisms of the State's choosing, without a Federal mandate. Federal support can include funding and technical assistance where appropriate. Congressional action that would permit the preapproval of interstate compacts created for State energy planning purposes, similar to the provisions of the Coastal Zone Management Act amendments, would also assist and could avoid the substantial time period required for approval under existing procedures.

In order for a regional agency to be effective, it should have enough geographic breadth to encompass regional fuel and electrical marketing areas and be structured to be accountable to the Governors of the States comprising the regional agency.

## CONCLUDING OBSERVATIONS

Substantial study has been made of current deficiencies in the siting process and many recommendations and suggestions have been advanced for remedying current difficulties.

Timely action should be taken by both State and Federal governments to incorporate those changes that will achieve more effective siting procedures. Some actions can be taken quickly, through adjustments in administrative procedures and programs. Some changes may necessitate minor legislative action to provide additional resources or to provide a more adequate organizational authority. Many of the major recommendations will require Federal legislation.

It is likely that it will be some months, or even years, before total implementation of the concepts discussed in this report can be achieved. It is important, therefore, to proceed during the interim with whatever tools are available. Administratively, it is possible to develop common information and data bases for State and Federal use. It is also possible to expand the utilization of joint hearings and perhaps a joint record to reduce duplicative hearings. Joint efforts in developing environmental impact statements can also be productive. These actions are illustrative of those that should be aggressively pursued pending the adoption of new Federal legislation. Applications in process should not be jeopardized; however, increased joint activity can assist in minimizing current overlapping activities.

The identification of appropriate roles has largely been accomplished. The principal work necessary now is to implement those ideas which can impart favorably upon the siting process. The ascendancy of the key role of States in the development of public policies relating to energy facility siting programs can steady the siting process and make it timely, responsive, and effective. Further delays in implementing changes can only impede the achievement of a sufficient and appropriate energy supply.

The careful delineation of responsibilities between the Federal and State governments can be achieved and direct, persistent actions can assist in making a siting process more palatable to all legitimate interests while lessening the current susceptibility to delay and inaction. Clarity and orderliness of procedure, increased planning competence, added trust in the capacity of States to participate, and better management systems all can combine to better effect energy policies of concern to all. More delay and inaction surely is the least desirable approach. The problems, although complex, have been carefully analyzed and, through implementation of the foregoing recommendations, measurable progress in improving effectiveness can be assured.

## REFERENCES


1. Office of State Programs, U.S. Nuclear Regulatory Commission, "Improving Regulatory Effectiveness in Federal/State Siting Action," USNRC Report NUREG-0195, May 1977, Part I, Chapter 1, p. 1-10. Available from National Technical Information Service (NTIS), Springfield, VA 22161.

2. See Ref. 1, Part I, Chapter 1, p. 1-8.

3. John N. Nassikas, Panel Chairman, "State Regulatory Activity Involved in Need for Power," prepared for NRC, Office of State Programs, USNRC Report NUREG-0197, April 1977. Available from National Technical Information Service (NTIS), Springfield, VA 22161.

4. See: Energy Program, National Governors' Association/Office of State Programs, NRC "Federal/State Regulatory Permitting Action in Selected Nuclear Power Station Licensing Cases," USNRC Report NUREG-0200, June 1977, for an examination of a number of licensing actions. The report also analyzes the major sources of delay in the licensing process. It is available from the National Technical Information Service (NTIS), Springfield, VA 22161.

5. See Ref. 1, Part I, Chapter 1, p. 1-10.

APPENDIX A

## NATIONAL GOVERNORS' ASSOCIATION POLICY STATEMENT ON ENERGY FACILITY SITING

This Policy Statement was prepared under the leadership of Governor Robert W. Straub, Chairman of the Subcommittee on Energy Facility Siting. The proposal was submitted to the Natural Resources and Environmental Management Committee for review and then to the Nation's Governors for their action. The statement was adopted unanimously by the Governors in the fall of 1977 and appears as a part of overall NGA policy in the publication, "Policy Positions 1977-78," on page 61-62. This document is available from the National Governors' Association.

### POLICY STATEMENT

The planning, timing, and analysis of specific sites for major energy facilities is presently unnecessarily burdened by the lack of national energy policy, blurred lines of state/federal responsibility, lack of needed advance planning and inadequate arrangements for state input, resulting in delay and duplication of effort which impact heavily upon cost, certainty, and timely availability of needed facilities.

The increasingly complex and lengthy processes involved in planning and securing required permits and licenses for energy facilities need not and should not be tolerated. Key to the resolution of many of the present difficulties is the acceptance by Congress and the Administration of the capacity and responsibility of State Governments. Also, a national fuels policy is urgently needed and should be developed through hearings and extensive consultation with states.

We specifically recommend:

1. That states individually and through regional arrangements be clearly given the responsibility to forecast the need for power through a clear and open process involving public hearings and comment, incorporating broad conservation goals and objectives. Such determinations should be binding upon federal agencies.

2. Present duplication of efforts in making environmental reviews must be eliminated. Legislation should be enacted by Congress delegating to interested states the responsibility for making environmental analyses of proposed energy facilities. Environmental reviews meeting minimum standards prescribed under federal guidelines, which should be developed in close consultation with states, should then be accepted by federal agencies. This action has already been taken in regard to federally assisted highway improvements and should be extended to energy facilities.

3. That Congress take action to expedite and encourage regional arrangements of states to enable joint planning efforts without mandating any particular method. The preapproval of interstate compacts similar to the authority contained in the amendments to the Coastal Zone Act is one model that could be utilized. The imposing of federally mandated, regional organizational forms would be neither wise nor productive. There is broad evidence that the states can unite their common interests in dealing with issues of concern to them. It is also vital that there be political accountability through the Governors.

4. Adequate opportunity for public participation in facility site planning and site analysis at an early stage must be further developed. Citizens should not have to attempt to influence site decisions long after all important decisions have been made. Therefore, utilities should disclose facility plans at the earliest possible time and an improved planning process at the state and regional levels should provide, throughout the process, expanded ways in which individual and group views and opinions can be expressed. With improved citizen access throughout the process, relevant issues can be identified and dealt with on a timely basis. Delays resulting from frivolous of both procedural and substantive questions should be required within a specified time, including the right of intervention. Federal funding for intervenors shall not be provided unless it can be shown that individuals or groups of individuals will suffer direct and personal adverse impact by the approval, construction and operation of an energy facility and have a demonstrated need for such funding.

5. That a system of early site reviews including review of potential sites on federal lands be established. With a national fuels policy, proper planning authority vested with the states, and with standard plant designs it would be possible to separate basic generic issues from specific site analysis. Therefore, site analysis could be carried forward separate from specific facility review. States, as a part of the planning process, should certify sites as to their compatibility with long-range state plans. The development of an inventory of suitable sites for energy facilities would speed licensing procedures significantly.

6. That those planning and siting processes remaining at the federal level be integrated. The creation of a federal Department of Energy can help considerably in tightening federal siting actions. Development of a one-stop siting procedure, common to several states, would be advantageous. At the very least the coordination of federal efforts under a lead agency should be accomplished as soon as possible.

7. That greater coordination be accomplished with federal agencies concerning energy facility sites on federal lands. Land Management Agency representatives in affected areas must be involved in the evaluation process.

8. That state management processes be strengthened where appropriate to more effectively deal with facility site planning and analysis. Integration of procedures under a one-stop process and greater coordination of activities under minimum standards can be of significant benefit.

9. Dealing with waste disposal is an important ingredient in our siting procedures and is imperative to our national defense posture. We must have a national policy for dealing with radioactive waste and states should have a strong influence in the development of that policy, with the Federal Government retaining authority for final decision.

10. During the interim period as these policies are being implemented, existing procedures should be utilized for applications in process. In addition, there should be substantially increased joint activity between states and Federal Government, including the common use of information, joint hearings, and other ways to minimize current overlapping activities.

The National Governors' Association feels strongly that needed improvements in facility siting procedures can be accomplished without further delay. Greater involvement by the states can ease many of the unnecessary constraints now surrounding the complex and often redundant layers of siting review. Quick action at the federal level can result in better planning, better analysis, and the savings of billions of dollars for the American citizen and yet provide the needed energy facilities in suitable locations.

In developing appropriate federal legislation implementing needed changes in dealing with facility siting matters, substantial participation by states is encouraged and necessary.

APPENDIX B

STATE PERSPECTIVES ON ENERGY FACILITY SITING

Summary of NGA/NRC Workshop
Atlanta, Georgia
December 1976

1. Efficiency in energy facility siting activities involves a general trade-off between the speed and the quality of licensing decisions. It also involves the optimization of all costs, to minimize both the total environmental costs and the costs incurred because of the passage of time.

Timely decisions on siting matters must not lead to poor quality or public dissatisfaction with the process, causing lengthy appeals or public resistance in future proceedings. The inevitable trade-off between timeliness and quality is more manageable when each level of government streamlines its regulatory and review processes as much as possible.

Considerations of efficiency in specific siting actions suggest the desirability of joint hearings and a common data base and hearings record among State and Federal agencies, among Federal agencies, and among State and local agencies for any single site or combinations of sites.

Federal siting legislation may be desirable to better define the coordination of Federal energy actions and agencies, the extent of State responsibilities and authority, and the scope and degree of State and Federal cooperation for achieving a data base.

To be efficient, energy siting regulation should be comprehensive. Its environmental considerations should encompass the quality of the human environment, be related to advance planning of the future need for power and supporting facilities, and include consideration of broad socioeconomic factors in the area affected by a plant site. These factors can be reviewed to some extent during advance energy planning and discussion of predesignated sites. Specific facility licensing, properly related to the general planning, can be defined more narrowly and can proceed more speedily.

2. A delination of Federal/State energy siting responsibilities suggests that the Federal role is in such areas as national security and radiological health and safety. Nonfederal responsibilities -- State, local or regional -- include socioeconomic community impacts, land use, the need for power and type of power, and physical environmental impacts.

Federal responsibilities involve generic issues, such as nuclear waste disposal and fuel recycling, for which broad standards should be developed by the appropriate Federal

agency. Such issues should not be decided in individual site licensing cases. States cannot revise or replace Federal standards, but they should participate in their development and be provided necessary flexibility so that all standards can be applied to local conditions.

Socioeconomic, community, and environmental impacts are paramount State responsibilities. States and regional bodies have preeminent responsibilities for land and water use. They can conduct thorough environmental assessment reviews as well as or better than Federal agencies as they further their expertise, procedures, and relationships with local units of government and public interest groups. Even where effects are regional, States have strong responsibilities for assuring comprehensive review and coordination.

For many environmental matters, Federal, State, and regional bodies will be involved. Subjects of shared concern include water rights, air and water quality, and transportation and storage of nuclear materials. The standards for a nuclear cask design are a Federal question, while cask utilization is a State concern. The environmental impacts of energy facility siting, however, involve questions which should be a part of State review responsibility.

3. Federal legislation should be enacted to delegate final site approval authority -- for nonfederal responsibilities -- to the appropriate State or regional agencies that wish to assume those responsibilities.

The State's site approval process should contain provisions for

- formal review of specific objects to be completed within a specified time period;
- meaningful public participation; consistent with State administrative practices, including opportunities for interested parties to be heard;
- a requirement that decisions will be binding on all parties; and
- an appeal mechanism with a specified statute of limitations, except in the event of new material, evidence, or changed circumstances.

Legislation proposed in the 94th Congress (HR 15788 and HR 15789) to give denial power to the States is not necessary because the States already have forms of denial power. The bills would add to the body of redundant regulation by Federal and State government.

A degree of commonality and predictability is desirable in the site approval process from State to State. Without attempting to impose strict uniformity in the States' structure of organization, Federal legislation could specify some common criteria for decision making, such as time guidelines, quality and scope of data for a common data base, on-the-record hearings, public participation, binding decisions, and an appeals process with a statue of limitations. Other common criteria to be included in the decisionmaking process could involve consistent and continued recognition of land use

planning and the inclusion of all interested State agencies and interest groups in coordinated licensing proceedings.

4. Federal legislation should address the statutory overlap involved in intra-federal as well as Federal/State relationships. Where clear national goals exist, Federal jurisdication should be cut back and responsibilities delegated officially to the States.

Federal legislation should define more clearly the respective responsibilities of the different Federal agencies that now are involved, sometimes to a competitive or overlapping degree, as a result of statutory requirements in energy matters. The current memoranda of understanding between Federal agencies cannot sufficiently delineate total responsibilities.

Ultimately, at the project licensing stage, it would be helpful if utilities could apply to one central institution in the Federal and State bureaucracies to obtain the necessary facility authorizations and permits.

In particular, some clarification of the shared Federal/State responsibilities for water-quality reviews would be helpful. At present, Federal and State agencies cannot apply economic or cost-balancing considerations in making water-quality judgments. This problem would be transferred to the States as they undertake environmental reviews through the delegation of National Environmental Policy Act responsibilities.

5. The sequence of licensing decisions should be developed more clearly, including the proper order for basic planning, information gathering and analysis, and site decision making.

Nine elements seem central to the decision process:

- overall national energy policy,
- energy growth policy,
- forecasts of need for power,
- the choice between electric and nonelectric sources,
- the proportion of power to be produced by baseload stations,
- choices between nuclear and nonnuclear facilities,
- siting decisions
- specific construction criteria and permits, and
- plant operation and monitoring.

Basic planning should identify which types of fuels and types of facilities should meet what proportions of future energy needs, the growth rate for electric power, the acceptability of various means of producing electric power, total national energy demand goals by energy sector (residential, commercial, industrial, and transportation), and consideration of alternative sites to effectuate these options.

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The public and State governments should be involved in all choices that precede questions of type of facilities and site selection. Once some consensus is reached on energy facility planning policy, however, it should provide a basis for site decisions. In general, decisions on construction and operation of power plants should come last in the process.

6. Demand/supply analysis, as related to energy facility site needs, should be given a more prominent role and should be delegated to the States, if necessary, by new legislation.

State agencies seem to feel increasingly that the analysis of the need for power and the consequent need for specific facilities is one of their most important tasks, that it should guide the predesignation of plant sites, and that the States are competent to have generic need-for-power and specific need-for-facility questions delegated to them.

At the Federal level, outside of reliability considerations under the Federal Power Act, there is no direct responsibility for adjusting the construction of power plants to the load forecasts. States now are analyzing and adjusting power capacity to forecasts by such tools as the traditional means of ratemaking and certification of individual sites. Thus, States are developing more expertise in supply/demand planning. With a consistent national fuels policy, States are more competent than Federal agencies to make decisions involving local interests.

7. A common data base is essential to the development of a policy on energy facility siting.

The data base must be national in perspective, have uniform systems of measurement and definitions of terms, and have a capacity to transmit information to all users and to the public.

8. Wherever possible, joint hearings between Federal and State agencies should be encouraged

Such hearings should concentrate on the building of a common data base, basic energy planning and policy development, site review and analysis, and all other questions where there is a dual interest.

9. Regional interstate compacts can be used for some of the planning for power activities that precede site decisions. Also, regional bodies could have definite responsiblity for site analysis and predesignation.

Precedents exist for regional energy sharing, planning, and site decision making. The New England Power Pool is an outstanding example.

Regional bodies could be involved directly in questions of twenty-year planning, the extent of nuclear capacity growth, the general review of energy facility sites in the public domain well in advance of licensing applications, and the trade-offs of tax benefits and direct environmental impacts among States and communities.

10. One-stop licensing, in the sense of some centralized leadership by one agency in the decisionmaking process, seems desirable within both the State and Federal levels of government.

The lead agency need not be a conglomerate agency. But it should serve as a central location for receiving data and comment from all interested parties, and it should compile all this material in one proceeding.

The lead agency should be responsible for considering input from all sides. It should be responsible for avoiding unnecessary duplication of technical studies and for fostering consistency in decisions by agencies with overlapping jurisdictions arising from differing statutory roles.

One-stop licensing seems closely related to the use of joint hearings and time limits for various phases of the decisionmaking process. Streamlining should not impair the quality of decisions, however, by inadequate considerations of inputs from all relevant governmental bodies and opinion groups.

11. Greater public participation in energy siting processes is necessary and desirable, particularly because of the large scale, financial cost, and impact of decisions involving modern power plants.

The greatest public participation in planning efforts should occur at the earliest possible time, including energy growth and load forecasting, and the earliest consideration of alternative future sites.

The degree of public involvement will be influenced strongly by the choice of procedures. Some favored methods include formal public notice, actively disseminated, of each step in the planning and decisionmaking process, and the full use of adjudicatory hearings to contest issues and data as early as possible, before large financial commitments are made.

EXHIBIT B-1

NATIONAL GOVERNORS' ASSOCIATION ENERGY PROGRAM

Workshop
Atlanta American Motor Hotel
Atlanta, Georgia
December 15-16, 1976

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APPENDIX C

## STATE PERSPECTIVES ON ENERGY FACILITY SITING

Workshop Summary
Chicago, Illinois
April 1977

### INTRODUCTION

The National Governors' Association, through its Subcommittee on Energy Facility Siting, has been taking a comprehensive look at energy facility siting policies and practices during the past several months. In conjunction with the U.S. Nuclear Regulatory Commission, the NGA co-sponsored a national workshop on siting issues in Chicago, Illinois on April 14, 1977 as a followup to a previous workshop held in Atlanta.*

The basic purpose of the two workshops was similar - to determine how the existing facility siting process could be made more responsive, timely, and effective through the securing of State comments and insights and their recognition in the developing NRC study on the subject.

There were some differences in the two workshops. In Atlanta, the meeting was exploratory in nature; questions were raised, and assessments of State perspectives were offered on a wide range of issues through discussion and comment. In Chicago, the workshops built upon the previous discussions and were more directed to issues that had been raised. In addition, those attending had available for analysis the draft report that NRC was assembling. Therefore, the Chicago meeting was able to pinpoint key issues and provide more focus on some of the most important factors that presently constrain the establishment of operation of a better siting process.

Oral reports were also provided by the chairmen of two panels which had been established by NRC to assist in the examination of the issues of "need for power"** and "success factor evaluation."*** Both summaries were of substantial assistance to the workshop attendees.

*See Appendix B



**John N. Nassikas, Panel Chairman, "State Regulatory Activity Involved in Need for Power," USNRC Report NUREG-0197, April 1977. Available from National Technical Information Service (NTIS), Springfield, VA 22161.

***Joel Haggard, Panel Chairman, "Success Factor Evaluation Panel," USNRC Report NUREG-0196, March 1977. Available from National Technical Information Service (NTIS), Springfield, VA 22161.

One additional participant should be specially noted. The former Governor of Washington State, Daniel J. Evans, made a presentation on financing alternatives for funding the siting process. A summary of his remarks is contained in Appendix E of this report. While the workshop participants were unable to come to any consensus on the financing questions, Mr. Evans' views pinpoint many of the considerations involved and were an important contribution to the deliberations.

A number of specific questions were examined by each of the four working sessions which sharpened the focus of comments. Those attending (see Appendix C for the list of participants) addressed the issues with the premise that an evaluation of options was timely and that the groups could develop some consensus on preferred approaches. It should be noted that in addition to State and Federal representatives, invitees included individuals from utilities, industry, and environmental organizations. While a number of consensus positions emerged from the two-day sessions, several questions were not resolved. A list of some of those appears near the end of the text.

Attending the Chicago workshop were 30 representatives from 24 States. In addition, four NGA staff members assisted along with 18 people from the Nuclear Regulatory Commission, including the then Chairman of the Commission, Marcus Rowden, and Commissioner Richard Kennedy. The Director of the Office of State Programs, Robert Ryan, and his staff were also present. Thirty-eight others were also invited, including representatives of utilities, environmental groups, other Federal agencies, attorneys, State regional compact organizations, and architect engineers from 14 States and the District of Columbia.

## WORKSHOP PRELIMINARY CONCLUSIONS AND FINDINGS OF MAJOR ISSUES

### Issues Related ot the Planning Process

1. Planning Issues. Energy planning activities should be strengthened at the State and regional levels and generic issues dealt with at the earliest possible time.

   To develop planning capacity, early and full disclosure of long-range utility system planning is desirable and should be required. Planning and forecasting should be conducted as far in advance as possible, recognizing that the farther in the future forecasts are made, the more speculative they become. Such planning should designate sites only in broad geographic descriptions until a specific site selection process is undertaken. Plans should be periodically updated and information gathered from all useful sources.

   It is difficult to develop meaningful 20 year plans, but they are useful in describing possible energy use frameworks. It may also be necessary to provide a range of scenarios in forecasting to accommodate some uncertainty in the predictive process. A proper planning process will identify key issues and will secure, analyze, and disseminate as much information as is possible so that appropriate response can be indicated by those interested and concerned about the provision of adequate levels of energy on a timely

basis. The planning activity should be comprehensive and definitive enough that proposals for specific facilities can be certified as being in conformance with the anticipated and accepted need.

With an early disclosure of system plans and alternatives and a resolution of conflicts in the development of an energy plan by a State or a combination of States, there may be opportunities to limit the raising of generic (planning) issues at later stages of environmental review or licensing. Reopening of an issue should be permitted for good cause only, for example, the providing of pertinent new information.

An orderly examination of issues through a structured planning process would enable the identification of principal problems earlier, thereby reducing the need for raising issues at an inappropriate time due to the lack of adequate opportunity to raise questions when basic determinations on important public policy matters are being made. Participants felt that an early appraisal and discussion of general issues could clearly be of advantage in minimizing or eliminating subsequent raising of the same or related issues. There should be no need to reexamine those issues of generic concern in site specific or facility specific forums - unless the refiling is based on new data or factors not previously dealt with. It was recognized that the developed of appropriate planning mechanisms necessitated a regional approach.

Proper energy planning requires the accumulation of a considerable amount of data and information. Utility forecasts should be taken into consideration since it may not be possible, nor would it necessarily be desirable, to replicate staff capability within States to undertake similar forecasting functions.

2. Need for Power Determinations. The determination of the need for power should be a State responsibility and, when made singly or collectively, should be binding upon Federal agencies.

Such action does not need to be coupled to a site specific licensing process, but can be developed as a part of the overall energy planning activity. The conclusions reached by the State would be determinative to the Federal agencies and not just included for review. The appropriate State agency for making need for power decisions should be designated by the States, so that a diversity of options is maintained. It is recognized that the States can accomplish these activities in a competent manner. The question of need for power is not just a neutral technical exercise. The determination of need must reflect major public policies relating to economic vitality, growth factors, land use, transportation, price, accessibility, and other factors. Information should be utilized from utilities and other sources in making need determinations. Such decisions should be related to an advance site approval process which should include a conclusion of compatibility with a State determined need.

3. Separation of Site and Facility Reviews. It is desirable to establish the suitability of a site in advance of a construction permit proceeding.

It should be recognized that not all site-related issues can be resolved in advance of facility design reviews. Such an approach should not be mandatory, but remain as an option to be pursued where possible. Early site reviews must identify all general and unique characteristics, and the analysis process should clearly determine those considerations that would require certain design constraints and predetermined criteria. An advance site analysis would not reduce the amount or scope of scientific or technical investigations needed in site evaluation but would separate the activity in time from the specific facility review. Design and performance characteristics of a standard-type plant must be adequate to describe what would be anticipated on the site so that a review could be comprehensive enough to warrant a site determination. An advance review of sites must necessarily be coupled with an energy planning process which addresses the need for power and consistency of the site and facility with that plan.

4. Regional Issues. The effectiveness of energy planning done at the State level can be enhanced through the combination of planning efforts in a regional setting.

The conduct of planning and forecasting activities at the regional level is an important consideration, but the form in which such planning would be carried out should be left as an option for the States. Where the planning and development of energy facilities impacts more than one State, the States can and should take the initiative for resolving these issues. The organizational form can be prescribed by the States and be made effective. Plans should be broader than the boundaries of a given State where the situation warrants. An electricity marketing region must be accommodated in the facility site and plant siting process. There is not one organizational format nor any formula that would prescribe a certain number of States within a regional planning area. The key factor is the marketing area involved. Planning at the regional level should be accomplished as inclusively as possible and take into consideration all relevant regional factors.

It was emphasized that States will cooperate on regional issues to the extent that it is in their interest and will not cooperate where it is not. Legislation to mandate cooperation simply would not be effective, but legislation to encourage cooperation could be helpful. Planning information that is developed by the Federal Government or by Reliability Councils or some other entity should be in such a form that it can be disaggregated at the State level.

Public policies, which are inherent in an energy planning process, need to have substantially more State government input to a process which has been dominated up to the present time by the representatives of the utlities. Regional activities, as they are developed by States working together, should be cognizant of and take into consideration those regional groupings of utilities which have carried out what planning has been

evident on a regional basis in the past. Workshop participants recognized that the increasing size and geographic location of major energy facilities commonly impacts more than one State, and an apparatus to allow the assessment of individual and joint interest is appropriate.

5. Strengthening Public Participation. It was recognized that public participation is of prime importance, that it needs to be encouraged and that its diversity requires that States provide improved access where appropriate.

The developing of a better planning process, including the discovery and analysis of issues, would assist in having the public participate at the point in the process where such participation can be the most effective. Better public notice, the ordering of issue analysis, and broadened technical assistance were all alternatives that were mentioned in the workshop discussions. It is not appropriate for the reraising of settled issues and efforts must be made to provide ample and early opportunity for citizen input and resolution of issues. Later participation should be confined to dealing with unresolved issues and the impact of new conditions or new information on those already decided.

6. Delegation of Federal Environmental Review Resonsibility under NEPA. It is important in avoiding the present duplicative systems of environmental review to delegate the authority and responsibility to qualified States, under Federal guidelines, the responsibilities for making environmental reviews in conformance with NEPA.

In carrying out the delegation of responsibility to States, there should be assurance that the quality of the decisions made by the States would not be impaired by an inadequate procedure. It was recognized that in 1975 there was an amendment to a National Environmental Policy Act, permitting the delegation of environmental impact statements on highway projects to States. It was felt that these amendments might be a good model if considerations beyond State boundaries, including regional or national interests, were built in. Delegation of the environmental review responsibilities to States would enable the elimination of a growing amount of duplicative activity between the States and the Federal Government. Such a procedural change was an important component of simplifying the siting process.

Issues Related to the Site Analysis Process

7. State/Federal Coordination. It is desirable to have a lead Federal agency designated to coordinate Federal siting permits and decisions. This should be accomplished by administrative action or by new legislation if required.

It may be unrealistic to expect that the Federal government could establish a one-stop siting process as several States have accomplished. It would be possible, and the workshop supported developing increased consistency in Federal licensing activities with

a coordinating agency that could establish a consistent approach. The lead agency should be in a position to establish firm time guidelines for decisions by all involved Federal agencies after due consultation. There is a need to insure early notice and involvement. It might be helpful for a Federal Interagency Coordinating Council to assist in preparing timelines or schedules and to deal with conflicts in problem areas.

Membership on the Federal Coordinating Council should include an official from each involved Federal agency and perhaps a representative of the affected State. Mechanisms for establishing a coordinative responsibility should be optional but they should exist in order to carry out an effective siting process.

It is recognized that a number of agencies work within different time frames. Therefore, in order for the lead Federal agency to be effective, some authority should accompany the responsibility in order to assure timely action. Agreements, memorandums of understanding, and other operational arrangements among Federal agencies can help make the lead agency process work. A unified one-stop process at the Federal level would be difficult to accomplish in the minds of most participants. There was some feeling on the part of the workshop members that a lead Federal agency to coordinate Federal activity should not be the NRC in regard to nuclear facilities. There was some support to having NRC deal exclusively with safety issues.

8. Improved State Site Management Programs. States should be encouraged to adopt one-stop or coordinated siting systems as an aid in improving State/Federal actions.

It was recognized that a number of States have enacted legislation to consolidate their siting activities either in a one-stop form or by providing coordination and lead agency action. It was recognized by workshop participants that establishing a coordinative system was of key importance, but also there should be some self-imposed strong time guidelines. There should be not mandatory time schedule but State agencies should adopt good management systems and make all efforts necessary to meet published schedules.

9. Transition Period Activities. It is important that improved actions be undertaken until such time as basic reforms can be achieved through administrative and legislative action.

Typical of the activities which could improve the system during the transition would be the holding of joint hearings. Good communication between involved staffs is essential. Interrogatories should seek to avoid duplication. Legislative hearings could be conducted for a portion or some issues with adjudicatory portions for the important and controversial issues. In carrying out joint hearings it is desirable to agree on the format and the data base, so that there would need to be only one application instead of two.

10. Preemptive Federal Jurisdiction over Radiation Health and Safety.

Substantial diversity was evident in the discussion on this point. Some felt that the States should be parties to the licensing and thus should receive a full record of

design data. The States could maintain surveillance of the certification agreements and of operating characteristics of a plant. This could be accomplished through an amendment to Section 274 of the Atomic Energy Act. Funding for this activity could be conducted by a charge on generating capacity. Others felt that clearly the Federal government should continue to have a preemption of jurisdiction. However, even here it was felt that States could participate. Others felt that the Federal government should maintain standards for radiation health but that the States should have the authority to impose more stringent standards.

11. Alternative Scenarios.

The Office of State Programs draft report* (March 28, 1977) contained a substantial amount of information on difficulties surrounding the existing licensing process as well as providing some optional approaches (scenarios) for action. A number of specific approaches were included for analysis, indicating a wide range of choice in determining changes that could expedite the licensing activity. These alternatives included:

(a) Essentially maintaining the existing system with making some administrative changes through the NRC for regional review and early site review;

(b) Modifying the Atomic Energy Act to provide for improved Federal/State cooperation and planning within the aegis of the Nuclear Regulatory Commission;

(c) Providing for a shared Federal/State role for the licensing of nuclear facilities;

(d) Providing a similar approach to scenario (c) but with a broader application, including the need for a shared State/Federal role in electric energy forecasting, planning, and facilities siting for nuclear and nonnuclear facilities;

(e) Providing for a dominate Federal role in facility planning and development, which lessens State involvement and preempts State action in certain areas.

The workshop participants felt strongly that of the scenarios presented, scenario (d) was the most viable and reasonable approach, although modification needed to be made to include other elements from other scenarios. The overall conclusion of the workshop was that only a shared approach between the State and Federal governments with larger responsibilities for the States in planning, need determinations, and environmental reviews would the process work on a more systematized and effective basis. Anything short of an enlargement of the State's role would not provide the effective siting process which both Federal and State participants wish to implement.

*U.S. Nuclear Regulatory Commission, Office of State Programs, "Improving Regulatory Effectiveness," March 28, 1977. Available at the NRC Public Document Room (PDR), 1717 H Street NW, Washington, DC 20555, for inspection and copying for a fee.

Unresolved Issues

Throughout the two-day workshop sessions a number of issues were discussed but there was a lack of general consensus on a number of questions. Among these were the following:

1. Whether a single NRC permit should be established, combining the construction permit and operating license;

2. The type of hearing to be used to resolve generic issues;

3. The type of institutional arrangements appropriate for States to address water quantity/quality and land use issues;

4. Alternative methods for accomplishing regional power planning reviews;

5. Providing equity among the States in treating nuclear fuel cycle issues and national fuel allocations;

6. Methods of funding the siting process at the Federal and State levels.

EXHIBIT C-1

ROBERT W. STRAUB
GOVERNOR


OFFICE OF THE GOVERNOR
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April 27, 1977

STATE PERSPECTIVES ON ENERGY FACILITY SITING

TO: Participants in National Governors' Conference Workshop,
Chicago, Illinois, April 14-15, 1977

Attached is a summary report for the workshop in which you participated. I have reviewed the recommendations which appear in this summary and endorse them personally. I commend them to the attention of my fellow Governors on the National Governors' Conference Subcommittee. Thank you for your assistance in the thoughtful formulation of these recommendations.

Robert W. Straub, Chairman
NGC Subcommittee on Energy Facility Siting

RWS/sj
Enclosure

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Summary Report

# STATE PERSPECTIVES ON ENERGY FACILITY SITING

On April 14-15, 1977, 30 representatives from the governments of 24 states participated in a workshop on the above subject. The workshop, held at the Ramada O'Hare Inn near Chicago, was organized by the staff of the National Governors' Conference (NGC) under contract with the U. S. Nuclear Regulatory Commission (NRC). The state representatives were aided in their work by four NGC staff members, 18 NRC people (including Chairman Rowden and Commissioner Kennedy), and 38 other participants including representatives of utilities, environmental groups, other federal agencies, attorneys, state regional compacts, and architect engineers from 14 states and the District of Columbia.

The group had the benefit of a previous exploratory workshop held in Atlanta in December 1976, of studies by NRC Advisory Panels on "Need for Power" and "Success Factor Evaluation" (related to measurement of efficiency in siting), of several special reports for the NRC on subjects such as the impact of certain Congressional Acts on the siting process, and a comprehensive report by the NRC Office of State Programs entitled "Improving Regulatory Effectiveness". The group spent more than six hours in plenary session and nine hours in small discussion units.

A substantial consensus was reached by the participants that energy facility siting should be improved by adopting procedures described below, and that appropriate legislation facilitating these changes should be enacted.

## Procedures Primarily Affecting the States

1. Environmental responsibility for site certification under NEPA should be delegated to interested states under Federal guidelines. At the very least, federal agencies should be allowed to use state environmental analyses.

2. The final determination of need for the power from an energy facility should be made by the states and should be accepted by Federal agencies.

3. Electric utilities should be required periodically to disclose their long-range system plans to the states and the public.

4. States should be urged to adopt coordinated siting systems.

Procedures Affecting Federal Agencies

5. Generic problems such as disposal of radioactive wastes should be separated from consideration of individual sites and facilities, provided that this separation is not used to defer generic problems for future consideration and that reconsideration can be given during facility proceedings in light of new information.

6. Increased coordination of Federal licensing should be required either by use of multi-agency councils, or by use of lead agencies with authority to impose time periods for action by all involved agencies.

Procedures Affecting both State and Federal Agencies

7. State certification should not be required as a pre-condition for docketing of an energy facility application by federal gencies.

8. Establishment of general site suitability in advance of facility approval should be authorized but should not be required.

9. To the extent that Federal responsibility for site certification has not been delegated to the states, joint or concurrent hearings by state and Federal agencies should be authorized and encouraged.

10. With early disclosure by utilities of long-range system plans, and advance resolution of generic issues or issues in specific site reviews, intervention on environmental decisionmaking at the facility licensing stage should be severely limited in the absence of significant new information.

Workshop participants were unable to develop a general consensus on any of the following subjects:

1. Establishment of single NRC permit combining the Construction Permit and the Operating License.

2. Type of hearing to be used to resolve generic issues.

3. Institutional arrangements for states to address water quantity/ quality and land use issues.

4. Methods for accomplishing regional power planning reviews.

5. Methods to encourage public participation in siting decisionmaking.

6. How to provide equity among the states in treating nuclear fuel cycle issues and national fuel allocations.

7. Whether or not the Federal Government should continue to exercise preemptive jurisdiction over radiological health and safety issues.

8. Methods of funding the siting process.

W. Kelly Woods, Staff Chairman
NGC Subcommittee on Energy Facility Siting
April 27, 1977

WKW:sj

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EXHIBIT C-2

NATIONAL GOVERNORS' CONFEPENCE ENERGY PROGRAM

"State Perspectives on Energy Facility Siting"

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APPENDIX D

## STATE PERSPECTIVES ON ENERGY FACILITY SITING

Summary of
National Governors' Association/Department of Energy
Workshop on
Clean Air Act Impacts on Facility Siting

Salt Lake City, Utah
April 1977

### INTRODUCTION

The charge of the NGA to its Siting Subcommittee was to explore all constraints to siting procedures, both nuclear and nonnuclear. Concurrent with the holding of the joint NGA/NRC workshop in Chicago was the development and sponsorship, in conjunction with the Federal Energy Administration,* of a national workshop on the implications of existing law and regulation and proposed Clean Air Act amendments on the siting of energy facilities.

Invited to this meeting in Salt Lake City, Utah, April 21 and 22, 1977, were staff representatives of the NGA Subcommittees on Energy Facility Siting and Air Quality Management, along with officials from the Federal Energy Administration and the Environmental Protection Agency. A number of individuals, representing private industries and utilities, also participated.

The objective of the two-day session was to determine how proposed amendments to the National Clean Air Act would impact on energy facility siting needs. Under some interpretations, the proposals could severely impact the location of needed facilities and, indeed, could prohibit new plants in certain areas, even if all other relevant factors were positive. The workshop participants attempted to identify the principal issues and analyze how both siting needs and the necessary maintenance of air quality needs could be accommodated in a growing economy.

### SUMMARY OF PRINCIPAL CONCLUSIONS

Major items addressed were the prevention of significant deterioration of air quality, the utilization of best available control technology to achieve new source performance

*Now a part of the newly established U.S. Department of Energy. The DOE provided financial assistance to the NGA in support of the workshop.

standards, impacts of new facilities in non-attainment areas (those areas not meeting existing clean air standards), and the role of the States in energy facility siting.

## PREVENTION OF SIGNIFICANT DETERIORATION

The broad public policy issues in preventing significant deterioration of air quality can be examined, and hopefully resolved, by analyzing the benefits and costs associated with alternative approaches to attaining clean air objectives. The 1970 Clean Air Act and administrative regulations, along with the newly passed 1977 amendments, deal with the problem of significant deterioration. The courts have held that current Environmental Protection Agency regulations are a reasonable approach to a legitimate objective. In August 1976, the U.S. Court of Appeals held that the current approach is one that neither stifles necessary economic development nor permits unregulated deterioration to the national standards.

Those opposed to clean air legislation suggest that it mandates no growth in the country's less populated areas. However, the essential question is to determine, in fact, the potential impacts of legislation and regulations on the development of energy facilities, rather than assuming that implementation would require a cessation of new power plants.

During the evaluation process of a proposed facility or site there must be an explicit examination of the impact of the facility on clean air objectives. In this connection a number of points should be considered:

1. Site specific factors, including characteristics of the facility, local terrain, and meteorological conditions. Terrain is a very important factor, as diverse topography often acts as a greater constraint for site suitability than does flat terrain.

2. The type of control techniques to be required on new energy facilities. It is important to carefully define the term "best available control technology" (BACT). If BACT is defined in terms of economic impacts and other costs, new power plants may be able to use cheaper, less effective controls, thereby allowing the emission of larger amounts of pollutants. Conversely, the more strict the control technology, the less consumption of the available increment of allowable deterioration by the facility would occur. With the national objective of preventing significant air deterioration, the use of strict controls can enlarge an area's growth options, although it may mean a greater cost to the consumer of the facility's final product. Additionally, more new sources can be located in areas where there are strict controls, since each one would consume a smaller increment of allowable deterioration.

3. Methods of quick resolution of clean air issues. The impacts on energy facility siting are substantial and the absence of clearly defined policies and procedures add to existing uncertainties. Continued unpredictability leads to higher costs regarding location and difficulties in meeting energy supply needs.

4. Flexibility of States in dealing with alternatives, which do not prematurely foreclose reasonable options. This flexibility would include the implementing of variances, based upon terrain and local conditions. The major public policy confronting States in this area is the selection of the best means to obtain the basic objective of preventing significant deterioration. At the State or local levels, the various interest concerns are resolved through siting and other land use decisions. These decisions must reflect a concern for air quality. Perhaps this objective, itself, is a constraint which can influence energy facility siting and planning at an early enough stage to prevent costly decisions.

Significant contamination should be prevented from impacting on "pristine" areas. Beyond this point, however, the States should determine what the consequences of new energy facilities are within the limits of the national air quality standards. The determination of areas of allowable contamination should be accomplished as soon as possible and EPA should complete its determination of acceptable models and practices so that new energy facilities can be planned for and sited with a reasonable degree of certainty.

The prevention of significant deterioration requirements will usually not prevent construction of new facilities, but they could have some impact on the size and number of facilities located in any one area. They may also impact on economy of scale considerations. Also, in some instances, the facility may have to locate at other than an optimum site. It was recognized by the workshop participants that the result of the existing uncertainties in effecting the carrying out of significant deterioration prevention programs and the development of State air quality classifications could delay final plant siting decisions one to two years.

## NON-ATTAINMENT AREAS

Non-attainment areas (those not presently meeting air quality standards) must be defined as precisely as possible. A whole Air Quality Control Region should not be considered a non-attainment area but only that portion of the region which is in noncompliance. After defining a non-attainment area, the conditions for adding a new source (including energy facilities) in the area should be established.

The workshop participants suggested that a new facility should be allowed within the non-attainment area if a mechanism has been developed by the State for reasonable progress towards meeting the standard by a specific date. This could be accomplished by a number of different activities, including: a complete State implementation plan revision, emission offsets (trade-offs), or any other plan that the State may develop to demonstrate attainment progress.

Hydrocarbon emissions from energy facilities are not readily amenable to control at this time. Further, the Environmental Protection Agency offset policy does not seem to be a viable approach for dealing with such hydrocarbon emissions in a non-attainment area because the relationship of hydrocarbon emissions to oxidant standards is not fully understood. EPA

should take necessary steps to define the relationship and to develop control technology within the next two years, so that we might make reasonable progress towards resolving the problem.

In the interim, new energy facilities should be allowed in non-attainment areas and the hydrocarbon problem dealt with, using currently available control technology. This assumes that a plan of action is underway to reduce hydrocarbon emissions from existing sources.

NEW POLLUTION SOURCE PERFORMANCE STANDARDS/BEST AVAILABLE CONTROL TECHNOLOGY

Indications from the Environmental Protection Agency and Congress are that a strong sentiment exists for requiring continuous controls (i.e., scrubbers for $SO_2$ on energy facilities). The basic objectives to be achieved include:

1. Clean Air Act goals (by the utilization of best available control technology on new sources);

2. Energy goals (increased use of coal without transporting Western coal to the Eastern part of the country);

3. Economic leveling effects (minimizing competition among States to attract industrial development).

While there is some concern that not all available technical systems will function as anticipated, the reliability specifications could be included in the definition of best available control technology by EPA. Furthermore, such technology should be defined in terms of emissions, rather than a "hardware" standard. This, however, could negate one of the objectives mentioned, that of an economic leveling effect. Proposed clean air amendments could lead to specification type BACT as opposed to emission standards. States should not be prevented from requiring more stringent emission limitations to meet ambient standards for other State needs.

There was agreement that coal production and use will continue to increase proportionately to the constraints placed on the use of oil and gas (as outlined in the President's Proposed National Energy Policy) regardless of requirements for using best available control technology in the immediate future. Increases in the Appalachia Region and in the Midwest will be greater if BACT is required. However, in those regions where coal now has an economic advantage over nuclear, this advantage could narrow or disappear. The requirement of BACT will increase capital costs for investment, and the average consumer rate could be increased by two to four percent. Mandatory requirement of BACT on new energy facilities will help make low sulfur coal more readily available to the smaller commercial and industrial operation and existing large facilities, where the use of control technology is not physically or economically feasible.

## AUGMENTING THE STATE'S ROLE

A pivotal point is the role of the States in the implementing of clean air programs. Consistently in recent years, Federal legislation has included the objective of shifting implementing responsibility to the States.

Throughout the workshop, repeated recognition was made supporting the States as the best vehicle for making determinations relating to the attainment and maintenance of air quality standards. This includes making decisions, under Federal standards, regarding the types of control mechanisms to be required and for implementing variances required for conditions of terrain and local circumstances. States now have broad responsibilities in determining the suitability of sites for industry and energy facilities. There ought also to be a place for State action concerning Federal land use in areas other than Class I designation (national parks, wilderness areas, etc.), where special Federal stewardship may be appropriate. State involvement is necessary to influence the impact of development or lack of development on Federal lands and on other lands within the State's borders. This is particularly true in the western regions of the country, where there are several States with massive amounts of Federally owned lands. It is important to have a clear policy for State implementation of standards which allows for an appropriate balance of clean air objectives with social and economic changes.

It should also be recognized that a State having broad authority cannot act alone without a serious consideration of the well-being of neighboring States. Energy development and clean air requirements at times lead to interstate impacts, which cannot be easily or readily resolved by current mechanisms. Therefore, mechanisms should be developed to resolve broad regional energy facility siting implications and provide access for the impacted State into the facility siting decisions. Strong State participation and reasonable flexibility are highly important in helping reach air quality standards and a satisfactory supply of energy.

EXHIBIT D-1

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APPENDIX E

# ALTERNATIVES FOR FINANCING ENERGY FACILITY SITE PLANNING AND DEVELOPMENT

by

Daniel J. Evans

## INTRODUCTION

This excerpt of a speech was delivered by the distinguished former Governor of the State of Washington, Daniel J. Evans, to the National Governors' Association/Nuclear Regulatory Commission workshop held in Chicago, April 14 and 15, 1977, as a contribution to the NRC's study, "Improving Regulatory Effectiveness in Federal/State Siting Actions."

The financing of necessary energy planning is most important in establishing and implementing a national energy policy. This address contains one comprehensive alternative to meeting the problem of financing energy planning. There are others, and it should not be assumed that there is endorsement of this proposal by the National Governors' Association or the Nuclear Regulatory Commission. However, the speech does focus attention on the principal issues relating to successful energy facility siting policies and programs. It is a thoughtful approach to an important component of energy facility siting policy.

The full report, prepared by Mr. Evans, has been published by the NRC as, "Alternative Financing Methods," USNRC Report NUREG-0204, March 1977, and is available from the National Technical Information Service (NTIS), Springfield, VA 22161.

## TEXT OF SPEECH

We are a unique form of government. It is a Federal system. It was started by States who joined together, giving up a limited percentage of their independent power to a central government and fully intending to retain the rest of it for themselves. If we are ever going to effectively develop a successful energy policy, or for that matter almost any effective national policy, and with any hope of reaching the national goal we would all like to see, that concept must be recognized.

Now, obviously, there has been much change over the course of our own history. There has been movement toward centralization finally fostered by somebody clever enough to interpret the interstate commerce clause of our Constitution and under that guise do an awful lot of centralization that was never comtemplated, I am sure, by those who devised our Constitution. But, I think there are some signs of change. The current Supreme Court in a

couple of cases recently has taken quite different view of State and central government relationships, in their opinions on the Fair Labor Standards Act, and in the recent case on habeas corpus, where they said no, you can t come directly to a Federal court until you have exhausted all remedies at the State level. I think we may very well see in the course of the next few years a rehabilitation and a reassertion of our federal system and the particular and unique role of the State in our Federal system.

When that happens, as I am rather confident it will, there also has to be a recognition that there is a vast difference between the States of our nation and the various local governments.

Many of our major cities are bigger in population than many of our States. They like to have independent and direct contact with the Federal Government and look to the Federal Government more than the States for sustenance and help in their financial dilemmas. The fact is, if you look in our Consitution, you really won't find cities and local governments really independently mentioned. Our Constitution devised as a collection of States with some division of powers between States and the Federal Government, and virtually all of the powers of our cities and local governments come from the States, and not from the Federal Government. I hope that the lesson is learned and is recognized by those who are in the process of attempting to develop a comprehensive and effective national energy policy.

I think it is only given that recognition that we can develop an effective policy which fully recognizes the diversity and not the uniformity of this nation.

The simple facts of geography, of local or regional traditions, the constitutions of our individual States, the methods we have chosen to resolve problems at State and local levels, all seem to say, you can't make uniform rules, regulations, and laws without leaving some considerable flexibility to States and to local governments, as to how they reach national goals. There is quite a difference in setting national goals, which is a perfectly legitimate and desirable thing for a national government to do, and even for setting some measurements as to progress toward meeting national goals, and doing that at the national level is appropriate.

Where we get into deep difficulty is when we think we can prescribe how and in what fashion every State and every local community must use to reach those national goals.

It is only when we have the trust in one level of government to another to give them the independence of action so they can use their own best methods and respond well to their own local traditions, that we have any real hope of rapidly reaching whenever national goals we set.

How much do we borrow against our own future? How much do we take from the next generation? How much, how greedy are we in using up resources of whatever kind in the energy field?

I think we owe something more to the generation yet unborn, or perhaps even to our children, who have a long way to go yet, and no real hope yet, that they are going to have the availability of energy in enough quantity and in sufficient variety to keep them at the same levels of comfort and economic advance as we have enjoyed.

The policies which will be much more apparent and much more publicized next week seem to indicate that nuclear fission plants are an interim step, buying time enough for us to develop environmental effective ways of utilizing coal, that will move toward more standardized reactor designs to hopefully shorten the lead time between decision and construction. What we will find next week, hopefully, is that the Administration has seriously attempted to set forth a national direction in some detail and with some cohesiveness toward an energy policy. In spite of all the protestations of the past and many of the great ideas which have been stated, I don't really think anyone can say that this nation has or has ever espoused a good, comprehensive, and doable energy policy.

Hopefully, there will at least be the framework for what the Administration is now doing and the discussion which follows and ultimately the decisions made by Congress and, hopefully, with the strong and continuing input from States, local levels, and from the private sector of our economy, will give us all some goals to shoot for and a much, much clearer path on which to travel.

But, again, the ominious signs I see in some of the national policy which appears to be coming out, are those signs from a drive toward uniformity, which may not fully recognize the necessity and desirable diversity which we must retain in this nation.

I think it easy for almost anyone in this audience to state the obvious, the great differences, in how we use energy in different parts of the country. The Northwest is as different from the Southeast and from New England and from the Southwest as the miles which separate them. We in the Northwest are heavy users of hydroelectric energy, virtually unused in some other parts of the nation, where they haven't the privilege of free fuel, free fuel which isn't always available, as we are finding this year. Nonetheless, it is quite a different matter to develop an energy policy with different fuel uses, different backgrounds, and different traditions in the Northwest than it is for the States of the New England area or of the Southeast or any other part of the country.

We must give to the various parts of this nation the independence of action necessary, so that they can fully utilize the particular resources they have and, at the same time, be an integral part of reaching a national energy policy.

One of the terms used frequently, of course, as an essential first element or one of the first elements of any national fuel policy is the question of need for power.

I doubt if I would get too many dissents from this audience if I suggested that in the last really we haven't responded to a need for power; it's really been just a response to demand, as it came along and there was no conscious effort to try to distinguish how much

power was really needed or how much power was really desirable, or how much power we could really afford. It was merely a response to the collection of demands which were placed on us by the private and individual decisions made by industry and by individuals, as time went on.

But today we simply cannot afford to rely on that response. The need for power is an essential first element of any national energy policy, but a need for power today must also respond to the next generation. We cannot afford to steal their heritage away. It would be unconscionable for this generation of this nation, or this generation of all of the nations of the world, to deliberately utilize, or overutilize natural gas as a fuel, and to essentially use it up, giving no consideration to its very important benefits as feedstock, as a use for sophisticated chemicals for a generation to come.

In responding to the question of the need for power, we today had better start giving even more consideration than we have up to now to the need for conservation as an integral element, not just the response to demand.

There has to be a conscious fuel policy, to go with the need for power. We must have in the development of that need for power the States, and the political leaders of the nation, as well as the Federal Government and the Congress, primarily involved in these decisions. In the past, for many reasons, the determination of need for power, or more accurately that response or demand, has essentially been a decision of utilities, collectively, or independently, and the collection of those responses has been our need for power determination.

The utilities play a very important role, and we cannot ignore their expertise and we cannot ignore the efforts that they have made to join together in their electrical reliability regions. We can recognize the growing willingness of public and private utilities to work more closely together, but in my view, the decisions on the need for power are not decisions anymore which can be made essentially solely by the public or private utilities of the nation. They are decisions which are public decisions. They are decisions which have to be made by publicly elected leadership, utilizing the strengths and the abilities of utilities. It's a much broader decision than it has ever been in the past and we better get to that decision and tackle it will full consideration of these other elements of conservation, conscious fuel policies, and the preservation of fuels and resources for another generation, as well as just responding to demand as it seems to occur.

If we are going to effectively utilize the strength at our State level, and the strength at our national level and if we are going to utilize political and governmental leadership together with those in the private sector of our economy, to make these decisions, then we must have a continuing, dependable source of resources to insure that those decisions can be made wisely, that State governments, as well as the Federal Government, have the financial resources which they can depend upon for the research and review capabilities.

We don't have such dependable resources today. We have a greatly varying financial capacity, with only some of the States deeply involved into a broad energy planning and energy policy, and not very many having consistent and dependent sources of revenue.

Maryland and California have moved more strongly into the field of financing for these kinds of energy reviews.

In the work I have done for the Nuclear Regulatory Commission in examining all the potential ways in which financing might be provided, from general tax revenues, to trust funds, to surcharges on various energy sources and all the permutations and variations on each of those elements, I have come to the conclusion that while some of these sources may appear to be most desirable, they may not be most politically practical.

We must modify what is most desirable with what is politically practical and still achieve the end goal of providing some continuing dependable resources for States and for the Federal Government to do the essential job of not only participating in the need for power determination and the things wich flow from that, the site developments, the analysis of independence or individual sites, the construction permits, and the continuing surveillance after operation begins. All of these elements need continuing financial resources for the job to be done effectively and practically.

I think there is an opportunity to embark on a program which was very similar to the one first suggested by Walter Heller and Joseph Pechman in a treatise they did many years ago, which I think most people conclude gave birth to Federal revenue sharing. If, as is now being done in Maryland, a small rational millage tax were applied to electrical generation, and in addition, an equivalent millage tax applied to other fuel sources so there would be some consistency in that taxation (which probably that ought to be levied on the BTU equivalent or the energy equivalent of these various fuel sources).

A very small millage tax, probably smaller than the levels which are now current in Maryland, would in my view by more than sufficient to finance on a continuing basis the necessary work to be done at both Federal and State levels in the overall development of the need for power, and the associated step-by-step problems which you have been talking about, and which the Nuclear Regulatory Commission has been helping guide us in, over the past almost a year now. Also, an equivalent millage tax applied to other fuel sources would provide consistency in taxation (probably measured by BTU equivalents in each fuel source).

In addition, however, to the concept of a Federal tax applied on a uniform basis, across the country, on all fuels, and in uniform millages, the tax credit trigger is an important element. That tax credit trigger would be one which would allow the States to divert, if you will, a percentage of that tax to the State level on meeting two basic criteria. First, that they had established at the State level by law an effective comprehensive energy management concept, and preferably one which had within it the one-stop concept, which is now current in a number of States, in the development of energy sites and in response then to applications for specific plants. Second, that the legislature of that State had specifically passed a bill which would levy at the State level that millage tax, which then would be shifted from the Federal level to the State. You would then still have a consistent total tax levied on each of the generators of energy.

A certain percentage of that money flowing to the State level, if the States were willing to take on and pass the laws, that would establish themselves in a position where they had the ability and could, with money, generate the resources necessary to do an effective job of reviewing need for power, analyzing sites, setting aside, perhaps even banking sites as Maryland at least is now doing, and doing the analysis of individual applications.

This ought not to be the sole source of revenue for all of the energy activities in the nation. Certainly there are some elements which deserve general tax revenue at the Federal level. There are some elements which deserve general tax revenues at the State level for the independent activities States wish to carry on. There certainly is the desirability, it seems to me, for fairly substantial application fees. When applications are made for specifc individual plants, application fees ought to cover a substantial portion of that cost.

But the heart of financing the management of an energy program in this nation could well be the concept of a national millage tax, coupled with a tax credit which would give to States, willing to take on the responsibility, the means to carry out that responsibility. If a State chose not to do so, or failed to do so, the money would remain at the Federal level and the Federal Government would in that State carry out the responsibilities that the State had chosen or could not carry on by themselves.

There is another element that is terribly important in all of this. I think people could readily ask, can States individually and independently really do an effective job? Aren't we at a point where the effect of decisionmaking crosses State boundaries, and certainly it does in many, many cases. There is good rationale for regional efforts in many of these energy decisionmaking areas.

I just caution anyone who believes that we might create some new kind of regional body, that it is a very high hurdle to cross. If, however, we can encourage States as States to join together in combination at a regional level, then there is some hope and some chance of creating a regional approach toward power and energy needs.

I think there are a couple of ways of doing that. One would be a further refinement of this Federal energy tax and the tax credit provision. There would have to be an incentive from the Federal share of that tax, an incentive to States which had collected together, as a region, to do regional power planning, and that incentive would be in the nature of an added financial bonus to that group of States to encourage them to join together with a more effective financial base to do regional power planning.

In order to make an effective use of a regional program, you ultimately have to get to a point where those who have joined together at the regional level are willing to act together, as a region. Now, that's a tough hurdle, also. States are unlikely to vary easily give up any of their independent decisionmaking ability, to a region in which they are only a small part.

I think we ought to leave that completely, completely to the willingness of States to do that on a voluntary basis, to attempt to force or require regionalism, and to create a whole

series of shotgun marriages around the country would be self-defeating and would create enormous reaction.

But a financial incentive, coupled with a preapproval by Congress of interestate compacts, in much the same fashion as Congress has already done in the recently passed Coastal Zone Management Act, would then give the States an opportunity to first have a financial incentive to join together as regions, and once having jointed together as regions, if they desire to form a compact for any level of interest cooperation, could do so readily without having to go through the extended procedure, which has defeated most interstate compacts in the past. That extended procedure of assembling themselves all together, passing identical pieces of legislation in each State, and then having to have congressional approval of what they had done would work against having timely regional energy planning organizations. Preapproval by Congress hopefully will speed this effort and will in the next few years see how effective that is in the Coastal Zone Management Act. It could be just as effective in the energy field.

I hope you will deal in the remaining workshop time not only with the question of financing but also on this real question of streamlining of procedures.

I think there is a lot which could be done if there is a growing sense of trust of one level of government with another. In this field, as well as in a lot of others, I detect a great lack of real trust between Federal agencies and States and local communities, between the States and Federal agencies. We are pretty wary of one another. And I don't think that that wariness is justified. I think a great deal more trust is justified.

We talk of duplication in the national environmental review process and the NPDES permit. We have had over the years now a system where, if the States meet certain qualification and requirements they are authorized by, certainly by EPA, to assume the responsibilities. Unfortunately all that has meant, in too many cases, is that the States assume and carry out the responsibilities and then have them immediately duplicated at the Federal level, because there isn't sufficient trust on that level, even after the States have qualified.

I think we have got to get to a system where there isn't a repetitive and duplicatory procedure, but a recognition that once we say a level of government is qualified to do the job, we have some trust and faith that they will do the job and that the results are acceptable not only by the State but by the Federal Government as well. I also hope there will be a unification and sort of a one-stop permit concept which comes to fruition at the Federal level as at the State level.

Some States have gone pretty far in combining together their independent and individual agencies into a one-stop operation. In a one-stop operation, where at least in our own States we have come to a point where we say to one agency, which in the past years could totally block action. Now they have to prove, not only to themselves but to other agencies of the State as well, they they have a case. Ultimately you can get down a point where there is a single permit and single authorization and the applicant can be more confident that once authorization is given to go ahead, they are not likely to be stopped.

The same thing ought to happen at the Federal level as well. Somewhere, somehow, in some fashion at one point, every one should come together.

I think that what has been attempted here by the Nuclear Regulatory Commission, with the cooperation of the National Governors' Conference and with all of you in attendance, is a remarkable demonstration of how the State/Federal relationship can and ought to work.

I am grateful or the initiative shown by the Nuclear Regulatory Commission in reaching out and asking for participation by the States in this effort, in trying to develop a better system of carrying on our responsibility, and doing it not after decisions have already been made. You have asked us in right from the beginning. Speaking as someone who will always retain a devotion to State independence and States' rights, I appreciate very much what you have done.

I hope that in the coming months, as the Federal Government and the new Administration further develop their energy policy, it will have contained within it much of the end result of the efforts you have been engaging in over the last few months. Hopefully, will come together in an effective, jointly authorized and endorsed report which will be shortly on the desk of the Nuclear Regulatory Commission.