

ENVIRONMENTAL LAW PROJECT

School of Law, 064-A  
University of North Carolina  
Chapel Hill, NC 27514

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(47 FR 24044)

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Chairman, Regulatory Reform Task Force  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

SUBJECT: Proposed "Nuclear Standardization Act of 1982"

Dear Madam/Sir:

In a notice published at 47 Federal Register 24044, June 2, 1982, the Nuclear Regulatory Commission (NRC) solicited public comment on its proposed "Nuclear Standardization Act" (NSA). On behalf of the Environmental Law Project (ELP), a volunteer, non-profit, non-credit group of law students at the University of North Carolina, I would like to make the following comments.

First and foremost, the ELP is concerned that the NSA is merely an attempt to speed up and facilitate the licensing process at the expense of safety considerations--i.e., to allow the NRC to "grind out" licenses with routine and trouble free (for both the NRC and utilities) precision. The only problem is that this would further diminish public participation in the licensing and safety review processes. It is precisely this attitude that brought the NRC such criticism following Three Mile Island (TMI): the Kemeny Commission found that "the NRC is so preoccupied with the licensing of plants that it has not given primary consideration to safety issues," Report of the President's Commission on the Accident at TMI, p. 51. The NSA seems to reflect this "promotional" attitude that the Kemeny Commission criticized. Commissioner Gilinsky's point that the Commission might be making better use of its time by studying safety questions, 47 F.R. 24079, is well taken. The changes suggested in the Act indicate that a drift toward placing priority on rapid licensing instead of safety first.

Specific criticisms which the ELP would make, and suggestions for change:

1. The Background claims that design of nuclear power plants has passed beyond the "conceptual and developmental stage," 24045 column 2, because of 28 years of industry experience. This overlooks the facts that (1) many new design changes have occurred only within the past few years, particularly in response to TMI, (2) that there are still many kinds of accidents which have not happened, and which when they do happen, will require further redesign, (3) that there events which have not happened often enough to enable NRC or industry to completely understand them and redesign/modify appropriately, and (4) that experience with the present generation of

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large reactors (1000-1300 MWe) is not 28 years, but more on the order of eight years. The large number of unresolved generic safety problems is indicative of the kind of continuing problems which this assertion of industrial maturity overlooks: it should be remembered that because of the special danger to the public health and safety posed by nuclear plants that a higher standard of industrial maturity must be applied here than in other "normal" industry.

2. The Background goes on to state that "Final designs for most plants could be described at the construction permit stage." In part for the reasons described in 1., and in part because of the simple length of time it takes to build a large power reactor (Zimmer, 14 years; Shearon Harris 1, 10 years (estimated)), it is entirely unrealistic to expect that plant design will remain essentially unchanged over a decade or more. The recent discovery of over 100 design errors at Diablo Canyon (during operating license proceedings) merely confirms this. In addition, it should be noted that under current NRC practice (which is not proposed to be changed by NSA), the public is not involved in permit/license amendment proceedings, which are generally noticed in the Federal Register after NRC and utility have reached final agreement. The effect of consolidating the two license proceedings at this early stage would thus be to effectively withdraw from public scrutiny and challenge regulatory processes spanning ten years or more and potentially hundreds of modifications and design changes of varying significance. Despite industry protestations that licensing adds significant burdens and delays to time of construction, it has been shown quite convincingly (by Mr. Abbotts of PIRG in testimony concerning similar legislation before the House in 1979) that in fact only a small percentage of delays are due to licensing, and most are utility-related (particularly as relates to financing and need for power).

3. The Background also indicates at 24046 c. 1 that the NSA would delete the requirement that the CP holder reapply if construction is not complete by a time certain. If this is passed with the one-step licensing provision, then the result will be that a plant's design may be fixed some 20 to 25 years before completion, with all the attendant problems described in 1. and 2. above. For example, Duke Power's Cherokee plant is presently "delayed indefinitely" and will not be completed before 1995. Planning on Cherokee started in 1971 and construction in 1976: if it had a CP as provided for by the proposed Act, its design could well be obsolete by the time it was completed. Yet it could probably be built without some general overall review under the NSA. Also the Background does not state how onerous a burden is placed on the NRC in processing these applications: without this information, a better assessment is impossible.

4. The Background also indicates at 24046 c. 1 that a new

section 185(b) would be added to allow the NRC to rely on the FERC determination of the need for power. Again, if this provision is passed in conjunction with the one-step licensing provision, it will create a "definitive determination" (24055) at a stage of proceedings where need for power is not, and cannot possibly be, definitively determined. Given the ten-year (or even optimistic eight-year) construction period for nuclear plants, and the changeable nature of energy use and demand, need for power can change radically before the plant ever comes on line. An excellent example of this is Duke Power Company's "nuclear six-pack," i.e. six nuclear power plants (three at Cherokee and three at Perkins) planned in 1971 and dubbed "Project 81" for the year when they would be completed to meet energy needs. In 1975, Franz Beyer of Duke testified that Project 81 would still be needed in 1981 (see N.C. Utilities Commission Docket E-7 Sub 166, testimony of Jan. 1, 1975)--now it is 1982, Perkins has been cancelled (Duke 1982 1st Quarter stockholder report) and Cherokee is postponed indefinitely. Yet the NSA would establish a definitive determination for such plants; absent any language that need for power issues can be reopened or that the FERC determination must be reviewed periodically, this provision is hopelessly out of touch with reality.

5. The standardized license provision of proposed 185(c) is objectionable for the reasons outlined in 1. and 2. above (false claims of industrial maturity, long construction times encompassing design modification, etc.). The only proposed means of ongoing review is "inspections and tests" conducted by the NRC, overlooking repeated criticism that this inspection system cannot offer "adequate assurance that the nuclear power industry is being safely operated," "Panel hits N-plant inspection system," Raleigh News and Observer, June 14, 1981, p. 5-I. Shortages of qualified inspectors, funding cutbacks, utility non-cooperation, and other problems have all made the NRC inspection system less than fully effective. Especially since the licensing process as presently constituted has led to vital safety modifications even at operating license stages (e.g., Diablo Canyon, Zimmer), a continuation of the present licensing system would seem more appropriate to a "safety first" approach, especially since the NRC already conducts inspections and tests.

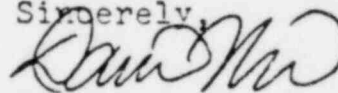
6. For the same reasons, allowing the NRC to decide at its discretion whether "the application contains sufficient information" to require a public hearing (proposed 185(c), 24055), relies overmuch on the ability of NRC testing to detect design and construction deficiencies, ignores the substantial contributions public intervenors have made to safety (as recognized by ex-AEC Chairman Schlesinger), and is contrary to the Fifth Amendment to the United States Constitution, in that it may allow loss of property rights and health without due process of law. The Supreme Court

of the United States recognized that individuals living near a nuclear power plant have an interest in protecting themselves from harms caused by such a plant (routine releases of radioactivity, fear, etc.), Duke Power Co. v. Carolina Environmental Study Group, 438 U.S. 59, 98 S.Ct. 2620, 57 L.Ed.2d 595 (1978). The NRC proposes to be the final arbiter of this interest, leaving affected individuals without any legal recourse. To the extent that this would clear up "confusion" about hearings under section 189(a) of the Act, the cure is worse than the illness--and as Crane and Wenner correctly point out in their separate views (24094;95), many years of agency precedent and case law have cleared up whatever "confusion" may have existed.

6. The proposed early site permit provision, section 193, is defective in that it does not state whether or not site work may commence after early site approval but before the CP/OL determination. This is objectionable because applicants may begin site work, thus generating a vested economic interest and economic momentum which undoubtedly will influence NRC decisions. Specific language to the effect that "No site work may commence until CP/OL is granted" is therefore necessary.

7. Finally, the NRC cites the "negative effect on credibility of the process" from having separate CP and OL hearings. It is the ELP's belief that any negative credibility comes not from the structure of the licensing process, but from the unwillingness of the NRC before recently to impose meaningful sanctions on sloppy or recalcitrant utilities, the preoccupation with speedy licensing, and the repeated and usually successful efforts to limit public participation in the licensing process. The structure of the process does not seem to be the major cause of these problems.

Sincerely,



Daniel F. Read  
For the ELP