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REMARKS *No Significant Hazards Consideration*

Attached are some pages copied from H.R. Report 97-22 Part 2 and H.R. 2330. I got the report on 6/30, the day after SECY-81-366 was scrubbed from the agenda. I would like your comments in regard to the marked items on p. 29. #1 - Does the "no significant hazards consideration" (nshc) determination have any meaning if a construction permit is not or has not been involved? #2 - What are the "prior court cases" that bear on the interpretation of nshc? #3 - Do you have any comments on how we can separate "nature of issues" from "merit of issues" if we must redraft 50.91(b)?

*① Difference between nshc + significant hazards*

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## Union Calendar No. 89

97TH CONGRESS  
1ST SESSION**H. R. 2330**

[Report No. 97-22, Parts I and II]

To authorize appropriations to the Nuclear Regulatory Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and section 305 of the Energy Reorganization Act of 1974, as amended, and for other purposes.

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**IN THE HOUSE OF REPRESENTATIVES****MARCH 4, 1981**

Mr. UDALL introduced the following bill; which was referred to the Committee on Interior and Insular Affairs

**APRIL 10, 1981**

Reported with an amendment, referred to the Committee on Energy and Commerce for a period ending not later than June 5, 1981, for consideration of such provisions of the bill and amendment as fall within the jurisdiction of that committee pursuant to clause 1(h), rule X, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

**JUNE 2, 1981**

Referred to the Committee on Science and Technology for a period ending not later than June 5, 1981, for consideration only of such portions of the bill and amendment authorizing funds for the development of a long-term nuclear powerplant safety systems plan pursuant to subsection 205(f) of the Energy Reorganization Act of 1974, as amended, as fall within that committee's jurisdiction over energy research and development pursuant to clause 1(r)(11), rule X

1 necessary to issue temporary operating licenses  
2 for nuclear power reactors as provided in section  
3 192 of the Atomic Energy Act of 1954, as amended,  
4 except that such temporary operating licenses  
5 may be issued—

6 (1) in advance of the conduct or comple-  
7 tion of any hearing required by section 192  
8 or by section 189 of such Act, and

9 (2) without regard to subsection (d) of  
10 such section 192 and the finding required by  
11 subsection (b)(3) of that section.

12 SEC. 7. Of the amounts authorized to be ap-  
13 propriated under section 1, the Nuclear Regula-  
14 tory Commission may use such sums as may be  
15 necessary to issue and make immediately effective  
16 amendments to licenses for nuclear power reac-  
17 tors where the Commission determines that an  
18 amendment involves no significant hazards con-  
19 sideration. Such an amendment may be issued and  
20 made immediately effective—

21 (1) in advance of the conduct and com-  
22 pletion of any required hearing, and

23 (2) without providing the prior notice  
24 and publication in the Federal Register re-

1       ferred to in section 189 of the Atomic Energy  
2       Act of 1954.

3       In all other aspects the amendment shall meet the  
4       requirements of the Atomic Energy Act of 1954.

5       SEC. 8. (a) Of the amounts authorized to be  
6       appropriated by section 1, such sums as may be  
7       necessary shall be used by the Nuclear Regulatory  
8       Commission to recommend legislation and regula-  
9       tions which if taken together would reduce by one-  
10      half the time for the filing, review, and issuance of  
11      construction permits, operating licenses, and li-  
12      cense amendments for a facility for which an ap-  
13      plication is filed on or after October 1, 1981, under  
14      sections 103, 104(b), or 189 of the Atomic Energy  
15      Act of 1954.

16      (b) The recommended regulations and legisla-  
17      tion shall be transmitted to Congress pursuant to  
18      this section on or before December 31, 1981, along  
19      with a report on each of the proposed regulations  
20      and legislation which describes their expected  
21      impact on reducing and stabilizing the time re-  
22      quired to issue construction permits, operating li-  
23      cense, and license amendments; safety assurance;  
24      judicial review; staff resources and public partici-  
25      pation.

AUTHORIZING APPROPRIATIONS FOR THE NUCLEAR  
REGULATORY COMMISSION

JUNE 9, 1981. Committed to the Committee of the Whole House on the State  
of the Union and ordered to be printed

Mr. DINGELL, from the Committee on Energy and Commerce,  
submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 2330]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 2330) to authorize appropriations to the Nuclear Regulatory Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and section 305 of the Energy Reorganization Act of 1974 as amended and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment to the bill as amended by the Committee on Interior and Insular Affairs, which was referred to the Committee on Energy and Commerce is as follows:

Strike out all after the enacting clause and omit the part printed in italic and insert in lieu thereof the following:

TITLE I—AUTHORIZATION OF APPROPRIATIONS FOR FISCAL  
YEAR 1982

SECTION 1. (a) There is hereby authorized to be appropriated to the Nuclear Regulatory Commission in accordance with the provisions of section 261 of the Atomic Energy Act of 1954 (42 U.S.C. 2017) and section 305 of the Energy Reorganization Act of 1974 (42 U.S.C. 5875), for the fiscal years 1982 and 1983 to remain available until expended \$500,700,000 for fiscal year 1982 and \$530,000,000 for fiscal year 1983 to be allocated as follows:

(1) Not more than \$75,610,000 for fiscal year 1982 and \$78,280,000 for fiscal year 1983, may be used for "Nuclear Regulatory Regulations".

(2) Not more than \$67,680,000 for fiscal year 1982 and \$70,270,000 for fiscal year 1983, may be used for "Inspection and Enforcement".

(3) Not more than \$17,950,000 for fiscal year 1982 and \$17,990,000 for fiscal year 1983, may be used for "Standards Development".

(4) Not more than \$46,700,000 for fiscal year 1982 and \$48,020,000 for fiscal year 1983, may be used for "Nuclear Material Safety and Safeguards".

(5) Not more than \$231,940,000 for fiscal year 1982 and \$252,180,000 for fiscal year 1983, may be used for "Nuclear Regulatory Research".

(6) Not more than \$19,140,000 for fiscal year 1982 and \$20,610,000 for fiscal year 1983, may be used for "Program Technical Support".

(7) Not more than \$41,680,000 for fiscal year 1982 and \$42,650,000 for fiscal year 1983, may be used for "Program Direction and Administration".

(b) The Commission may use not more than 1 per centum of the amounts authorized to be appropriated under paragraph (5) of subsection (a) to exercise its authority under section 31a. of the Atomic Energy Act of 1954 to enter into grants and cooperative agreements with universities pursuant to that section. Such grants should be made with the Commission paying close attention to opportunities for entering into agreements with appropriate historically predominately minority universities and research centers. Grants made by the Commission shall be made in accordance with the Federal Grants and Cooperative Agreements Acts of 1977 and other applicable law.

(c) (1) Not more than \$500,000 of the amount appropriated for a fiscal year to the Nuclear Regulatory Commission under any paragraph of subsection (a) for purposes of the program specified in that paragraph may be used by the Commission in that fiscal year for purposes of a program referred to in any other paragraph of subsection (a), and the amount available for appropriations for a fiscal year for purposes of any program specified in any paragraph of subsection (a) may not be reduced for that fiscal year by more than \$500,000.

(2) The limitations on reprogramming contained in paragraph (1) shall not apply where the Commission submits to the Committee on Interior and Insular Affairs and the Committee on Energy and Commerce of the United States House of Representatives and to the Committee on Environment and Public Works of the United States Senate a notification containing a full and complete statement of the action proposed to be taken and the facts and circumstances relied on in support of such proposed action, and if—

(A) each such committee, before the expiration of a thirty-day period, transmits to the Commission a written notification that the committee does not object to the proposed action; or

(B) a thirty-day period passes during which no such committee transmits to the Commission a written notification that the committee disapproves of the proposed action.

The thirty-day period referred to in this paragraph shall commence upon the receipt by each such committee of the notice referred to in the preceding sentence. In computing such period there shall not be taken into account any day in which either House of Congress is not in session because of an adjournment of more than three calendar days to a day certain or an adjournment sine die. Each committee referred to in this paragraph may approve or disapprove a proposal of the Commission under this paragraph in such manner as such committee deems appropriate.

Sec. 2. Monies received by the Commission for the cooperative nuclear research programs may be retained and used for salaries and expenses associated with those programs, notwithstanding the provisions of section 3617 of the Revised Statutes (31 U.S.C. 484), and shall remain available until expended.

Sec. 3. During the fiscal years 1982 and 1983, transfers of sums from salaries and expenses of the Nuclear Regulatory Commission may be made to other agencies of the United States Government for the performance of work for which the appropriation is made, and in such cases the sums so transferred may be merged with the appropriation so transferred.

Sec. 4. Notwithstanding any other provision of this Act, no authority to make payments hereunder shall be effective except to the extent or in such amounts as are provided in advance in appropriations Acts.

Sec. 5. (a) Of the amounts authorized to be appropriated pursuant to paragraph (7) of section 1(a), such sums as may be necessary shall be available for interim consolidation of Nuclear Regulatory Commission headquarters staff offices in the District of Columbia and, to the extent necessary, in Bethesda, Maryland.

(b) No amount authorized to be appropriated under this Act may be used, in connection with the interim consolidation of Nuclear Regulatory Commission offices, to relocate the offices of members of the Commission outside of the District of Columbia.

SEC. 6. Of the amounts authorized to be appropriated under section 1, the Nuclear Regulatory Commission may use such sums as may be necessary to issue temporary operating licenses for nuclear power reactors as provided in section 192 of the Atomic Energy Act of 1954, as amended, except that such temporary operating licenses may be issued—

- (1) in advance of the conduct or completion of any hearing required by section 192 or by section 189 of such Act, and
- (2) without regard to subsection (d) of such section 192 and the findings required by subsection (b) (3) of that section.

SEC. 7. Of the amounts authorized to be appropriated under section 1, the Nuclear Regulatory Commission may use such sums as may be necessary to issue and make immediately effective amendments to licenses for nuclear power reactors where the Commission determines that an amendment involves no significant hazards consideration. Such an amendment may be issued and made immediately effective—

- (1) in advance of the conduct and completion of any required hearing, and
- (2) without providing the prior notice and publication in the Federal Register referred to in section 189 of the Atomic Energy Act of 1954.

In all other aspects the amendment shall meet the requirements of the Atomic Energy Act of 1954.

SEC. 8. (a) Of the amounts authorized to be appropriated by section 1, such sums as may be necessary shall be used by the Nuclear Regulatory Commission to recommend legislation and regulations which if taken together would reduce by one-half the time for the filing, review and issuance of construction permits, operating licenses and license amendments for a facility for which an application is filed on or after October 1, 1981, under sections 103, 104(b), or 189 of the Atomic Energy Act of 1954.

(b) The recommended regulations and legislation shall be transmitted to Congress pursuant to this section on or before December 31, 1981, along with a report on each of the proposed regulations and legislation which describes their expected impact on reducing and stabilizing the time required to issue construction permits, operating license, and license amendments; safety assurance; judicial review; staff resources and public participation.

SEC. 9. Of the amounts authorized to be appropriated under section 1 for the Office of Nuclear Materials, Safety and Safeguards, such sums as may be necessary shall be used by the Nuclear Regulatory Commission to promptly enter into a memorandum of understanding with the Department of Energy specifying inter-agency procedures for the disposition of radioactive materials resulting from the clean-up of Three Mile Island Unit 2, except those materials approved for disposition prior to the effective date of this Act.

SEC. 10. Of the amounts authorized to be appropriated under section 1, the Nuclear Regulatory Commission may use such sums as may be necessary, in the absence of a State or local emergency preparedness plan which has been approved by the Federal Emergency Management Agency, to issue an operating license for a nuclear power reactor, if it determines that there exists a State, local or utility plan which provides reasonable assurance that public health and safety is not endangered by operation of the facility concerned.

SEC. 11. No funds authorized to be appropriated under this Act may be used by the Commission to promulgate or publish a safety goal for nuclear reactor regulation until public hearings have been conducted by the Commission respecting the establishment of such safety goal. Development of a safety goal for nuclear reactor regulation should be expedited, to the maximum extent practicable, so as to allow for the establishment of a safety goal by the Commission no later than December 31, 1981.

## PURPOSE

As introduced, H.R. 2330 provided for the authorization of funds to the Nuclear Regulatory Commission for fiscal years 1982 and 1983. It contained no amendments to existing law. The Committee on Energy and Commerce considered and reported an amendment in the form of a substitute which not only provides an authorization for appropriations for fiscal years 1982 and 1983, but which also provides the Commission with specific directives to perform certain actions and which gives the Commission the authority to avoid anticipated delays in the licensing process. Nothing in the substitute has applicability beyond fiscal year 1983. There are no amendments to existing law in the Committee substitute.

*Legislative background*

On February 23, 1981, the Nuclear Regulatory Commission forwarded to the Congress proposed legislation authorizing appropriations for the Commission for fiscal years 1982 and 1983. Thereafter, on March 4, 1981, Congressman Morris K. Udall, chairman of the Interior and Insular Affairs Committee introduced the bill (H.R. 2330) which was referred to the Committee on Interior and Insular Affairs. The bill, with a substitute, was ordered reported by that Committee on April 1, 1981.

*Committee action*

On April 10, 1981, the bill, as reported by the Committee on Interior and Insular Affairs, was, pursuant to the Rules of the House, sequentially referred to the Committee on Energy and Commerce. On Wednesday, May 13, 1981, the Subcommittee on Energy Conservation and Power met in open session for the purpose of marking up the bill, H.R. 2330, and voted favorably to report the bill to the Committee with a substitute text.

On Thursday, June 4, 1981, the Committee on Energy and Commerce met in open session and considered the Subcommittee on Energy Conservation and Power's substitute, and considered additional amendments, after which the committee, by a voice vote ordered the bill reported to the House with an amendment in the nature of a substitute.

*Summary of H.R. 2330*

The committee amendment to H.R. 2330 authorizes appropriations to the Nuclear Regulatory Commission for fiscal year 1982 and 1983. The bill, as reported by the committee, authorizes a total of \$500,700,000 for fiscal year 1982 and \$530,000,000 for fiscal year 1983, with the funds for each year being divided into seven categories which correspond to the Commission's major program areas.

Under the committee amendment, the Commission is directed to use not more than 1 percent of the funds authorized to enter into grants and cooperative agreements with universities, and is further directed, in making such grants, to pay close attention to opportunities for entering into such agreements with appropriate historically predominant minority universities and research centers.

The committee amendment to H.R. 2330 establishes a procedure for congressional review and prior approval of any proposed action by the



Commission to reprogram amounts in excess of \$500,000 for purposes other than those authorized in section 1(a).

The Commission is authorized to use such sums as may be necessary to accomplish the interim consolidation of the NRC's headquarters staff in the District of Columbia and, to the extent necessary, in Bethesda, Md., but is prohibited from using any funds for the purpose of moving the office of the Commissioners outside of the District of Columbia.

The Commission is also authorized to use such sums as may be necessary to issue temporary operating licenses in advance of the conduct or completion of any hearing required under section 192 or section 189 of the Atomic Energy Act and without regard to subsection (d) of section 192 and without regard to the findings required by subsection (b) (3) of section 192. The Commission is also authorized to issue and make immediately effective amendments to licenses in advance of or prior to the completion of any required hearing where the Commission determines that such amendment involves no significant hazards consideration.

The committee substitute also directs the Commission to submit to the Congress, by December 31, 1981, a report, including recommendations for legislation and regulations which, if taken together, would reduce by one-half the time for the filing, review and issuance of construction permits, operating licenses and license amendments for applications filed after October 1, 1981.

Under the committee amendment, the Commission is authorized to enter into a memorandum of understanding with the Department of Energy specifying interagency procedures for the disposition of radioactive materials resulting from the cleanup of the Three Mile Island Unit 2, except for those materials approved for disposition prior to the effective date of this Act.

The committee amendment also authorizes the Commission, in the absence of a State or local emergency preparedness plan which has been approved by the Federal Emergency Management Agency to issue operating licenses for nuclear power reactors if it determines that there exists a State, local or utility plan which provides reasonable assurance that the public health and safety is not endangered by the operation of the facility.

Finally, the subcommittee amendment also provides that the Commission's safety goal cannot be finalized until all the legislative-type public hearings are complete. The Commission is urged to complete this safety goal, to the maximum extent practicable, by December 31, 1981.

#### COMMITTEE COMMENTS

##### *Amounts authorized*

H.R. 2330, as reported by the Committee on Energy and Commerce authorizes a total of \$500,700,000 for fiscal year 1982 and \$530,000,000 for fiscal year 1983 to the Nuclear Regulatory Commission. While this is identical to the total amounts requested by both the Carter and Reagan administrations, the totals for fiscal year 1982 are \$14,828,000 and, for fiscal year 1983, \$16,900,000, above the amounts authorized by the Committee on Interior and Insular Affairs.

The reductions imposed by the Committee on Interior and Insular Affairs can be separated into two major areas. First, that committee approved a 2 percent across-the-board budget reduction for the Commission, which is explained in the committee report (H. Rept. 97-22, pt. I, p. 10), "was predicated on the belief that Federal spending must be reduced and that the Commission must share the burden." In view of the concern of the Committee on Energy and Commerce about the ability of the Commission to simultaneously address the safety issues raised as a result of the action at Three Mile Island and to continue the licensing process in a manner which avoids anticipated delays, this committee believes that an across-the-board budget reduction is unwarranted, especially in view of the additional requirements imposed upon the Commission to accelerate the licensing process by this committee's substitute. The Commission has presented testimony to this committee that the budget, as submitted, reflects efforts to economize and already incorporates a number of reductions in specific program areas from the amounts sought by the program office.

Moreover, at the time the Commission testified before the Subcommittee on Energy Conservation and Power, it was anticipating the need to reprogram approximately \$8 million to accelerate the licensing process administratively. Chairman Hendrie responded that most of the funds would be reprogrammed from technical assistance support programs in the Office of Nuclear Reactor Regulation but noted that some would have to come from other programs, such as Research and Standards. Commissioner Bradford, however, expressed concern about the potential impact of the reprogramming.

The primary overall criticism that the Commission received in the wake of the Three Mile Island accident was that it was devoting insufficient attention to safety issues and operating reactors, and too much attention historically to getting out licenses.

In the 2 years following the accident, we undertook a number of programs designed to reorient those priorities and establish better balance. If, in fact, and I don't want in any way to imply that it has occurred yet, but if, in fact, the climate over the next few years requires us to reorient our focus again entirely to the issuance of new licenses, it seems to me that there is inevitable compromise of safety related programs and operating reactors that may or may not come in squeezing for this \$7 or \$8 million.

But at some point, as you talk about redirecting resources and using neutral phrases like that, you really are talking about at first slidding and deferring, and then ultimately canceling programs that are directed at assessing the safety in the operating plants, or upgrading safety in the operating plants.

Although, during the course of the subcommittee hearing, the Commission was asked by a number of members to submit data as to the amounts needed to insure that both the safety and licensing functions would be fully funded at levels sufficient to avoid having to compromise either function, the Commission has failed to provide such informa-

tion. As the Commission was fully aware of the actions of the subcommittee in accelerating the licensing process, and as numerous members of the Commission submitted comments on those provisions, the Commission's failure to submit any information regarding the budgetary impact of these provisions and other efforts to accelerate the licensing process can only be interpreted as indicating that the licensing provisions will not compromise safety activities and that the Commission can fully perform its statutory responsibilities without the need for any supplemental requests during the next 2 fiscal years. Indeed, in his testimony before the subcommittee on March 30, 1981, Commissioner Bradford indicated that provisions such as those contained in the committee substitute would avoid having to compromise either function when he stated:

In fact, one of the reasons why interim licensing has seemed acceptable to me is that it does relieve some of the pressure to choose between safety on the one hand and licensing on the other, to the extent that the line can be drawn between the two.

In adopting the licensing provisions, the committee expects that the Commission will vigorously maintain its safety activities and oversight of operating reactors, and that the effort supporting these activities will not be compromised, and that the funds provided in the authorization will be sufficient to accomplish these objectives.

The second major reduction imposed by the Committee on Interior and Insular Affairs was in the funding for the establishment of a Nuclear Data Link (NDL). The reductions in this program authorized by the Committee on Interior and Insular Affairs total \$4,813,000 for fiscal year 1982 and \$6,300,000 for fiscal year 1983.

The Nuclear Data Link is designed to provide the Commission's Incident Response Center with instantaneous communications with licensed reactors in order to improve the transmission of the operating parameters of the reactor's major systems in the event of an accident. In testimony before the Subcommittee on Energy Conservation and Power, Commissioner Glinsky stated:

... I think it is important that we are proceeding in a way that our chairman laid out, sequentially, that we examine the functioning of such a data link, using perhaps a little more rudimentary equipment than one might if one were to go forward to try the concept, and to see what kind of relationship develops between us and the licensees. That will undoubtedly give us ideas on what it is we need, and what sort of system we would like to see in place in the future.

Mr. Stello, the Director of the Office of Inspection and Enforcement, which is the Office in which the NDL would be established, stated that, without the Interior Committee amendment—

... then it would allow all the moneys to move forward with the NDL as originally proposed, which would be full implementation of the system at least beginning in 1982. At the moment, just going with the prototype, as the Chairman indicated, is information gathering and experience for us. But

before we begin to put the NDL at all in the plants, we have to have the authority to do so, and the further away that is in the future, the further away that is put into the future, obviously, the further we will be from the full implementation of the NDL.

As one of the major problems identified in the studies of the accident at the Three Mile Island nuclear reactor was the poor communication of needed technical information regarding operating conditions, and as one of the primary recommendations was the establishment of such an instantaneous data link, the committee provided the Commission with the amount requested for this activity, without making the availability of such funds subject to further congressional action. In doing so, the committee expects that the Commission will proceed to establish this system in an orderly and cautious fashion, installing first a prototype linking the NDL with a limited number of representative operating reactors and possibly a simulator. Experience gained from such operation will be used in designing the ultimate system. The committee expects that, following the establishment of a prototype, the Commission will submit to the Congress a report evaluating its experience with such a system, and afford the appropriate authorizing committees of Congress the opportunity to determine if the establishment of the entire system is desirable. The committee wishes to emphasize that the establishment of this system is for the purpose of transmitting data in the event of a nuclear incident or abnormal occurrence in order to monitor such events, and that in all events, the responsibility for the actual operation of the reactor rests with the licensee. The committee recognizes that the Commission and its staff are not as competent to operate a reactor as those at the site, who are familiar with the idiosyncrasies of the particular unit, and that the information transmitted by the NDL will, in no way, be used to usurp the operator's prerogatives. The committee expects that the Commission will promptly identify the nature and scope of the information which needs to be transmitted in the event of an incident or abnormal occurrence, and establish criteria for the circumstances under which such information is to be transmitted.

#### *Nuclear Regulatory Commission Office consolidation*

For the past few years, this committee has been concerned about the fact that the Commission's staff has been scattered in 10 different buildings at five different locations in Washington, D.C. and suburban Maryland.

The Commission itself has unanimously concluded that the physical separation of the NRC staff has a significant adverse effect on the agency's operations. This conclusion has been supported by both the President's Commission on the Accident at Three Mile Island (the Kemeny Commission) and the Nuclear Regulatory Commission's Special Inquiry Group, both of whose reports recommended the prompt consolidation of the agency's staff. Moreover, in its September 26, 1980 letter to President Carter, the Nuclear Safety Oversight Committee stressed the importance of achieving this consolidation.

While there have been discussions over the past several years regarding the construction of a new building to house the entire Com-

mission staff, it is apparent that it will be several more years before such a building would be available for occupancy. Moreover, there is no funding for such a building included in the administration's fiscal year 1982 budget. In view of this, the committee supports efforts to achieve an interim consolidation which would at least enable the Commission staff to be housed in two locations. This would, to a great extent, solve some of the management problems. Last year, the Office of Management and Budget proposed consolidating the staff by relocating half of the staff in the Matomec Building (1717 H Street, NW, Washington, D.C.), which presently houses the Offices of the Commissioners, and half in a single building in Bethesda, Md. The Commission regards this Office of Management and Budget plan as "the acceptable short-term solution identified to date." However, since that proposal was offered, the General Services Administration has signed a lease for a building at Fifth and D Streets, SW., for use by the Department of Health and Human Services. Since signing the lease, the program that was to be housed there has been reduced to the point where the office space is no longer needed. Although the present building is not of sufficient size to house the entire Commission staff, an addition to the building is presently under construction, which, when completed and combined with the space already leased, would provide sufficient space for the consolidation of the entire Commission staff in a single location. It is expected that this building would be ready for occupancy within 18 months.

The committee strongly supports efforts to achieve the consolidation of the Commission staff at a single location as rapidly as possible, and believes that the location in Southwest Washington, D.C. should be expeditiously considered. In the event that the location is deemed unsuitable, the Office of Management and Budget plan should be promptly implemented. However, the committee strongly believes that the offices of the Commissioners should remain in the District of Columbia.

To accomplish this objective, the committee substitute authorizes the Commission to use such sums as may be necessary for interim consolidation of the NRC offices in the District of Columbia and, to the extent necessary, in Bethesda, Md. The committee substitute also prohibits the use of any funds authorized under the bill for the purposes of relocating the offices of the Commissioners outside the District of Columbia.

#### *Temporary operating licenses*

Following the submission of its budget request, the Commission, on March 18, 1981, submitted to the Congress a request that it be given the statutory authority to issue interim operating licenses. As submitted, the proposed language would allow the Commission to issue an interim operating license authorizing fuel loading and low-power operation and testing for an individual reactor, in advance of the conduct or completion of an on-the-record evidentiary hearing on contested issues. In submitting this proposal, the Commission acknowledged that the legislation represented an extraordinary and temporary cure for an extraordinary and temporary situation.

The extraordinary and temporary problem cited by the Commission refers to the present licensing situation where it currently appears

that the licensing process for a significant number of reactors will extend beyond the date when construction should be complete and the reactors are ready to operate. The following reactors have been identified by the Commission as facing this potential: Sumner (South Carolina); Diablo Canyon 1 and 2 (California); San Onofre (California); Zimmer (Ohio); McGuire (North Carolina); Enrico Fermi (Michigan); Susquehanna (Pennsylvania); Waterford (Louisiana); Shoreham (New York); and Commanche Peak (Texas). Administrative action by the Commission is expected to avoid delays in the operation of the following reactors: Salem 2 (New Jersey); Farley 2 (Alabama); LaSalle 1 (Illinois); Sequey 2 (Tennessee); Grand Gulf (Mississippi); Watts Bar 1 (Tennessee); and WNP 2 (Washington). It is anticipated that the cumulative delay in the licensing of these reactors could total at least 79 months, with individual reactors experiencing delays of from at least one to 13 months. As a result of these delays, costs will be incurred for replacement power and additional financial carrying charges. The Commission's April, 1981 report to Congress included delay cost estimates by the Department of Energy of \$2.3 billion, based upon a total projected delay of 102 months and upon the assumption that delay costs are limited to replacement power plant costs alone. Representatives of the nuclear industry have argued that, if utility financial carrying charges are included, the cost of delay could total between \$2.7 and \$3.6 billion.

In order to minimize the potential imposition of these costs upon consumers and utilities, the committee included in the substitute a provision which authorizes the Commission to issue, pursuant to section 192 of the Atomic Energy Act of 1954, as amended, temporary operating licenses in advance of the conduct or completion of any hearing required by section 189 or section 192 of the Atomic Energy Act, and without regard to subparagraph (d) of section 192 and without regard to the findings required by subparagraph (b) (3) of section 192 of the Atomic Energy Act of 1954, as amended. Under the committee provision, the required hearings must still be held, but they may be held following the issuance of a temporary operating license. However, the substantive standard for the issuance of a temporary operating license is the same as required for the issuance of a normal operating license, in that, in issuing a temporary operating license, the Commission would still have to find that the requirements of all applicable law, other than the conduct or completion of any hearing required by section 189 or 192, are met, including compliance with all the rules and regulations of the Commission applicable to the licensing of an operating reactor and the finding that there is reasonable assurance that the temporary operation of the facility in accordance with such terms and conditions on the operation of the reactor as the Commission may impose, will provide adequate protection of the environment.

The committee recognizes that the anticipated delays are an extraordinary and temporary situation that threatens to impose an unacceptable cost upon consumers and utilities and that the immediate delays do not require compromising the hearing process. Instead, the anticipated delays are primarily the result of the suspension of the licensing process, which was a consequence of the need to divert staff resources away from the licensing process in order to determine

the cause of the accident at the Three Mile Island No. 2 reactor and to incorporate into the Commission's regulations requirements designed to avoid any repetition of the accident. Despite the diversion of the staff's attention, the construction of reactors continued, creating the present situation. The committee has no reason to believe that, had the licensing process not been suspended and the staff utilized for nonlicensing purposes, the hearing process per se would have delayed the operation of the impacted reactors.

The committee believes that the hearing process serves a vital function as a forum for raising relevant issues regarding the design, construction and operation of a reactor, and for providing a means by which the applicant and the Commission staff can be held accountable for their actions regarding a particular facility. The committee feels that the hearing process is essential to obtaining public confidence in the licensing process, which is needed if the nuclear option is to be preserved. In authorizing the Commission to issue temporary operating licenses in accordance with the provisions of the substitute, the committee has elected to preserve the integrity of the hearing process, and thereby has acted to ensure that the rights of parties, including the right to depose the Commission staff, to cross examine witnesses, and to raise relevant contentions, as well as the right of licensing boards and States to raise issues, are fully preserved. Thus, by adopting the interim, compromise provisions in the substitute, the committee is rejecting comprehensive proposals made in other forums which would eliminate the procedural rights of parties and thereby merely preserve the form, and obviate the function, of the hearing process. The reforms contained in the committee substitute are temporary reforms directed at a temporary problem. The committee expects to review the hearing process in the context of a comprehensive approach to licensing reform.

The committee wishes to emphasize that, under the substitute amendment, the Commission is merely authorized, but not required, to issue a temporary operating license in the advance of the conduct or completion of any hearing required to be held under section 189 or section 192. The committee expects that the Commission will promptly act, prior to the effective date of this authorization, to establish expedited procedures, which procedures are in accordance with the requirements of the Administrative Procedures Act and which are appropriate for the full disclosure of material facts on all substantial issues raised in connection with the issuance of any temporary operating license, for any hearing held under the requirements of section 192 of the Atomic Energy Act.

As the authority to issue a temporary operating license in advance of the conduct or completion of any hearing required by section 189 or section 192 of the Atomic Energy Act is an extraordinary and temporary response to a unique situation, the Committee expects that this authority will be exercised especially in advance of the conduct or completion of the hearing required by section 192, by the Commissioners under firm and stringent guidelines consistent with the requirements of section 192. The committee notes that, as a practical matter, the decision to suspend the licensing process in an individual case is one which, at some time, must be made by the Commission. The com-

mittee expects that, under these firm guidelines, the Commission will avoid placing the staff in the tenuous legal position of ruling on the adequacy and sufficiency of its own findings and work, which may constitute an unconstitutional misjoinder of functions incapable of withstanding judicial review, thereby further delaying the operation of the reactor and defeating the intent of the provision.

The committee also wishes to emphasize that under the substitute amendment, the Commission is given the authority to establish the level of power generation authorized for each temporary operating license in view of the individual circumstances. Thus, while the Commission has the authority to issue a temporary operating license authorizing the full power operation of a given reactor, nothing in the substitute amendment requires the Commission to issue any full power temporary operating licenses. Indeed, the committee expects that, in granting any temporary operating license, and especially one prior to the conduct or completion of any hearing required by section 192, the Commission will exercise extreme caution, as it should in final licenses for operating reactors. The authority to impose on temporary operating licenses limitations is specifically provided in section 192(b)(2) which provides that the temporary operating license shall contain such terms and conditions as the Commission may deem necessary, and by section 192(b)(1) relating to complying with the requirement of section 185 of the Atomic Energy Act.

The committee notes that, under the substitute amendment, the Commission is directed, under section 192(c) to vacate any temporary operating license if it finds that the applicant is not prosecuting the application of its final operating license with due diligence. Although the committee rejected an amendment which would have statutorily imposed a one-year limitation on the duration of a temporary operating license because it did not feel that such a limitation would be sufficient to avoid delays confronting all affected reactors, the committee believes that both the applicant and the Commission have a strong responsibility to prosecute any pending license application and that it is the Commission's special responsibility to insure that the applicant pursues its application for a final operating license with vigor, and that it will exercise its authority to revoke a temporary operating license whenever it finds that the applicant is being dilatory. In adopting the substitute, the committee in no way seeks to establish a mechanism for avoiding the requirements of the normal licensing process, and the committee will exercise strong oversight activities to insure that this directive is fully enforced. Moreover, the committee, in authorizing the issuance of temporary operating licenses, does not intend that the Commission, in any way, relax its efforts to initiate administrative reforms which would avoid delays in the licensing process.

#### *Advisory committees*

In the course of the committee's deliberations on the Nuclear Regulatory Commission's authorization, it considered an amendment which would have prohibited the Commission from utilizing any of the funds authorized to be appropriated to establish any steering committee, advisory committee or similar committee or group which was comprised in whole or in part of representatives of the nuclear power industry or of individuals employed by organizations, institutes or



associations which are wholly or partially controlled by or otherwise closely associated with the nuclear power industry unless the membership of such committee or group also includes an equivalent number of individuals who represent organizations of citizens concerned with nuclear reactor safety and who do not represent the views of the nuclear power industry.

In considering the proposed amendment, certain members of the committee noted that its scope encompassed almost any type of advisory committee to the Commission, some of which were formed to consider highly technical and very specific issues, in which case it would be difficult to comply with the requirements of the amendment because of the lack of technical expertise outside of the nuclear industry.

Additionally, the language of the amendment raised certain technical problems regarding its interpretation. For example, the term "nuclear power industry" is not defined, and it would therefore be difficult to identify individuals who are employed by organizations, institutes or associations which are wholly or partially controlled by or funded by or otherwise closely associated with the nuclear power industry. For example, would such term include any member from a faculty of a university which is conducting research for a reactor manufacturer, even though the individual faculty member may not be involved in the research and may, in fact, be personally opposed to nuclear power, on the grounds that the faculty member is part of an organization which is partly funded by a member of the nuclear power industry? Would an individual's membership in a professional organization associated with the nuclear industry require the appointment of a citizen representative, without regard to the member's particular views? How would it be determined that one does not represent the views of the nuclear power industry?

Because of these concerns, the amendment was not adopted. However, the committee believes that all advisory and similar committees, wherever possible and appropriate, should be composed of a broad range of representative views, and that, where appropriate, members of the public serve on such committees. The committee expects that in forming any advisory or similar committee, the Commission will fully comply with the requirements of the Federal Advisory Committee Act (86 Stat. 770).

#### HEARING

On March 30, 1981, the Subcommittee on Energy Conservation and Power held a hearing on the Nuclear Regulatory Commission's authorization request for fiscal years 1982 and 1983. The Chairman of the Nuclear Regulatory Commission, Joseph F. Hendrie, testified, together with Commissioners Victor Gilinsky, John Ahearne and Peter Bradford. They were accompanied by the Directors of the major Commission program Offices.

#### AUTHORIZATION REQUESTS

The Nuclear Regulatory Commission's budget request for fiscal year 1982 is for \$500,700,000, which is \$53,180,000, or 10.6 percent, greater than the amount appropriated in fiscal year 1981 and the estimate for fiscal year 1983 is \$530,000,000.

## HOUSE AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEAR 1982

The fiscal year 1982 budget requests, in thousands, for the major offices of the NRC are as follows:

	Estimated expenditures FY 1981	NRC budget request FY 1982	FY 1983
Nuclear reactor regulation.....	\$75,320	\$75,610	\$78,280
Standards development.....	16,950	17,950	17,999
Inspection and enforcement.....	59,700	67,680	70,270
Nuclear material safety and safeguards.....	38,720	46,700	48,020
Nuclear regulatory research.....	216,150	231,940	252,180
Program technical support.....	19,400	19,140	20,610
Program direction and administration.....	40,076	41,680	42,650
<b>Total.....</b>	<b>466,836</b>	<b>501,200</b>	<b>530,000</b>

The estimated expenditures for fiscal year 1981 are greater than the amount appropriated because the appropriations bill authorizes the carryover of unobligated funds, which, at the beginning of fiscal year 1981 totaled \$11,996,000. There is an additional \$500,000 expended, which represents income from orders received from other Federal agencies.

The budget request in thousands in terms of functions, rather than programs, is as follows:

	Estimated FY 1981	Estimated FY 1982
Salaries and benefits.....	\$127,839	\$133,498
Program support and contracts.....	269,803	293,701
Administrative support.....	49,461	52,845
Travel.....	8,965	11,750
Equipment.....	10,268	8,906
<b>Total.....</b>	<b>466,336</b>	<b>500,700</b>
Reimbursable programs.....	500	500
<b>Total obligations.....</b>	<b>466,836</b>	<b>501,200</b>

The authorization permanent personnel level requested in the proposed fiscal year 1981 budget is as follows:

	Estimated FY 1981	Estimated FY 1982	FY 1983
Nuclear reactor regulation.....	\$720	\$735	\$740
Standards development.....	161	161	161
Inspection and enforcement.....	946	1,020	1,040
Nuclear material safety and safeguards.....	335	345	350
Nuclear regulatory research.....	178	174	744
Program technical support.....	296	293	300
Program direction and administration.....	754	773	777
<b>Total.....</b>	<b>3,390</b>	<b>3,501</b>	<b>3,542</b>

## PROGRAM DESCRIPTION

*Nuclear reactor regulation*

The Commission has requested a total authorization of \$75,610,000 for the Office of Nuclear Reactor Regulation, which is \$290,000 greater than the amount authorized by the House for fiscal year 1981.

The following chart indicates how the requested funds would be utilized by function:

	Estimated 1980	Estimated 1981
Salaries benefits.....	\$29,320	\$30,420
Program support.....	33,978	31,335
Administrative support.....	10,792	12,297
Travel.....	230	1,558
Equipment.....	0	0
<b>Total obligations.....</b>	<b>75,320</b>	<b>75,610</b>
Personnel.....	722	722

The following table indicates how the requested funds in thousands would be apportioned by programs (primarily contractual support):

	Estimated FY 1981		Estimated FY 1982	
	Dollars	People	Dollars	People
Operating reactors.....	9,992	241	6,915	242
Operator licensing.....	170	24	3,320	37
Casework.....	14,150	198	10,200	157
Safety technology.....	8,193	125	9,200	148
TWR cleanup.....	1,473	21	1,100	21
Management direction and support.....	0	76	0	76
<b>Total.....</b>	<b>33,978</b>	<b>684</b>	<b>31,335</b>	<b>681</b>

The Office of Nuclear Reactor Regulation (NRR) authorizes the construction and licenses the operation of nuclear power reactors, processes and issues license amendments and refueling applications, studies and responds to unresolved generic safety issues and responds to nonroutine operating events at nuclear reactors which require immediate attention, and generally oversees operating reactors.

There are presently 68 nuclear power reactors in operation in the United States with an additional 2 plants having a license to begin low power testing. There are 82 additional plants under construction and 11 applications for a construction permit. This Office also expects to process approximately 1,100 license amendments, act on applications to modify or expand spent fuel storage pool at reactor sites and address many of the unresolved generic safety issues which impede the process of licensing individual reactors.

The Office has responsibility for reviewing operating reactors, and both the Kemeny Commission and the Rogovin Report were critical of the Commission's failure to devote sufficient attention to operating reactors and to systematically review their experience as a means of identifying problems and communicating these problems to utilities with similar reactors. Last year there was a significant decrease in the casework category (38.5 percent), which processes license applications. The Commission has recently been severely criticized for failing to process license applications, and is now proposing to substantially increase the casework category to process reactor licensing. (See discussion in issues section.)

### Standards development

The Commission's request for the Office of Standards Development is \$17,950,000, which is \$980,000, or 5.7 percent, more than allocated to this Office for fiscal year 1981.

The following chart indicates how the requested funds would be utilized by function:

	Estimated FY 1981	Estimated FY 1982	FY 1983
Salaries and benefits.....	\$6,670	\$6,890	\$7,000
Program support.....	7,603	8,310	8,075
Administrative support.....	2,457	2,415	2,565
Travel.....	240	335	350
Equipment.....	0	0	0
<b>Total obligation.....</b>	<b>16,970</b>	<b>17,950</b>	<b>17,990</b>
Personnel.....	161	157	

The following table represents the allocation of funds in thousands (primarily contract support) by program:

	Estimated FY 1981		Estimated FY 1982	
	Dollars	People	Dollars	People
Reactor engineering standards.....	870	54	850	53
Fuel cycle and material engineering standards.....	1,242	23	1,260	22
Siting standards.....	833	12	1,050	12
Waste management standards.....	890	28	1,120	28
Safeguards standards.....	1,905	13	1,945	12
Radiation protection standards.....	1,863	19	2,285	18
Management direction and support.....	0	12	0	12
<b>Total.....</b>	<b>7,603</b>	<b>161</b>	<b>8,310</b>	<b>157</b>

The Office of Standards Development is responsible for developing the technical regulations and guides which establishes the standards and regulations relating to the regulation of nuclear facilities and the commercial uses of special nuclear materials. These include safety, safeguard, health and environmental regulations applicable to nuclear reactors, nuclear fuel facilities, transportation systems, waste facilities, international activities and medical and commercial uses of nuclear materials.

### Inspection and enforcement

The Commission has requested a total of \$67,680,000 for the Office of Inspection and Enforcement, which is an increase of \$7,980,000, or 13 percent, above the funds provided this Office in fiscal year 1981.

The following chart indicates how the requested funds would be utilized by function:

	Estimated FY 1981	Estimated FY 1982	FY 1983
Salaries and benefits.....	\$36,030	\$38,120	\$39,450
Program support.....	9,256	12,391	10,795
Administrative support.....	8,067	9,566	10,563
Travel.....	4,520	6,097	6,492
Equipment.....	1,831	1,506	2,970
<b>Total obligation.....</b>	<b>59,704</b>	<b>67,680</b>	<b>70,270</b>
Personnel.....	976	1,006	

The following table indicates how the requested funds, in thousands, would be apportioned by program (primarily contractual support) :

	Estimated FY 1981		Estimated FY 1982	
	Dollars	People	Dollars	People
Reactor engineering and construction program.....	395	180	1,010	192
Reactor operations program.....	415	287	275	296
Radiological safety program.....	1,898	203	2,594	206
Safeguards program.....	1,166	92	1,102	92
Enforcement, investigations, and special programs.....	5,207	134	6,985	140
Management direction and support.....	175	80	425	80
Total.....	9,256	976	12,391	1,006

The Office of Inspection and Enforcement (I. & E.) inspects licensees and their contractors to ascertain compliance with Commission regulations, rules, orders and license provisions to insure that the licensees are taking required and appropriate actions to protect nuclear materials and facilities, the environment, and the health and safety of the public. I. & E. also investigates incidents, accidents, allegations and other unusual circumstances.

This Office also inspects manufacturers who supply equipment used in the construction and operation of nuclear powerplants and is responsible for the safe transportation of nuclear materials and its safe use in commercial and medical operations.

Under the fiscal year 1982 request, this Office would add 30 personnel.

#### *Nuclear materials safety and safeguards*

The Commission has requested a fiscal year 1982 authorization for the Office of Nuclear Materials Safety and Safeguards (NMSS) of \$46,700,000 which is \$7,980,000, or 20.6 percent, more than the amount provided in fiscal year 1981.

The following chart indicates how the requested funds would be utilized by function :

	Estimated FY 1981	Estimated FY 1982	FY 1983
Salaries and benefits.....	\$11,910	\$13,050	\$13,600
Program support.....	17,095	24,040	24,440
Administrative support.....	9,155	9,075	9,420
Travel.....	560	535	560
Equipment.....	0	0	0
Total obligations.....	38,720	46,700	48,020
Personnel.....	329	329	

The following table indicates how the requested funds in thousands would be apportioned by program (primary contractual support) :

	Estimated FY 1981		Estimated FY 1982	
	Dollars	People	Dollars	People
Fuel cycle and material safety.....	4,250	102	4,330	105
Safeguards.....	2,510	102	2,735	94
Waste management.....	10,235	106	16,875	111
Management direction and support.....	100	19	100	19
Total.....	17,095	329	24,040	329

The Office of Nuclear Materials Safety and Safeguards (NMSS) licenses and regulates all facilities and materials, except reactors associated with the processing, transport and handling of nuclear materials including maintenance of safeguards. NMSS also reviews safety and safeguards programs of all such facilities and materials including monitoring, testing and upgrading internal accounting systems and developing plans for dealing with threats, thefts and sabotage at both the domestic and international levels.

NMSS fuel cycle regulatory responsibilities encompass uranium mills, uranium conversion facilities, fuel fabrication plants, spent fuel storage facilities and waste disposal sites. NMSS also certifies transport containers and licenses radioisotopes used in medicine, industry and science.

The major portion of NMSS's budget increase is contained in the Waste Management Program. Because of the importance of this program, the Commission established a Waste Management Division within this Office. Historically, the problems associated with waste management received little regulatory attention because early plans did not call for the licensing of such facilities. When attention began to focus on waste management, the Commission found itself without an established regulatory program capable of processing applications for terminal depositories.

#### *Nuclear Regulatory Research*

The Commission is requesting an authorization of \$231,940,000 for the Office of Nuclear Regulatory Research (RES), which is an increase of \$14,790,000 above the amount provided for in fiscal year 1981.

The following chart indicates how the requested funds would be utilized by function:

	Estimated FY 1981	Estimated FY 1982	FY 1983
Salaries and benefits.....	17,595	17,840	18,100
Program support.....	196,953	213,200	231,080
Administrative support.....	2,545	2,925	3,100
Travel.....	580	575	620
Equipment.....	8,477	7,400	9,280
<b>Total obligations.....</b>	<b>216,150</b>	<b>231,940</b>	<b>252,180</b>
Personnel.....	164	170	

The following table indicates how the requested funds in thousands would be apportioned by program (primarily contractual support):

	Estimated FY 1981		Estimated FY 1982	
	Dollars	People	Dollars	People
LOCA and transient.....	61,917	26	51,000	24
LOFT.....	42,400	7	44,000	7
Plant operational safety.....	29,624	26	37,000	27
Severe accident phen. and mitigation.....	19,798	15	20,200	16
Siting and environmental.....	12,014	13	14,400	13
Waste management.....	11,700	14	21,500	16
Safeguards and fuel cycle safety.....	8,500	13	10,200	13
Systems and reliability analysis.....	11,000	26	14,900	28
Program direction and support.....	0	24	0	26
<b>Total.....</b>	<b>196,953</b>	<b>164</b>	<b>213,200</b>	<b>170</b>

The Office of Nuclear Regulatory Research (RES) conducts research to support the licensing and regulatory process. It performs work on analytical methods and obtains necessary data which is needed to formulate regulatory decisions. It constitutes the largest program of the Commission and consumes almost 50 percent of the Commission's funds.

Under the provisions of the Energy Reorganization Act of 1974, which established the Nuclear Regulatory Commission as an independent regulatory agency, the Commission is prohibited from conducting original research which may be viewed as promoting nuclear energy and thereby compromise the Agency's regulatory integrity. Consequently, the Commission is confined to performing confirmatory research which independently verifies safety data and analytical methods which are used in the formulation of regulatory standards and licensing criteria. Under an amendment to the 1978 Fiscal Year Authorization Act, the Commission can conduct limited original research on safety problems relating to the operation of a nuclear powerplant.

#### *Program technical support*

The Commission is requesting an authorization of \$19,140,000 for program technical support, which is \$260,000 less than authorized in fiscal year 1981.

The following chart indicates how the requested funds would be utilized by function:

	Estimated FY 1981	Estimated FY 1982	FY 1983
Salaries and benefits.....	\$10,889	\$11,280	\$11,850
Program support.....	2,786	2,463	2,623
Administrative support.....	4,590	4,217	4,907
Travel.....	1,135	1,180	1,230
Equipment.....	0	0	0
<b>Total program costs.....</b>	<b>19,400</b>	<b>19,140</b>	<b>20,610</b>
Personnel.....	267	278	

The following table shows the allocation of personnel for each sub-program for this activity:

	FY 1981	FY 1982	FY 1983
Advisory Committee on Reactor Safeguards.....	42	43	43
Atomic Safety and Licensing Board Panel.....	37	37	37
Atomic Safety and Licensing Appeal Panel.....	15	15	15
Office of the Executive Legal Director.....	98	106	106
Office of the State Program.....	39	28	28
Office of the International Program.....	35	31	31
Office for Analysis and Evaluation of Operation Data.....	22	33	40

Authorizations for program technical support provide funds for salaries and other costs needed to operate the Advisory Committee on Reactor Safeguards which reviews and reports on safety studies and facility license applications and studies potential hazards; the Atomic Safety and Licensing Board panel which conducts adjudicatory hearings regarding the granting, suspending, revoking and amending re-

views appeals for Licensing Boards; the Office of the Executive Legal Director which provides legal advise and services to the Executive Director of Operations and represents the Commission staff at programs which develop and direct programs of cooperation with states, local governments and interstate organizations; and the Office of International Programs which negotiates and implements international regulatory and safety information exchanges, licenses the imports and exports of nuclear materials and facilities, engages in non-proliferation and international safeguards policy planning and support for NRC international activities.

*Program direction and administration*

The Commission is requesting an authorization of \$41,680,000 for Program direction and support, which is an increase of \$1,604,000, or 4 percent.

The following chart indicates how the requested funds would be utilized by function:

	Estimated FY 1981	Estimated FY 1982	FY 1983
Salaries and benefits.....	\$25,425	\$25,898	\$26,400
Program support.....	2,092	1,962	1,962
Administrative support.....	11,859	12,350	12,958
Travel.....	700	1,470	1,330
Total program costs.....	40,076	41,680	42,650
Personnel.....	755	775	

The following table shows the allocation of personnel among the various components of this budget category:

	FY 1981	FY 1982	FY 1983
Office of the Commissioners.....	31	31	31
Office of the Secretary.....	42	43	42
Office of the General Counsel.....	26	30	30
Office of the Policy Evaluation.....	18	18	18
Office of the Inspector and Auditor.....	28	33	33
Office of the Congressional Affairs.....	9	9	9
Office of the Public Affairs.....	19	21	21
Executive Director for Operations.....	12	12	12
Office of Equal Employment Opportunity.....	6	7	7
Office of the Controller.....	68	68	68
Office of the Management and Program Analysis.....	76	76	76
Office of the Administration.....	419	425	429
Total.....	754	773	777

Authorizations for Program direction and administration provide funds for the salaries and expenses of the Commissioners, and the staffs of the Offices of the Secretary, General Counsel, Policy Evaluation, Inspector and Auditor, Congressional Affairs, Public Affairs, Office of the Executive Director, Equal Employment Opportunity, Comptroller, Planning and Analysis, Management Information and Program Control and Administration.



SECTION-BY-SECTION ANALYSIS, NUCLEAR REGULATORY COMMISSION, FISCAL YEAR 1981 AUTHORIZATION, AS REPORTED BY THE COMMITTEE ON ENERGY AND COMMERCE

SECTION 1—AMOUNTS AUTHORIZED

*Summary*

Section 1 of the bill provides the Nuclear Regulatory Commission with a total authorization of \$500,700,000 for fiscal year 1982, and \$530,000,000 for fiscal year 1983. The Commission is authorized to use up to one percent of the amount authorized for the purpose of making research grants and cooperative agreements with universities, and in doing so, is directed to pay close attention to the opportunities for entering into agreements with the appropriate historically predominant minority universities and research centers. The Commission's authority to reprogram any funds in excess of \$500,000 for purposes other than those specified in section 1(a) is limited until the authorizing committees of Congress have reviewed the proposed reprogramming.

*Discussion*

The total amount authorized is equal to the amount requested by the Commission and is identical to the request of both the Carter and Reagan Administrations. The Committee substitute restores to the Commission funds deleted by the Committee on Interior and Insular Affairs because this Committee believes that, in view of the present backlog in the licensing process, an across-the-board reduction as proposed by the Committee on Interior and Insular Affairs, would be counterproductive and might result in compromising safety objectives.

Section 1(b) authorizes the Commission to use up to 1 percent of the amount authorized to the Office of Nuclear Reactor Research to making research grants and other research arrangements with universities under the provisions of section 31(a) of the Atomic Energy Act. This subsection was amended by the Subcommittee on Energy Conservation and Power to provide that, in making such grants, the Commission should pay close attention to the opportunities for entering into agreements with appropriate historically predominant minority universities and research centers. It is understood that the use of the word "appropriate" in the amendment is to be interpreted to require that any such historically predominant minority university and research center be, in all respects, qualified to conduct the research.

Section 1(c) limits the Commission's authority to reprogram funds. Under this provision, any reprogramming of funds in excess of \$500,000 for purposes other than those specified in section 1(a) is prohibited until a 30-day period of continuous session has passed following the submission of a report by the Commission to the authorizing committees of Congress, unless each such committee, prior to the expiration of the 30-day period, transmits to the Commission written notification that the Committee does not object to the proposed action. The language of this provision, as reported by the committee, differs from the language requested by the Commission because the committee felt that the requested language provided the Commission with too much flexi-

bility to utilize funds for purposes other than those authorized by Congress, and that the substitute language provides more effective Congressional review of Commission actions.

SECTION 2—AUTHORITY TO RETAIN AND USE COOPERATIVE RESEARCH  
MONEYS

*Summary*

Section 2 authorizes the Commission to retain and use moneys received by the Commission for cooperative nuclear research programs to offset the salaries and expenses associated with the conduct of such programs and to allow such moneys to remain available until expended.

*Discussion*

The provision is necessary to avoid the requirements of 31 U.S.C. 484, which would require that such funds received for these purposes be submitted to the Treasury in which event an appropriation would be needed to make such funds available to the Commission.

SECTIONS 3 AND 4—AUTHORITY TO TRANSFER FUNDS AND PROHIBITION  
PAYMENTS IN ADVANCE OF APPROPRIATIONS

*Summary*

Section 3 authorizes the Commission to transfer fiscal years 1982 and 1983 funds to other Government agencies to pay the salaries and expenses incurred by those agencies in performing work of the Commission for which an appropriation was made.

Section 4 provides that, notwithstanding any other provision of the authorization, the Commission shall not have any authority to make payments except to the extent or in such amounts as are provided in advance in appropriation acts.

*Discussion*

The authorities provided by section 3 of the bill is technical in nature and are necessary to give the Commission the statutory authority to provide funds to other agencies to perform work for the Commission. Section 4 is also technical in nature, subjecting the Commission's expenditures to the totals contained in appropriation acts.

SECTION 5—CONSOLIDATION OF NRC'S OFFICES

*Summary*

Section 5 authorizes the Commission to use such funds as may be necessary for the purpose of accomplishing the interim consolidation of the Commission's headquarter staff offices in the District of Columbia and, to the extent necessary, in Bethesda, Md. Subparagraph (b) prohibits the utilization of any funds authorized to be appropriated under this Act, in connection with such interim consolidation, to relocate the offices of the members of the Commission outside the District of Columbia.

*Discussion*

This action is designed to address the serious problems adversely affecting the Commission's responsibilities which result from the fact that the Commission's staff is presently housed in ten different buildings located throughout the District of Columbia and suburban Mary-

land. The need to consolidate the Commission's staff was a primary recommendation of both the President's Commission on the Accident at Three Mile Island (the Kemeny Commission) and the NRC's Special Inquiry Group, who cited the problems resulting from the physical separation of the staff in coordinating the Commission's response capabilities in an emergency situation. Additionally, the Nuclear Safety Oversight Committee recently stressed the importance of quickly achieving an interim consolidation.

#### SECTION 6—TEMPORARY OPERATING LICENSES

*Summary*—Section 6 of the bill reported by the subcommittee authorizes the Commission to use such funds as may be necessary to issue temporary operating licenses for nuclear power reactors under the authorities contained in section 192 of the Atomic Energy Act in advance of the conduct or completion of any hearing regarding the issuance of an operating license required under section 192 and section 189 of the Atomic Energy Act, and without regard to subsection (d) of section 192 and without regard to the findings required by subsection (b) (3) of section 192.

*Discussion*—Following the accident at the Three Mile Island nuclear reactor, the Nuclear Regulatory Commission imposed a moratorium on the issuance of new operating licenses for the purpose of determining the cause of the accident and incorporating into its regulatory requirements designed to avoid any repetition of the accident. The Commission's review consumed more time than initially anticipated, and diverted staff attention away from the licensing process. Meanwhile, the construction of reactors continued. As a result, it became apparent late last year that a limited number of plants would be sufficiently completed to allow fuel loading and to begin operation prior to the time when all the requirements for the issuance of an operating license would be met.

The Commission initially estimated that, of the 13 plants scheduled to be completed in 1981 or 1982, it would be able to complete the licensing process for only one of these plants prior to its presently anticipated completion date. The Commission further estimated that the remaining 12 plants would experience a total delay of 90 months between the completion of construction and the termination of the licensing process, with individual plants experiencing delays of between one and 13 months each. As the result of certain Administrative actions, the Commission now estimates that a total of 18 plants will now be completed in 1981 and 1982, and that 11 of these plants will experience licensing delays totalling 79 months, with individual plants experiencing delays of between one and 13 months. In its April 30, 1981 report to the Congress, the Commission cited a Department of Energy study which estimated that, based upon a total projected delay period of 102 months and upon the assumption that delay costs are limited to replacement power costs, the cost of delays in the licensing process for these plants would total \$2.3 billion. The nuclear industry has estimated that if these projections included utility financial carrying costs for these plants, the total estimated cost would be between \$2.7 and \$3.6 billion.

Although the Commission has already taken a number of administrative actions to reduce the anticipated delays, it is clear that they will not be sufficient to eliminate them and that substantial delays are still expected for several reactors through the next two fiscal years. As a result, on March 18, 1981, the Commission submitted a legislative proposal to amend the Atomic Energy Act to authorize the Commission to issue, prior to the conduct or completion of an on-the-record evidentiary hearing on contested issues, interim operating licenses, authorizing fuel loading and low-power operation and testing.

The committee amendment differs in several major respects from the Commission's legislative proposal. Under the NRC's requested legislation, the Commission's authority to issue interim operating licenses would be limited to fuel loading and a maximum level of operation of only 5 percent of its full rated power. With this authority, coupled with administrative actions, which have been proposed but not yet implemented, to reduce licensing delays, nine plants would still experience some licensing delay. Moreover, state utility commissions may not allow reactors with just low power licenses to be included in the ratebase, thus resulting in the imposition of increased costs and thereby defeating the purpose of the provision. Consequently, the committee believes that the low-power limitation is inadequate to deal with the anticipated delays of all the affected reactors.

Under the committee substitute, the Commission is given the authority to issue temporary operating licenses under the provisions of section 192 of the Atomic Energy Act in advance of the conduct or completion of any hearing required by that section or by section 189. It is left to the Commission to decide, in each case, whether any hearing required by section 189 or section 192 should be conducted or completed prior to the issuance of the temporary operating licenses and to establish the appropriate level of operation in light of the individual circumstances. Thus, any decision to dispense with any hearing required by the Atomic Energy Act is left to the Commission, as is the decision to set the appropriate level of power operation.

Under the committee substitute, an applicant can file a petition for a temporary operating license only after the report of the Advisory Committee on Reactor Safeguards, the staff's final safety evaluation report, and the staff's final environmental impact statement have been filed. Before issuing any temporary operating license, the Commission must publish a notice of the petition in the Federal Register and provide a 14-day period for parties to the proceeding to file affidavits in support of or opposition to the petition, which can be extended for an additional 10 days. If the Commission, following the publication of the notice and the expiration of the period for public comment, decides to issue a temporary operating license in advance of the conduct or completion of any hearing required by section 192 or by section 189, it can do so only if it first determines (i) that all the requirements of law other than the conduct or completion of any required hearing are met, including all the regulations of the Commission applicable to the licensing of an operating reactor, and (ii) that the temporary operation of the facility in accordance with the terms and conditions of the license will provide adequate protection of the environment during the period of the temporary operating license. Thus, the committee amendment does not, in any way, diminish the substantive standard required

for the issuance of a temporary operating license. In order to issue a temporary license, the Commission must still make all the determinations regarding the issuance of a normal operating license required by law regarding the applicant's compliance with the requirements of law and the rules and regulations of the Commission, including that the issuance of any such temporary operating license provides reasonable assurance that there is adequate protection of the public health and safety and the environment. The committee amendment merely allows the Commission to make these findings prior to the initiation or completion of any hearing on the operating license application. Following the issuance of any temporary operating license, the Commission remains obligated to conduct the hearing required by section 192 and any hearing required by section 189 of the Atomic Energy Act. Moreover, if the Commission at any time following the issuance of a temporary operating license determines that the applicant is not prosecuting its operating license application with due diligence, it is given the authority in section 192 to revoke the temporary operating license. The authority to issue temporary operating licenses expires at the end of fiscal year 1983.

#### SECTION 7—SHOLLY AMENDMENTS TO EXISTING LICENSES

*Summary*—Section 7 of the bill authorizes the Commission to use such funds as may be necessary to issue and make immediately effective amendments to licenses prior to the conduct or completion of any hearing required by section 189 of the Atomic Energy Act and without providing the prior notice and publication in the Federal Register referred to in section 189 if it determines the amendment involves no significant hazards consideration.

*Discussion*—On November 19, 1980, the U.S. Court of Appeals for the District of Columbia Circuit, in *Sholly v. the Nuclear Regulatory Commission*, held that section 189(a) of the Atomic Energy Act required that the Commission, upon request, conduct a hearing on any amendment to a license, even if the Commission determines that the amendment involved no significant hazards consideration. Although under the existing provisions of section 189(a), the Commission is given the authority to dispense with the required prior notice and publication in the Federal Register whenever it determines that the amendment involves no significant hazards consideration, the court ruled that this did not relieve the Commission of the responsibility to, upon request, hold a hearing prior to issuing and making immediately effective any such amendment.

On March 11, 1981, the Commission submitted to the committee proposed legislation which would explicitly authorize the Commission to issue a license amendment which involves no significant hazards consideration prior to the holding or completion of any requested public hearing. This request was based upon the Commission's concern that the requirement that a hearing be held prior to the issuance and immediate effectiveness of an amendment involving no significant hazards consideration to a license could result in a delay in the operation of a reactor and impose unnecessary burdens on the Commission's staff which are not related to significant safety considerations. The Commission has stated that in some cases, the need to

issue amendments to licenses arises quickly, frequently in relation to fuel reloading, and failure to act promptly on the amendment may result in the shutdown, continued outage or derating of the facility.

The committee amendment provides the Commission with the authority to issue and make immediately effective amendments to licenses prior to the conduct or completion of any hearing required by section 189(a) when it determines that the amendment involves no significant hazards consideration. However, the authority of the Commission to do so is discretionary, and does not negate the requirement imposed by the Sholly decision that such a hearing, upon request, be subsequently held. Moreover, the committee's action is in light of the fact that the Commission has already issued for public comment rules including standards for determining whether an amendment involves no significant hazards considerations. The Commission also has a long line of case-by-case precedents under which it has established criteria for such determinations. The Commission's authority to act under this provision expires at the end of fiscal year 1983.

#### SECTION 8—LICENSING STUDY

*Summary*—Section 8 of the bill is an amendment offered by Mr. Moorhead which authorizes the Commission to use such funds as may be necessary to recommend to the Congress proposed legislation and regulations which, if taken together, would reduce, by one-half, the time for filing, review and issuance of construction permits, operating licenses and amendments for applications filed after October 1, 1981. The Commission is directed to submit these recommendations by December 31, 1981, in a report to the appropriate Committees of Congress which is to include a description of the impact of each proposal on: (i) the length of the licensing process; (ii) the adequacy of the safety assurance; (iii) judicial review; (iv) staff resources; and (v) public participation.

*Discussion*—The time consumed in licensing nuclear power reactors has lengthened over the last few years, and this committee, in the past, has repeatedly expressed its interest in determining the causes of this situation. This amendment is designed to establish a basis for considering what administrative and legislative changes can be taken to streamline the licensing process and to evaluate the effect of each such proposal on a variety of factors. This amendment does not direct the Commission to promulgate or issue for public comment any regulations, but to instead formulate an integrated package of regulatory and legislative changes which, if taken as a whole, would reduce the licensing process by one-half, consistent with the Commission's statutory function of protecting the public health and safety. The Commission and each member would, of course, be free to provide comments on each such proposal, and it is expected that the Commission would afford its staff an opportunity to comment on each proposal.

#### SECTION 9—THREE MILE ISLAND WASTE MEMORANDUM OF UNDERSTANDING

*Summary*—Section 9 of the bill directs the Commission to enter into a memorandum of understanding with the Department of

Energy specifying agency procedures for the disposal of radioactive materials resulting from the clean up of Three Mile Island.

*Discussion*—To date, the Department of Energy has failed to respond to inquiries from the Nuclear Regulatory Commission regarding the establishment of interagency procedures regarding the disposal of radioactive wastes resulting from the clean up of the damaged Three Mile Island nuclear reactor. The disposal of these wastes is essential to the clean up of this facility and the failure of the Commission and the Department to enter into a Memorandum of Understanding is a serious impediment to the decontamination activities at the site. A memorandum of understanding is needed to define agency responsibility for the disposal of these materials. This amendment does not vest either the Commission or the Department of Energy with any authority to perform any action at the site beyond those already established by law. Any memorandum of understanding entered into pursuant to this section is to be in full accord with the statutory responsibilities of both the Department and the Commission imposed upon each agency by section 202 of the Energy Reorganization Act of 1974 relating to jurisdiction over commercially generated high level nuclear wastes.

#### SECTION 10—EMERGENCY PLANNING

*Summary*—Section 10 of the bill reasserts the Commission's authority, granted under section 109 of the Nuclear Regulatory Commission's Fiscal Year 1980 Authorization, to use from the amounts authorized to be appropriated such funds as may be necessary to issue an operating license in the absence of an approved state plan, where the Commission determines that there exists a state, local or utility emergency preparedness plan which provides reasonable assurance that the public health and safety will not be endangered by the operation of the facility.

*Discussion*—This provision is designed to clarify certain legal ambiguities in the NRC's emergency planning regulations as to whether the Commission, in the absence of a State or local emergency preparedness plan approved by the Federal Emergency Preparedness Agency, could issue an operating license if it determines that there exists a state, local or utility emergency preparedness plan which provides reasonable assurance that the public health and safety will not be endangered by the operation of the facility. This amendment resolves any legal ambiguity by restating the position contained in section 109 of Public Law 96-295 by requiring that the Commission's regulations be interpreted in a manner consistent with the previously expressed intent of Congress.

#### SECTION 11—PUBLIC MEETINGS ON SAFETY GOALS

##### *Summary*

Section 11 of the bill limits the authority of the Commission to promulgate or publish a safety goal for nuclear power reactors prior to the completion of public hearings and directs the Commission to expedite, to the maximum extent practicable, the development of the safety role so as to allow for its establishment no later than December 31, 1981.

*Discussion*

The Senate Environment and Public Works Committee report on the Nuclear Regulatory Commission's fiscal year 1981 authorization bill contained language directing the Commission to develop a safety goal as a means of focusing on genuine safety concerns in order to avoid concentrating on issues which divert staff resources but which do not significantly improve safety. As the proposed safety goal is expected to have an impact upon the development of certain major regulatory requirements, such as degenerated core, remote siting, and hydrogen control, the committee believes that the Commission should give greater attention to the prompt establishment of these quantitative safety goals and therefore argues that the Commission, to the maximum extent practicable, allow for the establishment of these goals by December 31, 1981.

In urging the Commission to act in a timely manner, the committee is rejecting suggestions made in other forums that the means to accomplishing this objective is to suspend public hearings on the proposed goals. Instead, the committee substitute specifically provides that the Commission cannot publish or promulgate the safety goal until public hearings have been conducted. The committee believes that the legislative-type hearings, which are being arranged by the League of Women Voters, will provide a useful forum in obtaining meaningful public input into the formulation of the safety goal. Moreover, in attempting to meet the desired schedule, the committee does not expect the Commission to alter its anticipated intention of submitting the proposed goals to a second round of public comment in the fall. In order to keep the committee informed of its progress, the committee requests that the Commission submit a report to the authorizing committees of Congress by October 31, 1981, of the progress which has been made in developing and in implementing the safety goals.

*Sholly versus the Nuclear Regulatory Commission*

The committee substitute includes a provision which gives the Commission the authority to issue and make immediately effective amendments to licenses in advance of the conduct or completion of any hearing required by section 189 of the Atomic Energy Act when the Commission finds that the amendment involves no significant hazards consideration. The committee notes that prior to November 1980 it had been the practice of the Commission not to hold any such hearing when it determined that the amendment involved no significant hazards consideration. The Commission based its decision not to hold a hearing on an interpretation of section 189, which specifically authorizes the Commission to dispense with the required prior notice and publication in the Federal Register whenever it determines that an amendment involves no significant hazards consideration. The Commission's position was that, as it was given the authority to dispense with the required prior notice and publication in the Federal Register, and as such prior notice and publication was normally a prerequisite to a hearing, it was reasonable to interpret this language to mean that the Commission was therefore also given the authority to dispense with any hearing regarding an amendment which involved no significant



hazards consideration, which would have been the subject of the prior notice and publication requirement. In November 1980 the U.S. Court of Appeals of the District of Columbia Circuit found otherwise and ruled that, while the Commission did have the authority to dispense with the prior notice and publication requirement, it still was mandated by the terms of the statute to hold the hearing even when the amendment involves no significant hazards consideration.

The committee notes that, as of January 31, 1981, there was a backlog of 2,771 licensing actions relating to operating reactors, and that current estimates project an increase during the fiscal year to 3,889, rising to 4,439 in fiscal year 1982. There are additional licensing amendments pending before the Office of Nuclear Material Safety and Safeguards relating to medical and research licenses, transportation packaging licenses, and low-level waste licenses. The requirement that a hearing be held whenever requested prior to the issuance of an amendment which involves no significant hazards consideration would only further complicate a serious situation. Moreover, many of these amendments involve only technical modifications which frequently arise during fuel reloading, and a requirement of a prior hearing could delay the restarting of a reactor. In order to avoid these problems, the Committee substitute authorizes the Commission to issue and make immediately effective license amendments prior to conduct or completion of any hearing required by section 189.

Although the Commission is given the authority to issue and make immediately effective amendments involving no significant hazards consideration prior to the conduct or completion of any hearing, the committee substitute maintains the requirement that the hearing be held. Thus, after issuing and making immediately effective the amendment, the Commission remains obligated under the rule in *Sholly's* case to hold the hearing mandated by section 189. Moreover, the committee expects that the Commission will make every effort to provide prior notice and publication in the Federal Register indicating its intent to issue any such license amendment so that parties have some opportunity to comment on the proposed action. The committee further expects that, in every instance, the Commission will provide prompt notice, including publication in the Federal Register, of any actual issuance of the license amendment prior to the conduct or completion of any hearing.

The committee is aware that there is some concern over the Commission's definition of the term "no significant hazards consideration", and observes that the Commission has already issued for public comment rules which include standards for determining whether an amendment involves no significant hazards consideration. The committee also notes the Commission has accumulated years of case-by-case precedents getting criteria for these determinations. The committee expects that the Commission will interpret the term "no significant hazards consideration" in a manner consistent with prior court decisions. Moreover, the committee believes that, in the process of establishing the standard for determining when an amendment involves no significant hazards consideration, the determination should represent a judgment on the nature of the issues raised by the license amendment rather than a conclusion about the merits of those issues.

## COMPARISON OF AUTHORIZATION REQUEST WITH COMMITTEE ACTION

The following table summarizes the NRC's request for authorization with the recommendations of the Interior and Insular Affairs Committee and the Committee on Energy and Commerce.

	NRC request	Interior	Energy and Commerce
<b>Fiscal year 1982:</b>			
Nuclear reactor regulation.....	\$75,610,000	\$74,097,800	\$75,610,000
Inspection and enforcement.....	67,680,000	61,513,400	67,680,000
Standards development.....	17,950,000	17,591,000	17,950,000
Nuclear materials safety and safeguards.....	46,700,000	45,766,000	46,700,000
Nuclear regulatory research.....	231,940,000	227,301,000	231,940,000
Program technical support.....	19,140,000	18,757,200	19,140,000
Program direction and administration.....	41,680,000	40,846,000	41,680,000
<b>Total.....</b>	<b>500,700,000</b>	<b>485,873,000</b>	<b>500,700,000</b>
<b>Fiscal year 1983:</b>			
Nuclear reactor regulation.....	78,280,000	76,714,400	78,280,000
Inspection and enforcement.....	70,270,000	62,564,600	70,270,000
Standards development.....	17,990,000	17,630,260	17,990,000
Nuclear materials safety and safeguards.....	48,020,000	47,059,600	48,020,000
Nuclear regulatory research.....	252,180,000	247,136,400	252,180,000
Program technical support.....	20,610,000	20,197,800	20,610,000
Program direction and administration.....	42,656,000	41,797,000	42,656,000
<b>Total.....</b>	<b>530,000,000</b>	<b>513,100,000</b>	<b>530,000,000</b>

## COST ESTIMATE

In accordance with rule XIII, clause 7(a) of the Rules of the House of Representatives, the committee has made an estimate of the budget authority which would be required to carry out the provisions of H.R. 2330 for the fiscal year beginning on October 1, 1981 and the fiscal year beginning on October 1, 1982.

In accordance with committee cost estimates, the bill authorizes \$500,700,000 for fiscal year 1982 and \$530,000,00 for fiscal year 1983. Although this amount is a significant budget component, it is identical to the amount contained in the Nuclear Regulatory Commission's budget request. Consequently, the committee recommendation should not adversely affect the overall budget projections for the 2 ensuing fiscal years. The committee's cost estimates are:

## Estimated authorization level:

Fiscal year:	Millions
1982.....	\$500.7
1983.....	530.0
1984.....	550.0
1985.....	550.0
1986.....	550.0

## Estimated outlays:

Fiscal year:	Millions
1982.....	484.0
1983.....	498.0
1984.....	528.0
1985.....	528.0
1986.....	528.0

*Basis of estimate*

For the purpose of this estimate, the subcommittee assumed that this bill will be enacted and the entire amount will be appropriated prior

to fiscal year 1982. The estimated annual outlays are based on the historical spending patterns of the Nuclear Regulatory Commission's activities.

The Nuclear Regulatory Commission has provided the committee with the following legislative program projections for fiscal years 1980-86.

U.S. NUCLEAR REGULATORY COMMISSION, FISCAL YEAR 1982 BUDGET ESTIMATES

[Dollar amounts in thousands, except whole dollars in narrative material, fiscal years]

	Legislative program projections						
	1980 actual	1981 estimate	1982 estimate	1983 estimate	1984 estimate	1985 estimate	1986 estimate
NRC total:							
Budget authority.....	\$400	\$454	\$501	\$530	\$550	\$550	\$550
Budget outlays.....	378	437	484	498	528	528	528

\* Budget authority includes \$6,820,000 for the proposed pay raise supplemental. Budget outlays associated with this supplemental total \$6,680,000.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of the Rules of the House of Representatives, the committee has determined that this legislation will have no significant inflationary impact on prices or costs in the national economy.

The cost estimate of the Congressional Budget Office is as follows:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
Washington, D.C., June 9, 1981.

HON. JOHN D. DINGELL,  
Chairman, Committee on Energy and Commerce,  
Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for H.R. 2330, a bill to authorize appropriations to the Nuclear Regulatory Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and section 305 of the Energy Reorganization Act of 1974, as amended, and for other purposes.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

ALICE M. RIVLIN, *Director.*

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE, JUNE 9, 1981

1. Bill No.: H.R. 2330.
2. Bill title: A bill to authorize appropriations to the Nuclear Regulatory Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and section 305 of the Energy Reorganization Act of 1974, as amended, and for other purposes.
3. Bill status: As ordered reported by the House Committee on Energy and Commerce, June 4, 1981.

4. Bill purpose: This bill authorizes 2 years of funding for the Nuclear Regulatory Commission's (NRC) research and regulatory activities. The total amount authorized by this bill for the NRC is \$500.7 million for fiscal year 1982 and \$530 million for fiscal year 1983. This is identical to the President's revised March request for these programs.

The fiscal year 1982 authorization contained in this bill represents a 12-percent increase over the fiscal year 1981 appropriation of \$447.5 million. The largest increases are for inspection and enforcement (up 30.2 percent to \$67.7 million) and nuclear material safety and safeguards (up 22.9 percent to \$46.7 million). Four programs show modest increases: standards development is up 11.5 percent to \$18 million, nuclear regulatory research is up 8 percent to \$231.9 million, program technical support is up 3.5 percent to \$19.1 million, and program direction and administration is up 14 percent to \$41.7 million. One program, nuclear reactor regulation, is down 2 percent to \$75.6 million.

The fiscal year 1983 authorization of \$530 million contained in the bill is a 6 percent increase over the 1982 authorization level. The bill provides moderate increases for the seven program categories. Authorizations include \$18 million for standard development (basically unchanged), \$78.3 million for nuclear reactor regulation (a 4 percent increase), \$70.3 million for inspection and enforcement (a 4 percent increase), \$48 million for nuclear material safety and safeguards (up 3 percent), \$252.2 million for nuclear regulatory research (up 9 percent), \$20.6 million for program technical support (up 8 percent), and \$42.7 million for program direction and administration (a 2 percent increase).

The bill also amends the nuclear power plant licensing practices of the NRC.

5. Cost estimate:

[By fiscal years, in millions of dollars]

	1982	1983	1984	1985	1986
Authorization level.....	500.7	530.0			
Estimated outlays.....	305.4	461.0	203.3	61.0	

Assuming appropriation of the authorized amount, total NRC outlays for fiscal year 1982, including funds from prior year appropriations, are estimated to be \$485.2 million.

The costs of this bill fall within budget function 270.

6. Basis of estimate: For the purposes of this estimate, it is assumed that all funds authorized will be appropriated by the start of each fiscal year. The estimated outlays are based on the historical spending patterns of NRC programs. This estimate assumes a spendout rate of 61 percent the first year, 27.5 percent the second year, and 11.5 percent the third year.

7. Estimate comparison: None.

8. Previous CBO estimate: CBO has done previous estimates of two fiscal year 1982 and 1983 NRC authorization bills. On April 9, 1981, CBO did an estimate of H.R. 2330 as reported by the House Committee on Interior and Insular Affairs. That bill authorized \$485.9 million for

fiscal year 1982 and \$513.1 million for fiscal year 1983. On May 15, 1981, CBO did a cost estimate of S. 1207 as reported by the Senate Committee on Environment and Public Works. S. 1207 authorized \$495.7 million for fiscal year 1982 and \$530 for fiscal year 1983.

9. Estimate prepared by: Gary Kaitz (225-7760).

10. Estimate approved by:

C. G. NUCKOLS,  
(For James L. Blum,  
Assistant Director, for Budget Analysis.)

#### OVERSIGHT STATEMENT

During the 96th Congress, the Interstate and Foreign Commerce Committee thoroughly reviewed various aspects of the commercial nuclear industry. In exercising its oversight function, the Committee conducted oversight hearings and ordered that several reports be undertaken regarding nuclear issues. The following is a chronological listing of the hearings relating to nuclear issues held by the Interstate and Foreign Commerce Committee.

On February 27, 1979, the Subcommittee on Energy and Power held hearings to review the operations of the Nuclear Regulatory Commission.

On February 28, 1979, the Subcommittee on Energy and Power held a hearing to review the status of programs regarding the storage and disposal of nuclear waste.

On March 21 and 22, April 5 and 10, May 16, 22 and 30, and on June 4, 5, 15, 18 and 19, 1979, the Subcommittee on Oversight and Investigations held oversight hearings on hazardous waste disposal.

On April 19, 1979, the Subcommittee on Oversight and Investigations held a hearing on the health effects of low level radiation.

On April 23, May 24 and August 1, 1979, the Subcommittee on Oversight and Investigations held hearings on low level radiation effects on health.

On June 26 and 27, 1979, the Subcommittee on Energy and Power held hearings on the need for the federal government to provide centralized storage for spent fuel.

On November 5, 1979, the Subcommittee on Energy and Power held hearings to review the Nuclear Regulatory Commission's reaction to the accident at the Three Mile Island nuclear reactor and to obtain the Commission's response to the recommendations of the President's Commission on the accident at the Three Mile Island nuclear power plant.

On February 20, 1980, the Subcommittee on Energy and Power held a hearing on programs regarding the storage and disposal of nuclear waste.

On February 22, 1980, the Subcommittee on Energy and Power held hearings to review the operations of the Nuclear Regulatory Commission.

On July 25, 1980, the Subcommittee on Energy and Power held hearings on nuclear waste disposal issues.

On July 28, 1980, the Subcommittee on Energy and Power held a hearing on the condition of high-level liquid radioactive wastes at the West Valley Nuclear Fuels Service Center in New York.

On February 20, 1980, the Subcommittee on Energy Conservation and Power held hearings on the new Administration's nuclear waste policies.

On March 30, 1981, the Subcommittee on Energy Conservation and Power held hearings on the Nuclear Regulatory Commission's Authorization request for fiscal years 1982 and 1983.

On May 1, 1981, the Subcommittee on Energy Conservation and Power held hearings on financial conditions of Three Mile Island.

On June 5, 1981, the Subcommittee on Energy Conservation and Power held hearings on the impact of budget reductions on the government's uranium enrichment services program.

It is anticipated that additional oversight hearings and related activities will be conducted in the months ahead.

The Subcommittee has also initiated a number of studies on nuclear issues which have been or will be released during the present Congress. These include studies regarding the causes of the accident at the Three Mile Island nuclear power plant, the comparative environmental and financial costs of nuclear vs. coal plants, and the comparative costs of closing certain nuclear power plants vs. the cost bringing them into compliance with new regulatory requirements. Among the reports which have been issued during this Congress are:

"Federal Government Incentives to Coal and Nuclear Energy". Report to the Energy and Power Subcommittee by the Congressional Research Service. Committee Print 96-IFC20.

"Federal Facilities for Storing Spent Nuclear Fuel—Are They Needed?" Report to the Subcommittee on Energy and Power, Committee on Interstate and Foreign Commerce, by the General Accounting Office. Report No. EMP-79-82, June 27, 1979.

"Existing Nuclear Sites Can Be Used For New Powerplants and Nuclear Waste Storage". Report to the Subcommittee on Energy and Power, Committee on Interstate and Foreign Commerce by the General Accounting Office. Report No. EMD-80-67, April 1, 1980.

"Status of Efforts to Clean Up the Shut-Down Western New York Nuclear Service Center," reported to the Chairman, Subcommittee on Energy and Power, Committee on Interstate and Foreign Commerce, by the General Accounting Office. Report No. EMD-80-69, June 6, 1980.

"The Problem of Disposing of Nuclear Low Level Waste: Where do we go from here?" Report to the Subcommittee on Energy and Power by the General Accounting Office. Report No. EMD-80-69, March 31, 1980.

"Analysis of the Price-Anderson Act". Report to the Subcommittee on Energy and Power by the General Accounting Office. Report No. EMD-80-80, August 18, 1980.

"Three Mile Island: The Most Studied Nuclear Accident in History". Report to the Subcommittee on Energy and Power. Report No. EMD-80-109, September 9, 1980.

#### AGENCY REPORT

The recommendations of the Nuclear Regulatory Commission, dated February 23, 1981, and the Commission's recommendations, dated

April 3, 1981, regarding the authorization request for fiscal years 1982 and 1983, the Commission's request, dated March 11, 1981, regarding the request for statutory authority to issue and make immediately effective amendments to licenses in advance of the conduct or completion of any hearing, and the Commission's letter dated March 18, 1981, regarding the request for legislative authority to issue interim operating licenses follow:

U.S. NUCLEAR REGULATORY COMMISSION,  
Washington, D.C., February 23, 1981.

HON. JOHN D. DINGELL,  
*Chairman, Committee on Energy and Commerce,  
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: In compliance with your joint letter of December 14, 1980 requesting submission of a budget proposal for both fiscal year 1982 and fiscal year 1983 attached is draft authorizing legislation to support the budget request.

Although not giving approval to the fiscal year 1983 request, OMB did approve a fiscal year 1983 planning estimate for NRC in the amount of \$530 million. Accordingly, the program estimates for fiscal year 1983 should be recognized as approved planning targets and not budget requests.

Sincerely,

CARLTON KAMMERER,  
*Director, Office of Congressional Affairs.*

Enclosure.

NUCLEAR REGULATORY COMMISSION PROPOSED BILL FOR AUTHORIZATION  
OF APPROPRIATIONS FOR FISCAL YEAR 1982 AND FISCAL YEAR 1983

A BILL To authorize appropriations to the Nuclear Regulatory Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and section 305 of the Energy Reorganization Act of 1974, as amended, and for other purposes

*Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,*

TITLE I—AUTHORIZATION OF APPROPRIATIONS FOR  
FISCAL YEARS 1982 AND 1983

SEC. 101. (a) There is hereby authorized to be appropriated to the Nuclear Regulatory Commission in accordance with the provisions of section 261 of the Atomic Energy Act of 1954 (42 U.S.C. 2017) and section 305 of the Energy Reorganization Act of 1974 (42 U.S.C. 5875), for the fiscal years 1982 and 1983 to remain available until expended \$500,700,000 for fiscal year 1982 and \$530,000,000 for fiscal year 1983 to be allocated as follows:

(1) not more than \$75,610,000 for fiscal year 1982 and \$78,280,000 for fiscal year 1983, may be used for "Nuclear Reactor Regulation";

(2) not more than \$67,680,000 for fiscal year 1982 and \$70,270,000 for fiscal year 1983, may be used for "Inspection and Enforcement";

(3) not more than \$17,950,000 for fiscal year 1982 and \$17,990,000 for fiscal year 1983, may be used for "Standards Development";

(4) not more than \$46,700,000 for fiscal year 1982 and \$48,020,000 for fiscal year 1983, may be used for "Nuclear Material Safety and Safeguards";

(5) not more than \$231,940,000 for fiscal year 1982 and \$252,180,000 for fiscal year 1983, may be used for "Nuclear Regulatory Research";

(6) not more than \$19,140,000 for fiscal year 1982 and \$20,610,000 for fiscal year 1983, may be used for "Program Technical Support";

(7) not more than \$41,680,000 for fiscal year 1982 and \$42,650,000 for fiscal year 1983, may be used for "Program Direction and Administration."

SEC. 101. (b) the Commission may use not more than one per centum of the amounts authorized to be appropriated under paragraph (5) of subsection (a) to exercise its authority under section 31.a. of the Atomic Energy Act of 1954, as amended, to enter into grants and cooperative agreements with universities pursuant to that section. Grants made by the Commission shall be made in accordance with the Federal Grants and Cooperatives Agreements Act of 1977 and other applicable law.

SEC. 101. (c) No amount appropriated to the Nuclear Regulatory Commission pursuant to subsection (a) may be used for any purpose in excess of the amount expressly authorized to be appropriated therefore by paragraphs (1) through (7) of such subsection if such excess amount is greater than \$500,000, nor may the amount available from any appropriation for any purpose specified in such paragraphs be reduced by more than \$500,000, unless—

(1) a period of 30 calendar days (not including any day in which either House of Congress is not in session because of an adjournment of more than 3 calendar days to a day certain or an adjournment sine die) has passed after the receipt by the Committee on Interstate and Foreign Commerce and the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Environment and Public Works of the Senate of notice given by the Commission containing a full and complete statement of the action proposed to be taken and the facts and circumstances relied upon in support of such proposed action, or

(2) each such Committee has, before the expiration of such period, transmitted to the Commission a written notification that there is no objection to the proposed action.

SEC. 102. Moneys received by the Commission for the cooperative nuclear research programs may be retained and used for salaries and expenses associated with those programs, notwithstanding the provisions of section 3617 of the Revised Statutes (31 U.S.C. 484), and shall remain available until expended.

SEC. 103. From appropriations to the Nuclear Regulatory Commission under Section 101(a), the Commission may transfer to other agencies of the Government sums for salaries and expenses for the performance by such agencies of activities for which such appropriations



of the Commission were made. The sums so transferred may be merged with the appropriation of the agency to which the sums transferred.

SEC. 104. Notwithstanding any other provision of this Act, no authority to make payments hereunder shall be effective except to such extent or in such amounts as are provided in advance in appropriation Acts.

U.S. NUCLEAR REGULATORY COMMISSION,  
Washington, D.C., April 3, 1981.

HON. JOHN D. DINGELL,  
Chairman, Committee on Energy and Commerce,  
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: In accordance with the provisions of Section 261 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2017) and Section 305 of the Energy Reorganization Act of 1974, as amended (42 USC 5875), we are submitting proposed legislation which would authorize appropriations for fiscal year 1982 and fiscal year 1983.

The proposed legislation requests authorization for "Salaries and Expenses" of \$500,700,000 for fiscal year 1982 and of \$530,000,000 for fiscal year 1983. The primary factors influencing the NRC budget request are (1) the high priority on our reactor license application review efforts to minimize the time a completed reactor awaits licensing; (2) implementation of the Agency's TMI Action Plan; (3) a re-oriented research program in response to the recommendations of the various studies arising out of the TMI-2 accident; (4) increased inspection and enforcement activities resulting from the increase in the number of operating reactors; and (5) greater inspection emphasis and increased effort to resolve the issues of nuclear waste. Our budget request is discussed in more detail in the section-by-section analysis which accompanies the attached bill and in the NRC's more detailed budget justification transmitted separately.

The Office of Management and Budget has advised that the enactment of this legislative proposal would be in accord with the program of the President.

Sincerely,

JOSEPH M. HENDRIE.

Enclosure.

NUCLEAR REGULATORY COMMISSION PROPOSED BILL FOR AUTHORIZATION  
OF APPROPRIATIONS FOR FISCAL YEAR 1982 AND FISCAL YEAR 1983

A BILL To authorize appropriations to the Nuclear Regulatory Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and section 305 of the Energy Reorganization Act of 1974, as amended, and for other purposes.

*Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,*

TITLE I—AUTHORIZATION OF APPROPRIATIONS FOR  
FISCAL YEARS 1982 AND 1983

SEC. 101. (a) There is hereby authorized to be appropriated to the Nuclear Regulatory Commission in accordance with the provisions of section 261 of the Atomic Energy Act of 1954 (42 U.S.C. 2017) and

section 305 of the Energy Reorganization Act of 1974 (42 U.S.C. 5875), for the fiscal years 1982 and 1983 to remain available until expended \$500,700,000 for fiscal year 1982 and \$530,000,000 for fiscal year 1983 to be allocated as follows:

(1) not more than \$75,610,000 for fiscal year 1982 and \$78,000,000 for fiscal year 1983, may be used for "Nuclear Reactor Regulation;"

(2) not more than \$67,680,000 for fiscal year 1982 and \$70,270,000 for fiscal year 1983, may be used for "Inspection and Enforcement;"

(3) not more than \$17,950,000 for fiscal year 1982 and \$17,990,000 for fiscal year 1983, may be used for "Standards Development;"

(4) not more than \$46,700,000 for fiscal year 1982 and \$48,020,000 for fiscal year 1983, may be used for "Nuclear Material Safety and Safeguards;"

(5) not more than \$231,940,000 for fiscal year 1982 and \$252,180,000 for fiscal year 1983, may be used for "Nuclear Regulatory Research;"

(6) not more than \$19,140,000 for fiscal year 1982 and \$20,610,000 for fiscal year 1983, may be used for "Program Technical Support;"

(7) not more than \$41,680,000 for fiscal year 1982 and \$42,650,000 for fiscal year 1983, may be used for "Program Direction and Administration."

SEC. 101. (b) The Commission may use not more than one per centum of the amounts authorized to be appropriated under paragraph (5) of subsection (a) to exercise its authority under section 31.a. of the Atomic Energy Act of 1954, as amended, to enter into grants and cooperative agreements with universities pursuant to that section. Grants made by the Commission shall be made in accordance with the Federal Grants and Cooperative Agreements Act of 1977 and other applicable law.

SEC. 101. (c) No amount appropriated to the Nuclear Regulatory Commission pursuant to subsection (a) may be used for any purpose in excess of the amount expressly authorized to be appropriated therefore by paragraphs (1) through (7) of such subsection if such excess amount is greater than \$500,000, nor may the amount available from any appropriation for any purpose specified in such paragraphs be reduced by more than \$500,000, unless—

(1) a period of 30 calendar days (not including any day in which either House of Congress is not in session because of an adjournment of more than 3 calendar days to a day certain or an adjournment sine die) has passed after the receipt by the Committee on Interstate and Foreign Commerce and the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Environment and Public Works of the Senate of notice given by the Commission containing a full and complete statement of the action proposed to be taken and the facts and circumstances relied upon in support of such proposed action; or

(2) each such Committee has, before the expiration of such period, transmitted to the Commission a written notification that there is no objection to the proposed action.

SEC. 102. Moneys received by the Commission for the cooperative nuclear research program and the material access authorization program may be retained and used for salaries and expenses associated with those programs, notwithstanding the provisions of section 3617 of the Revised Statutes (31 U.S.C. 484), and shall remain available until expended.

SEC. 103. From appropriations to the Nuclear Regulatory Commission under Section 101(a), the Commission may transfer to other agencies of the Government sums for salaries and expenses for the performance by such agencies of activities for which such appropriations of the Commission were made. The sums so transferred may be merged with the appropriation of the agency to which the sums transferred.

SEC. 104. Notwithstanding any other provision of this Act, no authority to make payments hereunder shall be effective except to such extent or in such amounts as are provided in advance in appropriation Acts.

U.S. NUCLEAR REGULATORY COMMISSION,  
Washington, D.C., March 11, 1981.

HON. RICHARD L. OTTINGER,  
*Chairman, Subcommittee on Energy Conservation and Power, Committee on Energy and Commerce, U.S. House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: Transmitted herewith is a Nuclear Regulatory Commission legislative proposal in the form of a draft bill to amend the Atomic Energy Act of 1954, as amended, to clarify that the Commission may issue a license amendment, where no significant hazards consideration is involved without holding a prior hearing and for other purposes. A draft bill is in Enclosure 1. An analysis of the proposal is in Enclosure 2. A memorandum explaining the need for the proposal is in Enclosure 3.

This proposal is in response to and seeks to overturn the decision of the U.S. Court of Appeals for the District of Columbia Circuit in *Sholly, et al. v. NRC, et al.*, No. 80-1691 (November 19, 1980). The court held that the NRC may not issue a license amendment even if there is no significant hazards consideration when an interested person has filed a request for a hearing under Section 189(a) of the Atomic Energy Act, 42 U.S.C. 2239(a). The decision could also implicate the Commission's authority to issue immediately effective license amendments and orders when the public health, safety, and interest or the common defense and security requires. The court's decision mandating a prior hearing on demand on matters insignificant to the public health and safety seriously and immediately encumbers the regulation of nuclear power, and puts at risk a substantial number of nuclear power plants which would either have to be shut down or operate at reduced power if they are not accorded the authority sought in pending license amendment requests. The number of power plants affected will fluctuate over time depending upon which plants have license amendment applications pending and the nature of the license amendment requests.

The proposed legislation, if adopted, would amend Section 189 to clarify that the Commission may issue a license amendment which involves no significant hazards consideration without first holding a hearing. The bill would also clarify that Section 189 does not limit the NRC's authority to take immediate action by amendment or order to protect the public health, safety, and interest or common defense and security. This legislation is needed to overturn the adverse impacts of the *Sholly* decision on the regulation of nuclear energy. Unless overturned, this decision raises the prospect of a substantial curtailment of nuclear power plant operation for reasons which in the Commission's view are unrelated to the safety of the facility. We do not believe that prospect to have been intended by Congress in enacting Section 189 and urge approval of the proposed NRC legislation.

Sincerely,

JOSEPH M. HENDRIE

Enclosures.

A BILL To amend the Atomic Energy Act to clarify that no prior public hearing is required for applications for amendment which involve no significant hazards consideration and for other purposes

*Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That:*

Section 189 of the Atomic Energy Act of 1954, as amended, is amended by adding the following new sentences at the end of paragraph (a) thereof:

"The Commission is authorized to issue and to make immediately effective an amendment to a license upon a determination by the Commission that the amendment involves no significant hazards consideration, notwithstanding the pendency before it of a request for a hearing from any person. The Commission is authorized to issue and to make immediately effective any amendment to a license, or any order to govern any activity subject to this Act, as it may deem necessary upon a determination that immediate effectiveness is required to protect the public health and safety, and [interest, or] the common defense and security."

#### SECTION ANALYSIS

The purpose of the amendment is to overturn the decision of the U.S. Court of Appeals for the District of Columbia Circuit in *Sholly v. NRC*, November 19, 1980. The amendment provides that the Commission may issue a license amendment upon a determination that it involves no significant hazards consideration without holding a prior hearing. It also clarifies that nothing in the Atomic Energy Act limits the agency's exercise of its powers to issue immediately effective license amendments or orders to protect the public health, safety, and interest or the common defense and security. This amendment does not affect the opportunity of an interested person for a hearing after the amendment has been issued.

#### LEGISLATIVE MEMORANDUM IN SUPPORT OF PROPOSED BILL

This memorandum sets forth the views of the U.S. Nuclear Regulatory Commission in support of a proposed amendment to Section 189 (a) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2239(a).

to overturn the decision of the U.S. Court of Appeals for the District of Columbia Circuit in *Sholly et al. v. NRC, et al.* (November 19, 1980). That decision seriously and immediately encumbers the regulation of nuclear power, and puts at risk a substantial number of nuclear power plants which would either have to shut down or operate at reduced power if they are not accorded the authority sought in pending license amendment requests. The number of power plants affected will fluctuate over time depending upon which plants have license amendment applications pending and the nature of the license amendment requests. The Commission urges enactment of this amendment.

#### STATEMENT OF FACTS

The lawsuit arose over the Commission's effort to take necessary preliminary steps for the cleanup of the March 28, 1979 accident at Three Mile Island. As a result of that accident the TMI-2 containment building atmosphere held approximately 43,000 curies of radioactive krypton-85 which had been released from the nuclear fuel damaged during the accident. That radioactive krypton posed a barrier to progressing with the cleanup. There was no serious dispute, by anyone, that the krypton had to be removed. After a multi-month extensive public process, the Commission decided to vent the krypton to the atmosphere and amended the license to permit the venting at a faster rate than that permitted under the license's technical specifications while at the same time keeping radiation doses to the public at or below levels which the superseded release limits were intended to assure.

#### COURT OF APPEALS DECISION

In an opinion handed down November 19, 1980, the D.C. Circuit declared that the Commission's refusal to hold a hearing on its venting orders violated petitioners' statutory right to a hearing under Section 189(a) of the Atomic Energy Act, 42 U.S.C. 2239(a), *Sholly v. NRC*, — F.2d —, No. 80-1691 (Nov. 19, 1980). The court ruled that even where a license amendment involves no significant hazards consideration (such as the substitution of dose limits for release limits that allowed for the venting to be completed within two weeks rather than months) an interested person who requests a hearing is entitled by Section 189 (a) of the Atomic Energy Act to a hearing before the amendment becomes effective. The proposed amendment addresses this ruling.<sup>1</sup>

#### IMPORTANCE OF THE COURT OF APPEALS DECISION

The principal ruling of concern to the Commission is the D.C. Circuit's holding that even where an amendment to a nuclear power plant license involves no significant hazards consideration, an interested per-

<sup>1</sup> The court also ruled that the Commission's approval of venting the TMI-2 containment was itself a license amendment even though not characterized by the Commission as such. This ruling should not prove onerous for three reasons. It is applicable only to a situation where the relevant authority under a license has been revoked as the court mistakenly thought was the case with regard to the TMI-2 license. Second, the Commission does not consider itself bound to follow the court's misreading of the Commission's intent. Third, even prior to *Sholly* the granting of significant authority where none existed previously would have required a license amendment. Thus the Commission is not proposing to legislatively overrule the court's erroneous ruling with regard to the TMI-2 license.

son who requests a hearing is entitled by Section 189(a) of the Atomic Energy Act, 42 U.S.C. 2239, to a hearing before the amendment becomes effective. The practical effect of that ruling is substantial. Over the past four years the Commission has issued more than 1,600 amendments to nuclear power plant operating licenses based upon a no significant hazards consideration determination. Over the past few months some 20 nuclear power plants would either have had to shut down or operate at reduced power if they were not accorded the authority sought in no significant hazards license amendment requests. If, as the D.C. Circuit has held, hearings are necessary before this authority can be granted whenever an interested person requests one, there is the prospect of a substantial curtailment of nuclear power plant operations for reasons which in the Commission's view are unrelated to the safety of the nuclear power plants.

The large number of license amendment actions which the Commission must act upon, as is reflected in the yearly average of better than 400 amendments, is directly attributable to the kind of detailed regulation of nuclear power plant operation that the Commission has demanded. A nuclear power plant operating license, like that issued for Three Mile Island, Unit 2, the power plant involved in the *Sholly* case, is quite literally hundreds of pages long, and consists of highly detailed technical specifications. Any change in the license itself or in any of those hundreds of pages of technical specifications is a license amendment.

Since changes must often be made—for example, whenever a nuclear power plant refuels, which usually occurs at about 18-month intervals, the technical specifications often need to be adjusted to reflect the physical behavior of the fresh fuel placed in the reactor core—the consequence of the court's holding could be to keep a nuclear power plant shut down or prevent its operating at full-rated capacity, whenever the power plant refuels; and this despite the fact that in the Commission's best judgment there is no significant hazards consideration involved in adjusting the technical specifications to account for the behavior of the fresh fuel. A variety of other kinds of license amendment actions, such as extending the time for imposing a new requirement, or relieving the licensee of a particular maintenance check, could have similar results. For example, as the Commission moves to implement a whole host of new operating license requirements developed in response to the TMI-2 accident, any fine tuning of those requirements involving a delayed effective date or the substitution of one kind of licensing requirement for another could, under the court's ruling, prevent or impede a new power plant from coming on line or impede the operation of a nuclear power plant already in service until the issue was resolved after a hearing. And this despite the fact that the Commission thinks the license or technical specification amendment involved is not of safety significance. That result lacks practicality. The Commission does not think that Congress intended nuclear power regulation and the operation of nuclear power plants to be as episodic and dependent upon happenstance as the frequency of hearing requests on minor matters. Yet such a consequence is plainly a possible result of this Court's ruling that Section 189(a) of the Atomic Energy Act obliges the Commission to hold a

hearing on a no significant hazards consideration license amendment, on request, before the amendment becomes effective.<sup>2</sup> Nor does the Commission think that Congress intended the Commission to eliminate or grossly simplify the vast bulk of technical specifications which govern the operation of nuclear power plants in order to minimize the number of license amendment actions that must be dealt with.<sup>3</sup> With simplification comes a loss of governmental control, a loss of enforceability, and a loss of detailed assurance in a power plant's method of operation. It is questionable whether acceptance of those kinds of uncertainties best advances the public interest in assuring that nuclear power plants are operated safely. It is just as questionable that such a reading of Section 189(a) is the one that Congress intended.<sup>4</sup>

#### PROPOSED AMENDMENT

The Commission believes that the court's interpretation of Section 189(a) was erroneous and that the decision seriously encumbers the regulation of nuclear power by providing leverage to block, through hearing requests, needed license amendments which involve no significant hazards consideration. The Commission proposes to correct this situation through an amendment to Section 189(a) which, if adopted, would confirm the Commission's interpretation that there is no right to a prior hearing before an amendment may be made effective, if it presents no significant hazards consideration. The amendment would also clarify that Section 189(a) does not limit the Commission's authority to issue immediately effective amendments and orders when the public health, safety, and interest or the common defense and security requires. As to this latter point Commissioner Gilinsky believes that the proposed amendment should delete the words "and interest" and empower the Commission to take immediate action only when required by the public health and safety or the common defense and security. Commissioner Gilinsky believes that his proposal more accurately reflects the standard the Commission currently employs and that this is not the occasion to broaden the Commission's immediate effectiveness powers.

The amendment urged by the Commission would effectively end the adverse potential impacts of the *Sholly* decision. For the reasons described in this memorandum, the Commission urges adoption of the proposed amendment.

<sup>2</sup> The NRC, of course, does not know how many hearing requests, if any might be filed in connection with these license amendment requests. The Court's opinion, however, clearly provides an incentive for such filings.

The Commission also has as an alternative but not coextensive source of authority to issue immediately effective orders where the public health, safety or interest so requires. There is language in *Sholly* which could be interpreted as requiring a hearing on request prior to the NRC's exercise of its power to take immediately effective action. The second sentence of the proposed amendment clarifies that that is not the case, and the Commission is empowered to take such immediate action despite the pendency of a hearing request.

<sup>3</sup> Of course, any simplification of technical specifications would itself be a license amendment that under the *Sholly* decision could not be placed in effect until the completion of whatever hearing or hearings are requested by interested persons.

<sup>4</sup> The court of appeal's decision takes no account of these realities in its interpretation of Section 189. Beyond this in the NRC's view, the court's decision seriously misreads Congress' intent in passing the 1962 amendments to the Atomic Energy Act and erroneously refuses to give deference to the Commission's consistently held interpretation of its governing statute—that no prior hearing need be held when a finding is made that a license amendment involves no significant hazards consideration.

U.S. NUCLEAR REGULATORY COMMISSION,  
Washington, D.C., March 18, 1981

HON. THOMAS P. O'NEILL, JR.,  
*Speaker, U.S. House of Representatives, Washington, D.C.*

DEAR MR. SPEAKER: Transmitted herewith is a Nuclear Regulatory Commission proposal in the form of a draft bill to amend the Atomic Energy Act of 1954, as amended, to authorize the Commission to issue an interim operating license for a nuclear power plant, authorizing fuel loading and low-power operation and testing, in advance of the conduct or completion of an on-the-record evidentiary hearing on contested issues. The proposed legislation, which represents an extraordinary and temporary cure for an extraordinary and temporary situation, is set forth in Enclosure 1. An analysis of the proposed legislation is set forth in Enclosure 2. Enclosure 3 sets forth the proposed legislation in the form of a comparative text.

Under the Atomic Energy Act of 1954, as amended, no person may operate a nuclear power plant without first obtaining an operating license from the Nuclear Regulatory Commission. Under existing law, a formal on-the-record evidentiary hearing must be held, and a decision rendered on the basis of that record, if requested by any person whose interest may be affected, before the Commission may issue an operating license.

In the past, the scheduling and processing of licensing reviews has typically provided sufficient time to enable the hearings to be completed and the license issued by the time the nuclear plant is completed and ready to operate. For the first time, however, it appears that the hearing process for a significant number of nuclear power plants will last *beyond* the date when construction should be complete and the plants are ready to operate. This situation is an indirect consequence of the Three Mile Island (TMI) accident, which required a reexamination of the entire regulatory structure. After TMI, for a period of over a year-and-a-half, the Commission's attention and resources were focused on plants which were already licensed to operate and to the preparation of an action plan which specified a discrete set of TMI-related requirements for new operating reactors. During this period, utilities that had received construction permits continued to build the authorized plants.

The severe public interest impact of these delays has been discussed extensively before interested committees in the House and Senate. Although there may be differences of opinion on the precise overall impact of these delays, as well as in the different estimates of the consequences for each of the plants, the delay costs now are generally estimated to range in the tens of millions of dollars per month for each completed plant.

The Commission is making every effort to see that available resources are devoted to the completion of its licensing reviews of these plants, and that unnecessary delays in these hearings are avoided. Under existing law, however, the Commission lacks the authority to authorize fuel loading and low-power operation and testing on the basis of its safety and environmental evaluation; it must instead await the completion of the hearing process. The result, for the plants most affected by TMI-related actions, is likely to be delays of at least



several months in ultimate operation of the facilities, absent remedial action of Congress.

The proposed amendment to subsection 189a of the Act would authorize the Commission, if it finds that such action is in the public interest in order to avoid the consequences of delay in the operation of a completed nuclear power plant, to issue an interim operating license authorizing fuel loading and low-power operation and testing of the plant in advance of the conduct or completion of any required hearing. In all respects other than the completion of the hearing, the Commission would have to find that the requirements of all applicable law have been met prior to allowing such interim operations. Thus, the public health and safety, common defense and security, and environmental findings would still have to be made, even though the public interest findings is made. Furthermore, a hearing would still be held if requested by an interested person under section 189 of the Act. The proposed amendment would simply provide that in such a case, the requested hearing could be held or completed after issuance of the license authorizing fuel loading and low-power operation and testing. Moreover, any interim license issued under this authority would be subject to any subsequent findings and orders of the Commission after the conduct of any required hearing. The authority to issue such interim licenses would expire on December 31, 1983.

The effect of this proposed legislation would be to advance by at least several months the date of operation of the plants most affected by the TMI-related actions, where issuance of the operating license is contested. The savings of time could be much more substantial in cases where testing showed the need for modification and further testing. By placing a time limit of December 31, 1983 on the Commission's authority to issue such interim licenses, the proposed legislation would assure that the relaxation of licensing requirements would be confined to those plants which have been most directly affected by the Commission's post-TMI actions. Since the risks associated with low-power operation and testing are much smaller than those associated with normal full-power operation, we believe that this authority, limited to the relatively few plants likely to be most affected by our TMI-related effort, represents a minimal intrusion on our usual review and hearing process. The Commission cannot, under existing law, take these measures to reduce the delay in the licensing of the affected plants. The proposed legislation would result in very substantial cost savings for consumers in the service areas of the affected plants.

The proposed legislation deals essentially with matters of licensing procedures and, as indicated, would not alter any of the substantive standards and requirements of the Atomic Energy Act pertaining to the protection of public health and safety and the common defense and security or of NEPA. In light of this, the Commission has concluded that the proposed legislation would not significantly affect the quality of the human environment.

Additional comments by Commissioner Ahearne and myself are enclosed.

Sincerely,

JOSEPH M. HENDRIE.

Enclosures:

1. Draft Bill.
2. Analysis of Proposed Legislation.
3. Comparative Draft Bill.
4. Additional Comments of Commissioner Ahearne and Chairman Hendrie.

#### DRAFT BILL

To amend the Atomic Energy Act of 1954, as amended to authorize the Commission, upon determination that such action is necessary in the public interest, to issue an interim operating license authorizing fuel loading, low-power operation and testing of a nuclear power reactor in advance of the conduct of a hearing

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled,* That subsection 189a of the Atomic Energy Act of 1954, as amended, is amended by adding after the final sentence in the subsection: "Notwithstanding any other provisions of this Act, the Commission may, upon determination that such action is necessary in the public interest in order to avoid the consequences of unnecessary delay in the operation of a nuclear power reactor, issue for such a facility an interim operating license authorizing fuel loading, and operation and testing at power levels not to exceed five percent of rated full thermal power, in advance of the conduct or completion of any required hearing: *Provided*, That any operating license so issued shall be subject to any subsequent findings and orders of the Commission after the conduct of any required hearing; *and provided further*, That in all other respects the requirements of the Atomic Energy Act of 1954, as amended, shall be met. Prior to the issuance of any such interim license, the Commission shall publish in the Federal Register a notice of its intent to issue the license, and shall provide an opportunity for parties to the proceeding to comment on whether such action is necessary in the public interest. The authority to issue such an interim license for a nuclear power reactor in advance of the conduct or completion of a hearing shall expire on December 31, 1983."

#### ANALYSIS OF PROPOSED LEGISLATION

Under the Atomic Energy Act of 1954, as amended, no person may operate a nuclear power plant without first obtaining an operating license from the Commission. Under existing law, a formal on-the-record public hearing must be held before issuance of any operating license if requested by any person whose interest may be affected. The proposed amendment to subsection 189a authorizes the Commission, under the circumstances specified therein, to issue an interim operating license authorizing fuel loading and operation and testing at power levels not to exceed five percent of rated full thermal power, in advance of the conduct or completion of hearings on the issuance of the full-term license.

This authority could be used only if all legal requirements applicable to a license for fuel loading and low-power testing and operation have been satisfied, with the sole exception of the requirement that in a contested proceeding, operation can be authorized only after a decision based upon the record of a completed hearing. These legal requirements

include the Commission's findings as to public health and safety, the common defense and security, the environment, and antitrust considerations, as mandated by the Atomic Energy Act of 1954, as amended, the National Environmental Policy Act, and other applicable statutes.

Under the proposed legislation, the Commission may exercise the authority to permit fuel loading and lower-power operation and testing if it finds that such action is necessary in the public interest in order to avoid the consequences of unnecessary delay in the operation of the facility. This public interest finding would be based on the consideration of the costs, ultimately borne by consumers, of having a completed nuclear power plant standing idle while awaiting the completion of the hearing on the full-term license. These costs include the dollar costs of delay and of obtaining replacement power, and may also include the need for power from the facility and the energy equivalency of fossil fuel.

Any interim license issued under this authority will be subject to any subsequent findings and orders of the Commission after the conduct of the required hearing.

The proposed legislation requires the Commission, before authorizing issuance of a license for fuel loading and low-power operation and testing, to publish notice of its intended action in the Federal Register and to afford an opportunity for parties to comment on whether the intended action is necessary in the public interest.

Any final action of the Commission under this subsection is subject to judicial review.

The authority granted by the proposed legislation will expire on December 31, 1983. For a significant number of nuclear power plants—those most affected in the review process by Commission efforts to respond to the Three Mile Island accident—this time period should permit the Commission, with the full cooperation of prospective applicants, to schedule licensing reviews and proceedings so as to avoid, wherever possible, situations in which completed plants stand idle while awaiting completion of licensing proceedings.

[Comparative Text Draft Bill]

ATOMIC ENERGY ACT OF 1954, AS AMENDED

SEC. 189. HEARINGS AND JUDICIAL REVIEW.—

(a) In any proceeding under this Act, for the granting, suspending, revoking, or amending of any license or construction permit, or application to transfer control, and in any proceeding for the issuance or modification of rules and regulations dealing with the activities of licensees, and in any proceeding for the payment of compensation, an award, or royalties under sections 153, 157, 186 c., or 188, the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding. The Commission shall hold a hearing after thirty days' notice and publication once in the Federal Register, on each application under section 103 or 104 b, for a construction permit for a facility, and on any application under section 104c, for a construction permit for a testing facility. In cases where

such a construction permit has been issued following the holding of such hearing, the Commission may, in the absence of a request therefor by any person whose interest may be affected, issue an operating license or an amendment to a construction permit or an amendment to an operating license without a hearing, but upon thirty days' notice and publication once in the Federal Register of its intent to do so. The Commission may dispense with such thirty days' notice and publication with respect to any application for an amendment to a construction permit or an amendment to an operating license upon a determination by the Commission that the amendment involves no significant hazards consideration. *Notwithstanding any other provisions of this Act, the Commission may, upon determination that such action is necessary in the public interest in order to avoid the consequences of unnecessary delay in the operation of a nuclear power reactor, issue for such a facility an interim operating license authorizing fuel loading, and operation and testing at power levels not to exceed five percent of rated full thermal power, in advance of the conduct or completion of any required hearing: Provided, that any operating license so issued shall be subject to any subsequent findings and orders of the Commission after the conduct of any required hearing; and provided further, that in all other respects the requirements of the Atomic Energy Act of 1954, as amended, shall be met. Prior to the issuance of any such interim license, the Commission shall publish in the Federal Register a notice of its intent to issue the license, and shall provide an opportunity for parties to the proceeding to comment on whether such action is necessary in the public interest. The authority to issue such an interim license for a nuclear power reactor in advance of the conduct or completion of a hearing shall expire on December 31, 1983.*

#### ADDITIONAL COMMENTS OF COMMISSIONER AHEARNE

I accept the desirability of low-power interim licensing, given the problems we now face. If improvements in the licensing process cannot be made, then full-power interim licensing may be necessary. However, it is time for fundamental reforms in the role and practice of the hearing process. In particular, the Commission should direct Boards to serve to decide only issues that are raised by the parties, and of those, only those of substance. The threshold for admitted contentions should be significantly raised, *sua sponte* authority should be limited, and the Boards should be authorized to manage the proceedings with a strong hand. Failing these changes, I expect another Commission will be requesting full-power interim licensing legislation.

#### ADDITIONAL COMMENTS OF CHAIRMAN HENDRIE

I strongly support the legislative proposal made here for authority to issue interim operating licenses for fuel loading and low-power operation and testing. It would, in effect, advance the operating schedules of the affected units by several months and result in substantial savings for consumers.

But it is also my view that the authority for interim licensing could reasonably be extended to include full-power operation, with a further

substantial reduction in cost impacts. This authority would be needed with regard to only a small number of units, I estimate nine at most and more probably no more than six, that are particularly severely affected by the licensing delays following the Three Mile Island accident. For these units, even the lower-power interim license authority, together with all the measures the Commission can take under existing law, will probably not be enough to avoid licensing decision delays. Indeed, one of these units is already experiencing such a delay. The full-power interim licensing authority would remedy that situation for most of these units and would minimize the delay for the unit already affected.

## ADDITIONAL VIEWS OF HON. TOBY MOFFETT

It should be beyond dispute that the proper mission of the Nuclear Regulatory Commission is to insure the safety of the commercial nuclear power generating industry. Under the Acts of Congress which govern its existence, it is not mandated to promote the nuclear power industry. Its task is to safeguard the public health and safety from any risks arising from that industry.

Sections 6 and 7 of this bill as reported fundamentally ignore that basic fact. Both sections arise from an open hostility in some quarters to any actions taken either by the NRC or by citizens which have the effect of slowing down the construction and operation of nuclear power plants—no matter how well-founded and important the safety concerns may be which motivate those agency and citizen actions. The two sections of the bill arise from a quite mistaken premise that NRC safety hearings are an unnecessary and unproductive impediment to the growth of the nuclear power industry.

Moreover, Section 6 in particular is based on a wholly erroneous factual premise. That premise is that there is a platoon of nuclear plants now standing ready or near-ready for action and impeded only by NRC hearings that serve no genuine purpose. That is demonstrably untrue, despite a widespread effort by some in the industry to propagate that myth. I invite my colleagues to scrutinize carefully the reports being sent to Congress on a monthly basis by the NRC regarding the status of plants nearing completion and licensing. The facts reflected in those reports do not substantiate claims that interim licensing powers of the broad sort accorded NRC in Section 6 are needed.

Indeed, the irony is that one can safely predict that very few nuclear plants will in fact go on line more rapidly because of this new interim authority, if it should be granted. Out of some 90 plants at various stages of construction, it is highly unlikely that more than four or five plants will in fact be ready to benefit from the expedited treatment of this provision. Yet for that modest hypothetical benefit to the industry, the hearing process, and the rights of citizens to obtain some assurance regarding the safety of new plants before their operation, have been significantly assaulted.

It is my hope that upon further reflection and examination of the facts the Congress will add several of the safeguards to Sections 6 and 7 which were sought by a number of amendments offered during full Committee markup June 4. I would point out that the June 5 deadline imposed by the sequential referral of this bill to the Committee created regrettable time pressures which were quite obvious during that markup. If the opportunity had existed for further discussion of the need for those amendments, I believe they might have prevailed. Moreover, I would note that the failure of the Committee

to adopt those amendments—several by rather narrow margins—arose from an unusual legislative situation. It is my understanding that some Members of the Committee felt obligated to stand by previous commitments to the bill as reported by the Subcommittee which made it impossible to support amendments which they would otherwise have approved.

Sections 6 and 7 should be amended in a fashion consistent with the safety concerns that motivated the amendments offered in the full Committee. I urge my colleagues to support that result as this bill is further considered.

TOBY MOFFETT.

## ADDITIONAL VIEWS OF REPRESENTATIVE EDWARD J. MARKEY

I strongly believe that this Committee should have taken the prudent step to limit the provision of Section 6. Our authorization of Nuclear Regulatory Commission issuance of temporary licenses for nuclear power plants should be limited to licenses that would allow only fuel loading, initial testing, and operation at power levels not exceeding five percent of rated full thermal power. Such a limit is identical to the bill submitted earlier this year by the Nuclear Regulatory Commission.

The surface issue in this debate is whether or not the NRC licensing process, including the right of NRC hearing boards to examine questions about safety raised by the general public, will be short-circuited. The surface issue is whether or not these hearings must be concluded prior to the issuance of a full power license to operate the plant. But the real issue is nuclear safety. The current language of H.R. 2330 permits the issuance of temporary licenses for full power nuclear plant operation, which I consider excessive and dangerous.

As Chairman Joseph Hendrie of the NRC said:

The underpinning for our safety assurances is our licensing process . . . (which) provides for the issuance of operating licenses only after multilevel review that includes public participation and input at key stages.

As the NRC Special Inquiry Group into the accident at Three Mile Island (the so-called Rogovin Report) explained:

The (adjudicatory hearing) boards do not . . . conduct an extensive review or audit of the quality of the NRC staff's safety review. Almost without exception, the issues before a board are raised by interested members of the public who have intervened as parties in the proceeding. . . . Intervenors have made an important impact on safety in some instances—sometimes as a catalyst in the prehearing stage of proceedings, sometimes by forcing more thorough review of an issue or improved review procedures on a reluctant agency.

In other words, the investigation of Three Mile Island revealed that one of the few checks on inadequate NRC casework staff attention to safety comes in a contested hearing. If this House votes to allow full power operation of nuclear plants before these hearings, we are voting to unlearn the lessons of Three Mile Island.

Three of the four NRC commissioners voted earlier this year to restrict their interim licensing bill to low power operation only. As Chairman Hendrie explained, "Since the risks associated with low-power operation and testing are much smaller than those associated



with normal full-power operation, we believe that this authority represents a minimal intrusion on our usual review and hearing process."

Commissioners Gilinsky, Bradford and Ahearne do not believe that operation beyond the 5-percent ceiling should be permitted in advance of the completion of any required hearing.

Let me sum up their views with a few selected quotes:

From Commissioner Ahearne: "Full power (temporary) licensing legislation would be bad public policy."

From Commissioner Gilinsky: "The interim full power license proposal would undermine the hearing process to a degree that is out of proportion to the possible gain."

From Commissioner Bradford: "Authorizing full-power operation pending final resolution of safety matters would make NRC's licensing proceedings appear a sham."

I have often criticized the Commission for not doing enough to protect the public health and safety, for allowing reactors to operate without sufficient safeguards.

If the Nuclear Regulatory Commission—that I believe is too lenient on safety matters—is cautious about full-power interim licensing, then why should this House step in where there experts fear to tread?

The May 1981 NRC status reports shows that only 10 plants will experience some degree of delay during 1981 and 1982. The total plant/month delay is at most 55 months. This is a reduction from the estimate of a 79-month delay, given in the April NRC report, and a reduction from the estimate of a 110-month delay in the March report.

NRC chairman Hendrie told a Senate subcommittee on March 31 that authority to grant low power temporary licenses would speed the plants most heavily impacted by "two, maybe three or even more months." If that is the case, the NRC proposal—which I believe this Committee should have adopted—would save 2-3 months per plant. Low power interim licenses, if approved for each plant subject to delay, would therefore wipe out 20 to 30 months of the estimated remaining delay of about 55 months. As it happens, if 3 months are thereby saved for each plant, 5 of the 10 plants would be taken off the delay list entirely. In addition, if low power testing reveals problems requiring corrective action and further review, the time savings for that particular reactor could be as much as six months, according to the NRC.

It is important to view the estimated delays with some skepticism. The NRC uses projections of construction completion provided by the utility industry. The utilities have historically been very optimistic about construction schedules. I am simply echoing here the words of the NRC itself: "Historically the staff has found that the applicants' estimated completion dates are optimistic compared to the NRC estimates; therefore, the slippage based on applicants' dates is greater than when based on staff estimates." When we bandy about these figures—so many months of delay per plant—we are using these very shaky utility estimates, which the NRC admits are "historically optimistic." Delay in the licensing of safe nuclear power plants is a serious matter. But so is the risk of another accident, worse than we

experienced at Three Mile Island. The theme of the nuclear industry lobby is that meaningful public participation and thorough NRC licensing board scrutiny are expendable luxuries unrelated to safety. Nothing could be further from the truth.

In this regard, I urge my colleagues to consider carefully the views in this matter presented on March 31, 1981 before the Senate Subcommittee on Nuclear Regulation by NRC Commissioner Peter Bradford. Commissioner Bradford addressed his remarks in support of the limit on temporary licenses at the low power level. In his remarks are found an eloquent defense of the importance of public hearings as an integral part of the nuclear regulatory process.

I want, however, to speak a moment on the importance of the hearing process itself, to respond briefly to the question of just why we undertake these time-consuming inquiries that are sometimes imprecise and often expensive. If we are to tamper with them without doing violence to their purpose and their benefits—real and potential—we must remind ourselves just what the purposes and the benefits are. To do so comprehensively would be a major undertaking, but I want at least to attempt a sketch this morning.

The fact is that nuclear power is a uniquely favored industry in terms of its relationship to local fears and concerns. All of the operating plants and all of the plants whose "delays" we are concerned about were exempted by the preemptive sections of the Atomic Energy Act from any sort of state or local regulation of a radiation hazard that could force the plant's neighbors to evacuate their homes or that could—in the most unlikely case—render those homes uninhabitable for decades. In terms of basic American traditions of state and local government, this was a breathtakingly radical step—one that could probably only have been taken in an era in which public faith in the benign omniscience of the federal government ran much higher than it does today.

Furthermore, as if preemption weren't enough, the two-step licensing process postponed the hearing of many serious safety questions until the operating license hearings—after the plant was already built and an immense financial and social commitment made to its operation. While even the more enlightened representatives of the industry would prefer more thorough construction permit hearings today, the fact is that the historic process was set up to suit the needs of a rapidly developing technology, and the plants in the operating license hearings today received construction permit reviews that were not only pre-Three Mile Island, but that were often the Atomic Energy Commission's equivalent to a lick and a promise.

Against this background, the NRC hearing process can be understood as the federal side of two bargains. First, all effective state and local scrutiny of radiation hazard was preempted, but those concerns could be raised and examined in depth in federal hearings. Second, plans could be built on

the basis of relatively flimsy construction permit reviews on the understanding that at least the operating license review and hearing be thorough. While the proposals before you today can be reconciled with these commitments, others now under discussion in the Commission and in parts of the Congress would welsh on both of these commitments by making the hearing process even more of a sham in terms of effective safety review than it is today.

\* \* \* \* \*

We look to public hearings to serve two purposes. They should provide a strong and skeptical independent check on the NRC's internal reviews, and they provide the only avenue for citizens to resolve concerns about a new and serious hazard being introduced into their communities. When we talk of "streamlining" them, we must keep these purposes and the bargains that underlie them in mind.

After years of sitting on the two committees that oversee nuclear power, I can only agree with the Kemeny Commission Report to the President on the Accident at Three Mile Island. To the extent that we allow the NRC and the nuclear industry to return to "business as usual," with the closed-shop mindset that preceded the TMI accident, we are only setting the stage for a far greater catastrophe.

Section 6 of this bill revives that style of regulation. I intend, therefore, to urge that the House amend this bill to restrict the issuance of temporary operating licenses to reactor operation no higher than low power. Such erosion of public participation represents a reasonable compromise. It has been proposed by the NRC, which opposed taking any further interim license step. It expedites the licensing process without sacrificing safety reviews.

EDWARD J. MARKEY.

## ADDITIONAL VIEWS OF HON. MIKE SYNAR

There is no question that the Congress can and should take appropriate legislative action to address the problem of licensing delays for new nuclear power reactors. The Three Mile Island accident in 1979 resulted in the Nuclear Regulatory Commission refocusing on safety issues and away from new licensing proceedings. This shift in emphasis at NRC imposed lengthy delays on several operating license applicants. The NRC still has not satisfactorily resolved the delay problem nor, it seems, can it do so short of new legislative authority.

For the 22 nuclear power units scheduled for completion during calendar years 1981 and 1982, the NRC has projected licensing application delays for ten units. (Twelve are listed as having no projected delay.) For those ten, the NRC projects delays ranging from one to 12 months.

The NRC is instituting administrative changes to reduce these delays. Other changes will be implemented in the near future and still others are being planned to speed up licensing. It is likely, however, that some of those ten plants will still experience delays between the time of completion of the unit and final action by the NRC on the utility's permanent operating license application.

Therefore, it has become clear that the NRC requires new legislative authority to help resolve the licensing delay problem.

Allowing a plant to needlessly sit idle while the utility awaits action on its operating license application can impose costly burdens on ratepayers for replacement power and related costs. It should be noted, however, that not all delays are related to inaction or regulatory delay on the part of the Nuclear Regulatory Commission.

The NRC submitted to Congress a legislative proposal to grant the Commission new authority to issue temporary, or interim, operating licenses for units experiencing licensing delays. The NRC proposal, adopted by a three to one vote of the Commission, requested authority to grant interim licenses for fuel loading and low-power testing, prior to the conduct or completion of the public hearings required in a contested operating license procedure. The Commission termed even this new authority "an extraordinary and temporary cure for an extraordinary and temporary situation."

The Congress can and should take appropriate steps to grant NRC the limited authority and discretion it requires to alleviate the licensing delay problem for those ten units. However, the Committee's provision on temporary licensing goes well beyond the limits of reasonable authority and instead allows the NRC almost unbounded discretion to act its will with little constraint.

Section 6 of the Committee bill allows the NRC to issue full-power operating licenses, prior to any public hearing, for an indefinite period of time. In addition, the bill in no way prohibits the Commission from

delegating the actual decision to issue an interim license to the Commission staff, and does not require any finding by the Commission that the utility will actually experience a delay in the licensing process prior to receiving an interim operating license.

In my view, the bill should contain some minimal regulatory constraints to ensure adequate licensing safeguards and to protect the integrity of the participatory licensing process. These minimal and reasonable constraints would not and need not delay the licensing process; rather, they would ensure the safety and quality of the process when we speed it up.

These issues need to be addressed individually and in detail, so that Members of the House realize exactly how broad and unprecedented is the authority granted the Commission under the H.R. 2330, as reported by the full Energy and Commerce Committee.

First, there is nothing in the Committee language which imposes a duration on temporary operating licenses granted by the Commission. Temporary should mean temporary; it should not mean indefinite. Yet that is precisely what the Committee provision allows. I offered an amendment to impose a one-year time limit on these temporary licenses. The NRC's listing of plants either now completed or scheduled for completion this year or next, indicates that the longest projected delay for any plant on the list is 12 months. Some projected delays are as low as one month. Limiting the duration of temporary operating licenses serves two purposes: first, it reinforces the fact that the Congress does not intend for these temporary licenses to be effective for an indefinite period of time; and, second, it keeps pressure on the Commission to hold the required public hearings in contested cases, ensure any necessary modifications to the operating license application, and make a final decision on that reactor case. If the hearing process extends past one year, or if faults are found with the operating license application which necessitates further delay, the one-year temporary license could be renewed. But the one-year-at-a-time duration keeps the NRC actively focused on that application and ensures that the temporary license won't be issued—for an indefinite period of time—and then shoved to the back burner while the NRC goes on to other matters.

Despite the fact that the one-year license could be renewed if necessary, all the information we have gathered indicates that the NRC should be able to process the applications for all those cases having projected delays within that time frame. Further, the Congress should make clear its hope that these cases will be processed as expeditiously as possible.

Surely no one intends for these temporary licenses to run indefinitely in order to delay or circumvent the public hearing process. And if we agree in principle that a reasonable time limit should be placed on temporary licenses, then one year is more than adequate to process most or all of the cases.

The argument has been made that some cases may be delayed longer than the NRC has projected. While that may be true, the increased delay may not always be the fault of NRC regulatory delays; moreover, the temporary license could in any necessary case be renewed, as I have stated before. But the principle is the same: to keep pressure

on the NRC to act expeditiously on reactor cases. In this regard, the Congress should continue to make known its concern over licensing delays and encourage the NRC to act expeditiously when possible, and continue to implement additional administrative changes to further reduce licensing delays.

A second argument has been made that application for a renewal of the one-year operating license would cause further delays in the licensing process. This is simply not true. First, no hearing would be required for renewal. And, if a utility were approaching the expiration of the one-year license, they would file for a renewal prior to that expiration so that NRC could act quickly to renew if the evidence indicates that further delay is inevitable.

The operating license process at NRC has incurred delays since the TMI accident in 1979, and some feel that because we have experienced these licensing delays, we should now proceed to give the NRC more than enough authority and discretion to take virtually any action to speed the licensing process and get completed units on line. No regulatory agency should have unbounded authority and discretion. We have too often in the past given such discretion to regulatory bodies within government, and we are now trying to repair the damage by way of regulatory reform legislation.

A final argument made in opposition to limiting temporary operating licenses suggests that a State public utility commission or State corporation commission would be reluctant to include in a utility's rate base operation of the unit for a temporary time if it were possible that the temporary license would not be renewed after one year. This is simply ridiculous. Any operating license issued by the NRC, whether temporary or permanent, can be revoked at any time. The state utility and corporation commissions are well aware of this fact, and it has never prevented a commission from including reactor operation in a utility rate base. So there is no reason to believe that a commission would be any more reluctant to do so under this proposal than they would be under the existing situation. Finally, the issue of how a State utility or corporation commission would act in this regard has always been, and should continue to be, strictly a State matter. It is solely up to the commissions of the individual states as to any action concerning a utility's rate base, and the federal government should not interfere or be concerned with that state prerogative.

The second issue of concern to me deals with the issue of accountability. There is nothing in existing law, and nothing in the Energy and Commerce Committee interim licensing Section of H.R. 2330, which requires the decision to issue an interim license to be made by a majority of the Commission. In fact, there is nothing to prohibit the Commission from delegating this crucial decision to the NRC staff. The Commissioners of the NRC are paid with taxpayers dollars to make this kind of important decision, and should be required to do so in this case. I was distressed to learn during debate on this issue in full Committee that this kind of function is routinely delegated to NRC staff. Absent public hearings on a utility's operating license application, the accountability should rest with the Commissioners themselves as to whether or not a unit can operate under a temporary license.

In addition, in response to the suggestion that requiring a Commission vote on temporary licenses would delay the process, it is clear that almost no delay should be necessary. If the case presented to the Commission is clear-cut that temporary operating authority should be granted the utility, then the procedure by which the Commission meets and acts on the temporary license application should be relatively short and simple. Requiring the Commission to take this action does have the advantage of forcing the Commission to focus specifically on individual cases and make decisions for which they are accountable. If the case is not clear-cut, then the Commission should give more than routine attention to the matter.

The third issue relates to whether or not the Commission, prior to issuing a temporary license, should have to find that the utility will actually experience a delay in the regular licensing process. In my mind, this simple finding of delay is another reasonable constraint on the Commission's discretion. Certainly the Congress does not intend for the Commission to issue a temporary operating license to a utility which is not expected to experience a licensing delay. So, including such a provision would simply have reinforced the Congress' intention that only those utilities having projected licensing delays would be eligible for interim operating licenses. Unfortunately, the Committee rejected this proposal as well.

The fourth, and to some extent most serious, issue with respect to interim licenses is the authority of the Commission, under the Committee language, to issue full-power operating licenses prior to any public hearings on a contested application. The Senate Environment and Public Works Committee very prudently adopted an interim licensing provision which authorizes the Commission to initially grant interim licenses for fuel-loading and low-power testing only. Those licenses could then be amended following the testing period to allow an operating power higher than low-power testing (5 percent). While this authority—allowing increases in operating power levels—goes well beyond what the NRC requested, I believe it is an appropriate level of authority under current circumstances.

The provisions adopted by the Energy and Commerce Committee, however, go even further, by allowing the NRC, at its discretion, to issue temporary operating licenses at any power level, up to and including full power, without first requiring a low-power testing period.

The testing phase is a crucial "trial and error" period in the operation of any reactor, and while my proposal would not have specified the length of time for low-power testing, that phase would still have been mandatory before proceeding to a higher operating power level. Under my proposal, the decision as to when a reactor was ready for this increase, following low-power testing, would be at the discretion of the Commission. This initial phase is standard operating procedure for utilities, and should continue to be mandatory. Once the reactor has been through an adequate low-power testing period, as determined by the NRC, the utility could file a petition with the Commission for an increase in operating power. If testing has gone well, the NRC could simply amend the temporary operating license to authorize a higher power level. No delay would be incurred, since the reactor would continue to operate at low power while the NRC considered and acted on

the petition for an increase in power. No hearing would be necessary prior to such an amendment being adopted by the NRC.

Surely no one intends for the NRC to issue full-power operating license before low-power testing has been successfully completed. Since this two-step procedure is traditional within the industry and with the NRC's regular licensing process, the Congress should continue to require that low-power testing be completed before full power can be authorized. In order to ensure this important phase of operation, the Congress should stipulate it directly by including such a requirement in the bill.

Low-power testing is conducted to find out as early as possible if there are any construction flaws or other safety problems which might pose a bigger risk, both safety-wise and financially, if they became apparent only after the plant reached full power. This testing phase, therefore, is in the interests of the utilities as well as the public.

Again, I would reiterate that no delay would be incurred by the utility in getting approval of this second-step amendment to the temporary operating license, since the reactor would continue to operate at low power until a decision by the NRC on the utility petition.

This two-step process doesn't cause delays, but it does ensure the continued safety and integrity of the operating process. NRC Commissioner Peter A. Bradford, in a letter to Rep. Broyhill dated May 18, 1981, pointed out very cogently why this traditional low-power testing period should be continued prior to full-power operation:

. . . our three serious reactor accidents (FERMI-I, the Browns Ferry Fire, and Three Mile Island) all occurred very early in the lives of the respective power plants. . . .

While the Energy and Commerce Committee may "hope" the Commission will continue this crucial procedure, absent statutory language in the bill, there is nothing to preclude the NRC from issuing a full-power operating license immediately.

I hope the House, in considering these issues further, will adopt some minimal regulatory constraints upon the Commission's authority to issue interim licenses, such as I have suggested.

Unfortunately, the full Energy and Commerce Committee chose not to include any of these modest provisions in its bill, although I, and others, felt they greatly improved the interim licensing provision.

Nuclear power generation is unique by its nature and unique in its risks. While unfortunate, it is not surprising that it has therefore generated unique and oftentimes burdensome regulations and costly delays.

In attempting to resolve the licensing delay problem, the Congress is not faced with a simple choice between too much regulation or no regulation at all. Rather, Congress is faced with finding that delicate and appropriate balance between the two widely divergent choices. The Energy and Commerce Committee bill fails to strike this balance.

The primary responsibility of the NRC has always been and remains the protection of public health and safety. And, while it has become necessary to also now consider the financial burden of delays on utilities and their ratepayers, it can ill-afford to abrogate its first responsibility in the process of meeting this latest obligation.



The future of nuclear power in our nation depends upon the support and faith of the American public—faith not only in the nuclear industry itself, but in the ability of government to adequately regulate it.

Neither the industry nor the Congress can afford to jeopardize the faith and support of the public by permitting run-away regulatory discretion.

The Congress should adopt an interim licensing provision, along the lines of the Senate proposal, which could gain the support of industry, the public and most every Member of Congress. This broad-based support will be crucial as we move to quicken the pace of reactor licensing.

To achieve this support will require a legislative proposal which provides utilities with the necessary relief from costly and lengthy licensing delays, but which also preserves the integrity of the process by imposing some accountability on the Commission and which incorporate some minimal safeguards in the process, rather than running roughshod over the process.

MIKE SYNAR.

## ADDITIONAL VIEWS ON H.R. 2330

### *The need for nuclear licensing reforms*

The nuclear licensing reforms adopted in this bill are decidedly pro-consumer and anti-inflation. These regulatory reforms would speed the licensing of nuclear powerplants while maintaining safety and environmental protection.

At a time when consumers face soaring electric bills across the land, these reforms will help avoid over \$2 billion in higher electric rates and consumer costs due to Nuclear Regulatory Commission delays in licensing nuclear plants. In addition, the Department of Energy estimates these reforms will help reduce U.S. oil consumption by over 200,000 barrels per day equivalent.

Although we would have liked to have seen the Committee adopt stronger and more comprehensive reforms of the NRC licensing logjam, we believe the bipartisan, moderate compromise adopted by the Committee represents a long-overdue, common-sense step toward solving the short-term licensing problems at the NRC. According to DOE, if these problems are *not* solved, 11 to 13 powerplants will sit idle a collective total of 79 to 102 months over the next 2 years at a cost to consumers of tens of millions of dollars per day in higher costs of replacement power and carrying charges. In addition, 57 other plants scheduled to be completed by 1985 may also be caught in "pancaking" regulatory delays that make the current costs of delay look like spare change.

It is a tribute to the broad, bipartisan support for these moderate licensing reforms that they were adopted by the Committee without amendment.

However, the current logjam at the NRC is only a symptom of the disease of irrational over-regulation. This over-regulation burdens our economy and clouds our progress toward energy self-sufficiency.

When the French and Japanese can license a nuclear powerplant in less than 7 years and it takes us 12 to 15 years, something is terribly wrong with our regulatory process. The problem is not technological, the problem is political. As a national association of some 1,000 scientists, engineers, and scholars (including professor Hans A. Bethe of Cornell and six other Nobel Laureates), recently wrote us:

It is essential that this country find means to more sensibly and prudently license commercial nuclear reactors. The current regulatory inaction and industrial stagnation is contributing to the erosion of our nation's international economic and technical position . . . There is a clear and present need for putting licensing "back on track". The American public cannot continue to bear the billions of dollars in delay costs . . . Nor can the United States sit idle with its com-

mercial nuclear program while the rest of the Western world leaves it in technical "backwater". . . .

If the American economy is going to turn around and expand once again, creating more jobs and "a bigger slice of the pie" for millions of working American families, we are going to have to expand our energy mix with every domestic source available to fuel that economy—production as well as conservation. And if nuclear is to remain an option in that energy mix, as the American people in national opinion polls tell us it should, then we must incorporate balance into the regulatory process, a balance between the costs and benefits of regulation.

For these reasons, the reforms adopted in this legislation are only an interim step, and we expect this Committee, the new Administration, industry, and the public to address the need for comprehensive nuclear licensing reform during this Congress. And when we do, we know of two groups who will be watching us very carefully—the American consumers who pay high electric bills, and the OPEC oil suppliers who count their profits from those bills in the billions of dollars.

JAMES T. BROYHILL.  
CLARENCE J. BROWN.  
JAMES M. COLLINS.  
NORMAN F. LENT.  
MATTHEW J. RINALDO.  
TOM CORCORAN.  
ROBERT WHITTAKER.  
THOMAS J. TAUKE.  
DON RITTER.  
HAROLD ROGERS.  
DAN COATS.  
THOMAS J. BLILEY, JR.  
CARLOS J. MOORHEAD.  
WILLIAM E. DANNEMEYER.

AUTHORIZING APPROPRIATIONS FOR THE NUCLEAR  
REGULATORY COMMISSION

JUNE 9, 1981.—Committed to the Committee of the Whole House on the State  
of the Union and ordered to be printed

MR. DINGELL, from the Committee on Energy and Commerce,  
submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 2330]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 2330) to authorize appropriations to the Nuclear Regulatory Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and section 305 of the Energy Reorganization Act of 1974 as amended and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment to the bill as amended by the Committee on Interior and Insular Affairs, which was referred to the Committee on Energy and Commerce is as follows:

Strike out all after the enacting clause and omit the part printed in italic and insert in lieu thereof the following:

TITLE I—AUTHORIZATION OF APPROPRIATIONS FOR FISCAL  
YEAR 1982

SECTION 1. (a) There is hereby authorized to be appropriated to the Nuclear Regulatory Commission in accordance with the provisions of section 261 of the Atomic Energy Act of 1954 (42 U.S.C. 2017) and section 305 of the Energy Reorganization Act of 1974 (42 U.S.C. 5875), for the fiscal years 1982 and 1983 to remain available until expended \$500,700,000 for fiscal year 1982 and \$530,000,000 for fiscal year 1983 to be allocated as follows:

(1) Not more than \$75,610,000 for fiscal year 1982 and \$78,280,000 for fiscal year 1983, may be used for "Nuclear Regulatory Regulations".

- (2) Not more than \$67,680,000 for fiscal year 1982 and \$70,270,000 for fiscal year 1983, may be used for "Inspection and Enforcement".
- (3) Not more than \$17,950,000 for fiscal year 1982 and \$17,900,000 for fiscal year 1983, may be used for "Standards Development".
- (4) Not more than \$46,700,000 for fiscal year 1982 and \$48,020,000 for fiscal year 1983, may be used for "Nuclear Material Safety and Safeguards".
- (5) Not more than \$231,940,000 for fiscal year 1982 and \$252,180,000 for fiscal year 1983, may be used for "Nuclear Regulatory Research".
- (6) Not more than \$19,140,000 for fiscal year 1982 and \$20,610,000 for fiscal year 1983, may be used for "Program Technical Support".
- (7) Not more than \$41,680,000 for fiscal year 1982 and \$42,650,000 for fiscal year 1983, may be used for "Program Direction and Administration".

(b) The Commission may use not more than 1 per centum of the amounts authorized to be appropriated under paragraph (5) of subsection (a) to exercise its authority under section 31a. of the Atomic Energy Act of 1954 to enter into grants and cooperative agreements with universities pursuant to that section. Such grants should be made with the Commission paying close attention to opportunities for entering into agreements with appropriate historically predominately minority universities and research centers. Grants made by the Commission shall be made in accordance with the Federal Grants and Cooperative Agreements Acts of 1977 and other applicable law.

(c) (1) Not more than \$500,000 of the amount appropriated for a fiscal year to the Nuclear Regulatory Commission under any paragraph of subsection (a) for purposes of the program specified in that paragraph may be used by the Commission in that fiscal year for purposes of a program referred to in any other paragraph of subsection (a), and the amount available for appropriations for a fiscal year for purposes of any program specified in any paragraph of subsection (a) may not be reduced for that fiscal year by more than \$500,000.

(2) The limitations on reprogramming contained in paragraph (1) shall not apply where the Commission submits to the Committee on Interior and Insular Affairs and the Committee on Energy and Commerce of the United States House of Representatives and to the Committee on Environment and Public Works of the United States Senate a notification containing a full and complete statement of the action proposed to be taken and the facts and circumstances relied on in support of such proposed action, and if—

- (A) each such committee, before the expiration of a thirty-day period, transmits to the Commission a written notification that the committee does not object to the proposed action; or
- (B) a thirty-day period passes during which no such committee transmits to the Commission a written notification that the committee disapproves of the proposed action.

The thirty-day period referred to in this paragraph shall commence upon the receipt by each such committee of the notice referred to in the preceding sentence. In computing such period there shall not be taken into account any day in which either House of Congress is not in session because of an adjournment of more than three calendar days to a day certain or an adjournment sine die. Each committee referred to in this paragraph may approve or disapprove a proposal of the Commission under this paragraph in such manner as such committee deems appropriate.

Sec. 2. Monies received by the Commission for the cooperative nuclear research programs may be retained and used for salaries and expenses associated with those programs, notwithstanding the provisions of section 3617 of the Revised Statutes (31 U.S.C. 484), and shall remain available until expended.

Sec. 3. During the fiscal years 1982 and 1983, transfers of sums from salaries and expenses of the Nuclear Regulatory Commission may be made to other agencies of the United States Government for the performance of work for which the appropriation is made, and in such cases the sums so transferred may be merged with the appropriation so transferred.

Sec. 4. Notwithstanding any other provision of this Act, no authority to make payments hereunder shall be effective except to the extent or in such amounts as are provided in advance in appropriations Acts.

Sec. 5. (a) Of the amounts authorized to be appropriated pursuant to paragraph (7) of section 1(a), such sums as may be necessary shall be available for interim consolidation of Nuclear Regulatory Commission headquarters staff offices in the District of Columbia and, to the extent necessary, in Bethesda, Maryland.

(b) No amount authorized to be appropriated under this Act may be used, in connection with the interim consolidation of Nuclear Regulatory Commission offices, to relocate the offices of members of the Commission outside of the District of Columbia.

SEC. 6. Of the amounts authorized to be appropriated under section 1, the Nuclear Regulatory Commission may use such sums as may be necessary to issue temporary operating licenses for nuclear power reactors as provided in section 192 of the Atomic Energy Act of 1954, as amended, except that such temporary operating licenses may be issued—

(1) in advance of the conduct or completion of any hearing required by section 192 or by section 189 of such Act, and

(2) without regard to subsection (d) of such section 192 and the findings required by subsection (b) (3) of that section.

SEC. 7. Of the amounts authorized to be appropriated under section 1, the Nuclear Regulatory Commission may use such sums as may be necessary to issue and make immediately effective amendments to licenses for nuclear power reactors where the Commission determines that an amendment involves no significant hazards consideration. Such an amendment may be issued and made immediately effective—

(1) in advance of the conduct and completion of any required hearing, and

(2) without providing the prior notice and publication in the Federal Register referred to in section 189 of the Atomic Energy Act of 1954.

In all other aspects the amendment shall meet the requirements of the Atomic Energy Act of 1954.

SEC. 8. (a) Of the amounts authorized to be appropriated by section 1, such sums as may be necessary shall be used by the Nuclear Regulatory Commission to recommend legislation and regulations which if taken together would reduce by one-half the time for the filing, review and issuance of construction permits, operating licenses and license amendments for a facility for which an application is filed on or after October 1, 1981, under sections 103, 104(b), or 189 of the Atomic Energy Act of 1954.

(b) The recommended regulations and legislation shall be transmitted to Congress pursuant to this section on or before December 31, 1981, along with a report on each of the proposed regulations and legislation which describes their expected impact on reducing and stabilizing the time required to issue construction permits, operating license, and license amendments; safety assurance; judicial review; staff resources and public participation.

SEC. 9. Of the amounts authorized to be appropriated under section 1 for the Office of Nuclear Materials, Safety and Safeguards, such sums as may be necessary shall be used by the Nuclear Regulatory Commission to promptly enter into a memorandum of understanding with the Department of Energy specifying inter-agency procedures for the disposition of radioactive materials resulting from the clean-up of Three Mile Island Unit 2, except those materials approved for disposition prior to the effective date of this Act.

SEC. 10. Of the amounts authorized to be appropriated under section 1, the Nuclear Regulatory Commission may use such sums as may be necessary, in the absence of a State or local emergency preparedness plan which has been approved by the Federal Emergency Management Agency, to issue an operating license for a nuclear power reactor, if it determines that there exists a State, local or utility plan which provides reasonable assurance that public health and safety is not endangered by operation of the facility concerned.

SEC. 11. No funds authorized to be appropriated under this Act may be used by the Commission to promulgate or publish a safety goal for nuclear reactor regulation until public hearings have been conducted by the Commission respecting the establishment of such safety goal. Development of a safety goal for nuclear reactor regulation should be expedited, to the maximum extent practicable, so as to allow for the establishment of a safety goal by the Commission no later than December 31, 1981.

## PURPOSE

As introduced, H.R. 2330 provided for the authorization of funds to the Nuclear Regulatory Commission for fiscal years 1982 and 1983. It contained no amendments to existing law. The Committee on Energy and Commerce considered and reported an amendment in the form of a substitute which not only provides an authorization for appropriations for fiscal years 1982 and 1983, but which also provides the Commission with specific directives to perform certain actions and which gives the Commission the authority to avoid anticipated delays in the licensing process. Nothing in the substitute has applicability beyond fiscal year 1983. There are no amendments to existing law in the Committee substitute.

*Legislative background*

On February 23, 1981, the Nuclear Regulatory Commission forwarded to the Congress proposed legislation authorizing appropriations for the Commission for fiscal years 1982 and 1983. Thereafter, on March 4, 1981, Congressman Morris K. Udall, chairman of the Interior and Insular Affairs Committee introduced the bill (H.R. 2330) which was referred to the Committee on Interior and Insular Affairs. The bill, with a substitute, was ordered reported by that Committee on April 1, 1981.

*Committee action*

On April 10, 1981, the bill, as reported by the Committee on Interior and Insular Affairs, was, pursuant to the Rules of the House, sequentially referred to the Committee on Energy and Commerce. On Wednesday, May 13, 1981, the Subcommittee on Energy Conservation and Power met in open session for the purpose of marking up the bill, H.R. 2330, and voted favorably to report the bill to the Committee with a substitute text.

On Thursday, June 4, 1981, the Committee on Energy and Commerce met in open session and considered the Subcommittee on Energy Conservation and Power's substitute, and considered additional amendments, after which the committee, by a voice vote ordered the bill reported to the House with an amendment in the nature of a substitute.

*Summary of H.R. 2330*

The committee amendment to H.R. 2330 authorizes appropriations to the Nuclear Regulatory Commission for fiscal year 1982 and 1983. The bill, as reported by the committee, authorizes a total of \$500,700,000 for fiscal year 1982 and \$530,000,000 for fiscal year 1983, with the funds for each year being divided into seven categories which correspond to the Commission's major program areas.

Under the committee amendment, the Commission is directed to use not more than 1 percent of the funds authorized to enter into grants and cooperative agreements with universities, and is further directed, in making such grants, to pay close attention to opportunities for entering into such agreements with appropriate historically predominant minority universities and research centers.

The committee amendment to H.R. 2330 establishes a procedure for congressional review and prior approval of any proposed action by the

Commission to reprogram amounts in excess of \$500,000 for purposes other than those authorized in section 1(a).

The Commission is authorized to use such sums as may be necessary to accomplish the interim consolidation of the NRC's headquarters staff in the District of Columbia and, to the extent necessary, in Bethesda, Md., but is prohibited from using any funds for the purpose of moving the office of the Commissioners outside of the District of Columbia.

The Commission is also authorized to use such sums as may be necessary to issue temporary operating licenses in advance of the conduct or completion of any hearing required under section 192 or section 189 of the Atomic Energy Act and without regard to subsection (d) of section 192 and without regard to the findings required by subsection (b)(3) of section 192. The Commission is also authorized to issue and make immediately effective amendments to licenses in advance of or prior to the completion of any required hearing where the Commission determines that such amendment involves no significant hazards consideration.

The committee substitute also directs the Commission to submit to the Congress, by December 31, 1981, a report, including recommendations for legislation and regulations which, if taken together, would reduce by one-half the time for the filing, review and issuance of construction permits, operating licenses and license amendments for applications filed after October 1, 1981.

Under the committee amendment, the Commission is authorized to enter into a memorandum of understanding with the Department of Energy specifying interagency procedures for the disposition of radioactive materials resulting from the cleanup of the Three Mile Island Unit 2, except for those materials approved for disposition prior to the effective date of this Act.

The committee amendment also authorizes the Commission, in the absence of a State or local emergency preparedness plan which has been approved by the Federal Emergency Management Agency to issue operating licenses for nuclear power reactors if it determines that there exists a State, local or utility plan which provides reasonable assurance that the public health and safety is not endangered by the operation of the facility.

Finally, the subcommittee amendment also provides that the Commission's safety goal cannot be finalized until all the legislative-type public hearings are complete. The Commission is urged to complete this safety goal, to the maximum extent practicable, by December 31, 1981.

#### COMMITTEE COMMENTS

##### *Amounts authorized*

H.R. 2330, as reported by the Committee on Energy and Commerce authorizes a total of \$500,700,000 for fiscal year 1982 and \$530,000,000 for fiscal year 1983 to the Nuclear Regulatory Commission. While this is identical to the total amounts requested by both the Carter and Reagan administrations, the totals for fiscal year 1982 are \$14,828,000 and, for fiscal year 1983, \$16,900,000, above the amounts authorized by the Committee on Interior and Insular Affairs.



The reductions imposed by the Committee on Interior and Insular Affairs can be separated into two major areas. First, that committee approved a 2 percent across-the-board budget reduction for the Commission, which is explained in the committee report (H. Rept. 97-22, pt. I, p. 10), "was predicated on the belief that Federal spending must be reduced and that the Commission must share the burden." In view of the concern of the Committee on Energy and Commerce about the ability of the Commission to simultaneously address the safety issues raised as a result of the action at Three Mile Island and to continue the licensing process in a manner which avoids anticipated delays, this committee believes that an across-the-board budget reduction is unwarranted, especially in view of the additional requirements imposed upon the Commission to accelerate the licensing process by this committee's substitute. The Commission has presented testimony to this committee that the budget, as submitted, reflects efforts to economize and already incorporates a number of reductions in specific program areas from the amounts sought by the program office.

Moreover, at the time the Commission testified before the Subcommittee on Energy Conservation and Power, it was anticipating the need to reprogram approximately \$8 million to accelerate the licensing process administratively. Chairman Hendrie responded that most of the funds would be reprogrammed from technical assistance support programs in the Office of Nuclear Reactor Regulation but noted that some would have to come from other programs, such as Research and Standards. Commissioner Bradford, however, expressed concern about the potential impact of the reprogramming.

The primary overall criticism that the Commission received in the wake of the Three Mile Island accident was that it was devoting insufficient attention to safety issues and operating reactors, and too much attention historically to getting out licenses.

In the 2 years following the accident, we undertook a number of programs designed to reorient those priorities and establish better balance. If, in fact, and I don't want in any way to imply that it has occurred yet, but if, in fact, the climate over the next few years requires us to reorient our focus again entirely to the issuance of new licenses, it seems to me that there is inevitable compromise of safety related programs and operating reactors that may or may not come in squeezing for this \$7 or \$8 million.

But at some point, as you talk about redirecting resources and using neutral phrases like that, you really are talking about at first slidding and deferring, and then ultimately canceling programs that are directed at assessing the safety in the operating plants, or upgrading safety in the operating plants.

Although, during the course of the subcommittee hearing, the Commission was asked by a number of members to submit data as to the amounts needed to insure that both the safety and licensing functions would be fully funded at levels sufficient to avoid having to compromise either function, the Commission has failed to provide such informa-

tion. As the Commission was fully aware of the actions of the subcommittee in accelerating the licensing process, and as numerous members of the Commission submitted comments on those provisions, the Commission's failure to submit any information regarding the budgetary impact of these provisions and other efforts to accelerate the licensing process can only be interpreted as indicating that the licensing provisions will not compromise safety activities and that the Commission can fully perform its statutory responsibilities without the need for any supplemental requests during the next 2 fiscal years. Indeed, in his testimony before the subcommittee on March 30, 1981, Commissioner Bradford indicated that provisions such as those contained in the committee substitute would avoid having to compromise either function when he stated:

In fact, one of the reasons why interim licensing has seemed acceptable to me is that it does relieve some of the pressure to choose between safety on the one hand and licensing on the other, to the extent that the line can be drawn between the two.

In adopting the licensing provisions, the committee expects that the Commission will vigorously maintain its safety activities and oversight of operating reactors, and that the effort supporting these activities will not be compromised, and that the funds provided in the authorization will be sufficient to accomplish these objectives.

The second major reduction imposed by the Committee on Interior and Insular Affairs was in the funding for the establishment of a Nuclear Data Link (NDL). The reductions in this program authorized by the Committee on Interior and Insular Affairs total \$4,813,000 for fiscal year 1982 and \$6,300,000 for fiscal year 1983.

The Nuclear Data Link is designed to provide the Commission's Incident Response Center with instantaneous communications with licensed reactors in order to improve the transmission of the operating parameters of the reactor's major systems in the event of an accident. In testimony before the Subcommittee on Energy Conservation and Power, Commissioner Glinesky stated:

... I think it is important that we are proceeding in a way that our chairman laid out, sequentially, that we examine the functioning of such a data link, using perhaps a little more rudimentary equipment than one might if one were to go forward to try the concept, and to see what kind of relationship develops between us and the licensees. That will undoubtedly give us ideas on what it is we need, and what sort of system we would like to see in place in the future.

Mr. Stello, the Director of the Office of Inspection and Enforcement, which is the Office in which the NDL would be established, stated that, without the Interior Committee amendment—

... then it would allow all the moneys to move forward with the NDL as originally proposed, which would be full implementation of the system at least beginning in 1982. At the moment, just going with the prototype, as the Chairman indicated, is information gathering and experience for us. But

before we begin to put the NDL at all in the plants, we have to have the authority to do so, and the further away that is in the future, the further away that is put into the future, obviously, the further we will be from the full implementation of the NDL.

As one of the major problems identified in the studies of the accident at the Three Mile Island nuclear reactor was the poor communication of needed technical information regarding operating conditions, and as one of the primary recommendations was the establishment of such an instantaneous data link, the committee provided the Commission with the amount requested for this activity, without making the availability of such funds subject to further congressional action. In doing so, the committee expects that the Commission will proceed to establish this system in an orderly and cautious fashion, installing first a prototype linking the NDL with a limited number of representative operating reactors and possibly a simulator. Experience gained from such operation will be used in designing the ultimate system. The committee expects that, following the establishment of a prototype, the Commission will submit to the Congress a report evaluating its experience with such a system, and afford the appropriate authorizing committees of Congress the opportunity to determine if the establishment of the entire system is desirable. The committee wishes to emphasize that the establishment of this system is for the purpose of transmitting data in the event of a nuclear incident or abnormal occurrence in order to monitor such events, and that in all events, the responsibility for the actual operation of the reactor rests with the licensee. The committee recognizes that the Commission and its staff are not as competent to operate a reactor as those at the site, who are familiar with the idiosyncrasies of the particular unit, and that the information transmitted by the NDL will, in no way, be used to usurp the operator's prerogatives. The committee expects that the Commission will promptly identify the nature and scope of the information which needs to be transmitted in the event of an incident or abnormal occurrence, and establish criteria for the circumstances under which such information is to be transmitted.

#### *Nuclear Regulatory Commission Office consolidation*

For the past few years, this committee has been concerned about the fact that the Commission's staff has been scattered in 10 different buildings at five different locations in Washington, D.C. and suburban Maryland.

The Commission itself has unanimously concluded that the physical separation of the NRC staff has a significant adverse effect on the agency's operations. This conclusion has been supported by both the President's Commission on the Accident at Three Mile Island (the Kemeny Commission) and the Nuclear Regulatory Commission's Special Inquiry Group, both of whose reports recommended the prompt consolidation of the agency's staff. Moreover, in its September 26, 1980 letter to President Carter, the Nuclear Safety Oversight Committee stressed the importance of achieving this consolidation.

While there have been discussions over the past several years regarding the construction of a new building to house the entire Com-

mission staff, it is apparent that it will be several more years before such a building would be available for occupancy. Moreover, there is no funding for such a building included in the administration's fiscal year 1982 budget. In view of this, the committee supports efforts to achieve an interim consolidation which would at least enable the Commission staff to be housed in two locations. This would, to a great extent, solve some of the management problems. Last year, the Office of Management and Budget proposed consolidating the staff by relocating half of the staff in the Matomic Building (1717 H Street, NW, Washington, D.C.), which presently Houses the Offices of the Commissioners, and half in a single building in Bethesda, Md. The Commission regards this Office of Management and Budget plan as "the acceptable short-term solution identified to date." However, since that proposal was offered, the General Services Administration has signed a lease for a building at Fifth and D Streets, SW., for use by the Department of Health and Human Services. Since signing the lease, the program that was to be housed there has been reduced to the point where the office space is no longer needed. Although the present building is not of sufficient size to house the entire Commission staff, an addition to the building is presently under construction, which, when completed and combined with the space already leased, would provide sufficient space for the consolidation of the entire Commission staff in a single location. It is expected that this building would be ready for occupancy within 18 months.

The committee strongly supports efforts to achieve the consolidation of the Commission staff at a single location as rapidly as possible, and believes that the location in Southwest Washington, D.C. should be expeditiously considered. In the event that the location is deemed unsuitable, the Office of Management and Budget plan should be promptly implemented. However, the committee strongly believes that the offices of the Commissioners should remain in the District of Columbia.

To accomplish this objective, the committee substitute authorizes the Commission to use such sums as may be necessary for interim consolidation of the NRC offices in the District of Columbia and, to the extent necessary, in Bethesda, Md. The committee substitute also prohibits the use of any funds authorized under the bill for the purposes of relocating the offices of the Commissioners outside the District of Columbia.

#### *Temporary operating licenses*

Following the submission of its budget request, the Commission, on March 18, 1981, submitted to the Congress a request that it be given the statutory authority to issue interim operating licenses. As submitted, the proposed language would allow the Commission to issue an interim operating license authorizing fuel loading and low-power operation and testing for an individual reactor, in advance of the conduct or completion of an on-the-record evidentiary hearing on contested issues. In submitting this proposal, the Commission acknowledged that the legislation represented an extraordinary and temporary cure for an extraordinary and temporary situation.

The extraordinary and temporary problem cited by the Commission refers to the present licensing situation where it currently appears

that the licensing process for a significant number of reactors will extend beyond the date when construction should be complete and the reactors are ready to operate. The following reactors have been identified by the Commission as facing this potential: Sumner (South Carolina); Diablo Canyon 1 and 2 (California); San Onofre (California); Zimmer (Ohio); McGuire (North Carolina); Enrico Fermi (Michigan); Susquehanna (Pennsylvania); Waterford (Louisiana); Shoreham (New York); and Commanche Peak (Texas). Administrative action by the Commission is expected to avoid delays in the operation of the following reactors: Salem 2 (New Jersey); Farley 2 (Alabama); LaSalle 1 (Illinois); Sequey 2 (Tennessee); Grand Gulf (Mississippi); Watts Bar 1 (Tennessee); and WNP 2 (Washington). It is anticipated that the cumulative delay in the licensing of these reactors could total at least 79 months, with individual reactors experiencing delays of from at least one to 13 months. As a result of these delays, costs will be incurred for replacement power and additional financial carrying charges. The Commission's April, 1981 report to Congress included delay cost estimates by the Department of Energy of \$2.3 billion, based upon a total projected delay of 102 months and upon the assumption that delay costs are limited to replacement power plant costs alone. Representatives of the nuclear industry have argued that, if utility financial carrying charges are included, the cost of delay could total between \$2.7 and \$3.6 billion.

In order to minimize the potential imposition of these costs upon consumers and utilities, the committee included in the substitute a provision which authorizes the Commission to issue, pursuant to section 192 of the Atomic Energy Act of 1954, as amended, temporary operating licenses in advance of the conduct or completion of any hearing required by section 189 or section 192 of the Atomic Energy Act, and without regard to subparagraph (d) of section 192 and without regard to the findings required by subparagraph (b) (3) of section 192 of the Atomic Energy Act of 1954, as amended. Under the committee provision, the required hearings must still be held, but they may be held following the issuance of a temporary operating license. However, the substantive standard for the issuance of a temporary operating license is the same as required for the issuance of a normal operating license, in that, in issuing a temporary operating license, the Commission would still have to find that the requirements of all applicable law, other than the conduct or completion of any hearing required by section 189 or 192, are met, including compliance with all the rules and regulations of the Commission applicable to the licensing of an operating reactor and the finding that there is reasonable assurance that the temporary operation of the facility in accordance with such terms and conditions on the operation of the reactor as the Commission may impose, will provide adequate protection of the environment.

The committee recognizes that the anticipated delays are an extraordinary and temporary situation that threatens to impose an unacceptable cost upon consumers and utilities and that the immediate delays do not require compromising the hearing process. Instead, the anticipated delays are primarily the result of the suspension of the licensing process, which was a consequence of the need to divert staff resources away from the licensing process in order to determine

the cause of the accident at the Three Mile Island No. 2 reactor and to incorporate into the Commission's regulations requirements designed to avoid any repetition of the accident. Despite the diversion of the staff's attention, the construction of reactors continued, creating the present situation. The committee has no reason to believe that, had the licensing process not been suspended and the staff utilized for nonlicensing purposes, the hearing process per se would have delayed the operation of the impacted reactors.

The committee believes that the hearing process serves a vital function as a forum for raising relevant issues regarding the design, construction and operation of a reactor, and for providing a means by which the applicant and the Commission staff can be held accountable for their actions regarding a particular facility. The committee feels that the hearing process is essential to obtaining public confidence in the licensing process, which is needed if the nuclear option is to be preserved. In authorizing the Commission to issue temporary operating licenses in accordance with the provisions of the substitute, the committee has elected to preserve the integrity of the hearing process, and thereby has acted to ensure that the rights of parties, including the right to depose the Commission staff, to cross examine witnesses, and to raise relevant contentions, as well as the right of licensing boards and States to raise issues, are fully preserved. Thus, by adopting the interim, compromise provisions in the substitute, the committee is rejecting comprehensive proposals made in other forums which would eliminate the procedural rights of parties and thereby merely preserve the form, and obviate the function, of the hearing process. The reforms contained in the committee substitute are temporary reforms directed at a temporary problem. The committee expects to review the hearing process in the context of a comprehensive approach to licensing reform.

The committee wishes to emphasize that, under the substitute amendment, the Commission is merely authorized, but not required, to issue a temporary operating license in the advance of the conduct or completion of any hearing required to be held under section 189 or section 192. The committee expects that the Commission will promptly act, prior to the effective date of this authorization, to establish expedited procedures, which procedures are in accordance with the requirements of the Administrative Procedures Act and which are appropriate for the full disclosure of material facts on all substantial issues raised in connection with the issuance of any temporary operating license, for any hearing held under the requirements of section 192 of the Atomic Energy Act.

As the authority to issue a temporary operating license in advance of the conduct or completion of any hearing required by section 189 or section 192 of the Atomic Energy Act is an extraordinary and temporary response to a unique situation, the Committee expects that this authority will be exercised, especially in advance of the conduct or completion of the hearing required by section 192, by the Commissioners under firm and stringent guidelines consistent with the requirements of section 192. The committee notes that, as a practical matter, the decision to suspend the licensing process in an individual case is one which, at some time, must be made by the Commission. The com-

mittee expects that, under these firm guidelines, the Commission will avoid placing the staff in the tenuous legal position of ruling on the adequacy and sufficiency of its own findings and work, which may constitute an unconstitutional misjoinder of functions incapable of withstanding judicial review, thereby further delaying the operation of the reactor and defeating the intent of the provision.

The committee also wishes to emphasize that under the substitute amendment, the Commission is given the authority to establish the level of power generation authorized for each temporary operating license in view of the individual circumstances. Thus, while the Commission has the authority to issue a temporary operating license authorizing the full power operation of a given reactor, nothing in the substitute amendment requires the Commission to issue any full power temporary operating licenses. Indeed, the committee expects that, in granting any temporary operating license, and especially one prior to the conduct or completion of any hearing required by section 192, the Commission will exercise extreme caution, as it should in final licenses for operating reactors. The authority to impose on temporary operating licenses limitations is specifically provided in section 192(b)(2) which provides that the temporary operating license shall contain such terms and conditions as the Commission may deem necessary, and by section 192(b)(1) relating to complying with the requirement of section 185 of the Atomic Energy Act.

The committee notes that, under the substitute amendment, the Commission is directed, under section 192(c) to vacate any temporary operating license if it finds that the applicant is not prosecuting the application of its final operating license with due diligence. Although the committee rejected an amendment which would have statutorily imposed a one-year limitation on the duration of a temporary operating license because it did not feel that such a limitation would be sufficient to avoid delays confronting all affected reactors, the committee believes that both the applicant and the Commission have a strong responsibility to prosecute any pending license application and that it is the Commission's special responsibility to insure that the applicant pursues its application for a final operating license with vigor, and that it will exercise its authority to revoke a temporary operating license whenever it finds that the applicant is being dilatory. In adopting the substitute, the committee in no way seeks to establish a mechanism for avoiding the requirements of the normal licensing process, and the committee will exercise strong oversight activities to insure that this directive is fully enforced. Moreover, the committee, in authorizing the issuance of temporary operating licenses, does not intend that the Commission, in any way, relax its efforts to initiate administrative reforms which would avoid delays in the licensing process.

#### *Advisory committees*

In the course of the committee's deliberations on the Nuclear Regulatory Commission's authorization, it considered an amendment which would have prohibited the Commission from utilizing any of the funds authorized to be appropriated to establish any steering committee, advisory committee or similar committee or group which was comprised in whole or in part of representatives of the nuclear power industry or of individuals employed by organizations, institutes or

associations which are wholly or partially controlled by or otherwise closely associated with the nuclear power industry unless the membership of such committee or group also includes an equivalent number of individuals who represent organizations of citizens concerned with nuclear reactor safety and who do not represent the views of the nuclear power industry.

In considering the proposed amendment, certain members of the committee noted that its scope encompassed almost any type of advisory committee to the Commission, some of which were formed to consider highly technical and very specific issues, in which case it would be difficult to comply with the requirements of the amendment because of the lack of technical expertise outside of the nuclear industry.

Additionally, the language of the amendment raised certain technical problems regarding its interpretation. For example, the term "nuclear power industry" is not defined, and it would therefore be difficult to identify individuals who are employed by organizations, institutes or associations which are wholly or partially controlled by or funded by or otherwise closely associated with the nuclear power industry. For example, would such term include any member from a faculty of a university which is conducting research for a reactor manufacturer, even though the individual faculty member may not be involved in the research and may, in fact, be personally opposed to nuclear power, on the grounds that the faculty member is part of an organization which is partly funded by a member of the nuclear power industry? Would an individual's membership in a professional organization associated with the nuclear industry require the appointment of a citizen representative, without regard to the member's particular views? How would it be determined that one does not represent the views of the nuclear power industry?

Because of these concerns, the amendment was not adopted. However, the committee believes that all advisory and similar committees, wherever possible and appropriate, should be composed of a broad range of representative views, and that, where appropriate, members of the public serve on such committees. The committee expects that in forming any advisory or similar committee, the Commission will fully comply with the requirements of the Federal Advisory Committee Act (86 Stat. 770).

#### HEARING

On March 30, 1981, the Subcommittee on Energy Conservation and Power held a hearing on the Nuclear Regulatory Commission's authorization request for fiscal years 1982 and 1983. The Chairman of the Nuclear Regulatory Commission, Joseph F. Hendrie, testified, together with Commissioners Victor Gilinsky, John Ahearne and Peter Bradford. They were accompanied by the Directors of the major Commission program Offices.

#### AUTHORIZATION REQUESTS

The Nuclear Regulatory Commission's budget request for fiscal year 1982 is for \$500,700,000, which is \$53,180,000, or 10.6 percent, greater than the amount appropriated in fiscal year 1981 and the estimate for fiscal year 1983 is \$530,000,000.



## HOUSE AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEAR 1982

The fiscal year 1982 budget requests, in thousands, for the major offices of the NRC are as follows:

	Estimated expenditures FY 1981	NRC budget request FY 1982	FY 1983
Nuclear reactor regulation.....	\$75,320	\$75,610	\$78,280
Standards development.....	16,950	17,950	17,999
Inspection and enforcement.....	59,700	67,680	70,270
Nuclear material safety and safeguards.....	38,720	46,700	48,020
Nuclear regulatory research.....	216,150	231,940	252,180
Program technical support.....	19,400	19,140	20,610
Program direction and administration.....	40,076	41,680	42,650
Total.....	466,836	501,200	530,000

The estimated expenditures for fiscal year 1981 are greater than the amount appropriated because the appropriations bill authorizes the carryover of unobligated funds, which, at the beginning of fiscal year 1981 totaled \$11,996,000. There is an additional \$500,000 expended, which represents income from orders received from other Federal agencies.

The budget request in thousands in terms of functions, rather than programs, is as follows:

	Estimated FY 1981	Estimated FY 1982
Salaries and benefits.....	\$127,839	\$133,498
Program support and contracts.....	269,803	293,701
Administrative support.....	49,461	52,845
Travel.....	8,965	11,750
Equipment.....	10,268	8,906
Total.....	466,335	500,700
Reimbursable programs.....	500	500
Total obligations.....	466,836	501,200

The authorization permanent personnel level requested in the proposed fiscal year 1981 budget is as follows:

	Estimated FY 1981	Estimated FY 1982	FY 1983
Nuclear reactor regulation.....	\$720	\$735	\$740
Standards development.....	161	161	161
Inspection and enforcement.....	946	1,020	1,040
Nuclear material safety and safeguards.....	335	345	350
Nuclear regulatory research.....	178	174	744
Program technical support.....	296	293	300
Program direction and administration.....	754	773	777
Total.....	3,390	3,501	3,542

## PROGRAM DESCRIPTION

*Nuclear reactor regulation*

The Commission has requested a total authorization of \$75,610,000 for the Office of Nuclear Reactor Regulation, which is \$290,000 greater than the amount authorized by the House for fiscal year 1981.

The following chart indicates how the requested funds would be utilized by function:

	Estimated 1980	Estimated 1981
Salaries benefits.....	\$29,320	\$30,420
Program support.....	33,978	31,335
Administrative support.....	10,792	12,297
Travel.....	230	1,558
Equipment.....	0	0
<b>Total obligations.....</b>	<b>75,320</b>	<b>75,610</b>
Personnel.....	722	722

The following table indicates how the requested funds in thousands would be apportioned by programs (primarily contractual support):

	Estimated FY 1981		Estimated FY 1982	
	Dollars	People	Dollars	People
Operating reactors.....	9,992	241	6,915	242
Operator licensing.....	170	24	3,920	37
Casework.....	14,150	198	10,200	157
Safety technology.....	8,193	125	9,200	148
TMI cleanup.....	1,473	21	1,100	21
Management direction and support.....	0	76	0	76
<b>Total.....</b>	<b>33,978</b>	<b>684</b>	<b>31,335</b>	<b>681</b>

The Office of Nuclear Reactor Regulation (NRR) authorizes the construction and licenses the operation of nuclear power reactors, processes and issues license amendments and refueling applications, studies and responds to unresolved generic safety issues and responds to nonroutine operating events at nuclear reactors which require immediate attention, and generally oversees operating reactors.

There are presently 68 nuclear power reactors in operation in the United States with an additional 2 plants having a license to begin low power testing. There are 82 additional plants under construction and 11 applications for a construction permit. This Office also expects to process approximately 1,100 license amendments, act on applications to modify or expand spent fuel storage pool at reactor sites and address many of the unresolved generic safety issues which impede the process of licensing individual reactors.

This Office has responsibility for reviewing operating reactors, and both the Kemeny Commission and the Rogovin Report were critical of the Commission's failure to devote sufficient attention to operating reactors and to systematically review their experience as a means of identifying problems and communicating these problems to utilities with similar reactors. Last year there was a significant decrease in the casework category (38.5 percent), which processes license applications. The Commission has recently been severely criticized for failing to process license applications, and is now proposing to substantially increase the casework category to process reactor licensing. (See discussion in issues section.)

### Standards development

The Commission's request for the Office of Standards Development is \$17,950,000, which is \$980,000, or 5.7 percent, more than allocated to this Office for fiscal year 1981.

The following chart indicates how the requested funds would be utilized by function:

	Estimated FY 1981	Estimated FY 1982	FY 1983
Salaries and benefits.....	\$6,670	\$6,890	\$7,000
Program support.....	7,603	8,310	8,075
Administrative support.....	2,457	2,415	2,565
Travel.....	240	335	350
Equipment.....	0	0	0
Total obligation.....	16,970	17,950	17,990
Personnel.....	161	157	

The following table represents the allocation of funds in thousands (primarily contract support) by program:

	Estimated FY 1981		Estimated FY 1982	
	Dollars	People	Dollars	People
Reactor engineering standards.....	870	54	850	53
Fuel cycle and material engineering standards.....	1,242	23	1,260	22
Siting standards.....	833	12	1,050	12
Waste management standards.....	890	28	1,120	28
Safeguards standards.....	1,905	13	1,945	12
Radiation protection standards.....	1,863	19	2,285	18
Management direction and support.....	0	12	0	12
Total.....	7,603	161	8,310	157

The Office of Standards Development is responsible for developing the technical regulations and guides which establishes the standards and regulations relating to the regulation of nuclear facilities and the commercial uses of special nuclear materials. These include safety, safeguard, health and environmental regulations applicable to nuclear reactors, nuclear fuel facilities, transportation systems, waste facilities, international activities and medical and commercial uses of nuclear materials.

### Inspection and enforcement

The Commission has requested a total of \$67,680,000 for the Office of Inspection and Enforcement, which is an increase of \$7,980,000, or 13 percent, above the funds provided this Office in fiscal year 1981.

The following chart indicates how the requested funds would be utilized by function:

	Estimated FY 1981	Estimated FY 1982	FY 1983
Salaries and benefits.....	\$36,030	\$38,120	\$39,450
Program support.....	9,256	12,391	10,795
Administrative support.....	8,063	9,566	10,563
Travel.....	4,520	6,097	6,492
Equipment.....	1,831	1,506	2,970
Total obligation.....	59,700	67,680	70,270
Personnel.....	976	1,006	

The following table indicates how the requested funds, in thousands, would be apportioned by program (primarily contractual support) :

	Estimated FY 1981		Estimated FY 1982	
	Dollars	People	Dollars	People
Reactor engineering and construction program.....	395	180	1,010	192
Reactor operations program.....	415	287	275	296
Radiological safety program.....	1,898	203	2,594	206
Safeguards program.....	1,166	92	1,102	92
Enforcement, investigations, and special programs.....	5,207	134	6,985	140
Management direction and support.....	175	80	425	80
Total.....	9,256	976	12,391	1,008

The Office of Inspection and Enforcement (I. & E.) inspects licensees and their contractors to ascertain compliance with Commission regulations, rules, orders and license provisions to insure that the licensees are taking required and appropriate actions to protect nuclear materials and facilities, the environment, and the health and safety of the public. I. & E. also investigates incidents, accidents, allegations and other unusual circumstances.

This Office also inspects manufacturers who supply equipment used in the construction and operation of nuclear powerplants and is responsible for the safe transportation of nuclear materials and its safe use in commercial and medical operations.

Under the fiscal year 1982 request, this Office would add 30 personnel.

#### *Nuclear materials safety and safeguards*

The Commission has requested a fiscal year 1982 authorization for the Office of Nuclear Materials Safety and Safeguards (NMSS) of \$46,700,000 which is \$7,980,000, or 20.6 percent, more than the amount provided in fiscal year 1981.

The following chart indicates how the requested funds would be utilized by function :

	Estimated FY 1981	Estimated FY 1982	FY 1983
Salaries and benefits.....	\$11,910	\$13,050	\$13,600
Program support.....	17,095	24,040	24,440
Administrative support.....	9,155	9,075	9,420
Travel.....	560	535	560
Equipment.....	0	0	0
Total obligations.....	38,720	46,700	48,020
Personnel.....	329	329	

The following table indicates how the requested funds in thousands would be apportioned by program (primary contractual support) :

	Estimated FY 1981		Estimated FY 1982	
	Dollars	People	Dollars	People
Fuel cycle and material safety.....	4,250	102	4,330	105
Safeguards.....	2,510	102	2,735	94
Waste management.....	10,235	106	16,875	111
Management direction and support.....	100	19	100	19
Total.....	17,095	329	24,040	329

The Office of Nuclear Materials Safety and Safeguards (NMSS) licenses and regulates all facilities and materials, except reactors associated with the processing, transport and handling of nuclear materials including maintenance of safeguards. NMSS also reviews safety and safeguards programs of all such facilities and materials including monitoring, testing and upgrading internal accounting systems and developing plans for dealing with threats, thefts and sabotage at both the domestic and international levels.

NMSS fuel cycle regulatory responsibilities encompass uranium mills, uranium conversion facilities, fuel fabrication plants, spent fuel storage facilities and waste disposal sites. NMSS also certifies transport containers and licenses radioisotopes used in medicine, industry and science.

The major portion of NMSS's budget increase is contained in the Waste Management Program. Because of the importance of this program, the Commission established a Waste Management Division within this Office. Historically, the problems associated with waste management received little regulatory attention because early plans did not call for the licensing of such facilities. When attention began to focus on waste management, the Commission found itself without an established regulatory program capable of processing applications for terminal depositories.

#### *Nuclear Regulatory Research*

The Commission is requesting an authorization of \$231,940,000 for the Office of Nuclear Regulatory Research (RES), which is an increase of \$14,790,000 above the amount provided for in fiscal year 1981.

The following chart indicates how the requested funds would be utilized by function:

	Estimated FY 1981	Estimated FY 1982	FY 1983
Salaries and benefits.....	\$7,595	\$7,840	\$8,100
Program support.....	196,953	213,200	231,080
Administrative support.....	2,545	2,925	3,100
Travel.....	580	575	620
Equipment.....	8,477	7,400	9,280
<b>Total obligations.....</b>	<b>216,150</b>	<b>231,940</b>	<b>252,180</b>
Personnel.....	164	170	

The following table indicates how the requested funds in thousands would be apportioned by program (primarily contractual support):

	Estimated FY 1981		Estimated FY 1982	
	Dollars	People	Dollars	People
LOCA and transient.....	61,917	26	51,000	24
LOFT.....	42,400	7	44,000	7
Plant operational safety.....	29,624	26	37,000	27
Severe accident phen. and mitigation.....	19,798	15	20,200	16
Siting and environmental.....	12,014	13	14,400	13
Waste management.....	11,700	14	21,500	16
Safeguards and fuel cycle safety.....	8,500	13	10,200	13
Systems and reliability analysis.....	11,000	25	14,900	28
Program direction and support.....	0	24	0	26
<b>Total.....</b>	<b>196,953</b>	<b>164</b>	<b>213,200</b>	<b>170</b>

The Office of Nuclear Regulatory Research (RES) conducts research to support the licensing and regulatory process. It performs work on analytical methods and obtains necessary data which is needed to formulate regulatory decisions. It constitutes the largest program of the Commission and consumes almost 50 percent of the Commission's funds.

Under the provisions of the Energy Reorganization Act of 1974, which established the Nuclear Regulatory Commission as an independent regulatory agency, the Commission is prohibited from conducting original research which may be viewed as promoting nuclear energy and thereby compromise the Agency's regulatory integrity. Consequently, the Commission is confined to performing confirmatory research which independently verifies safety data and analytical methods which are used in the formulation of regulatory standards and licensing criteria. Under an amendment to the 1978 Fiscal Year Authorization Act, the Commission can conduct limited original research on safety problems relating to the operation of a nuclear powerplant.

#### *Program technical support*

The Commission is requesting an authorization of \$19,140,000 for program technical support, which is \$260,000 less than authorized in fiscal year 1981.

The following chart indicates how the requested funds would be utilized by function:

	Estimated FY 1981	Estimated FY 1982	FY 1983
Salaries and benefits.....	\$10,889	\$11,280	\$11,850
Program support.....	2,786	2,463	2,623
Administrative support.....	4,590	4,217	4,907
Travel.....	1,135	1,180	1,230
Equipment.....	0	0	0
<b>Total program costs.....</b>	<b>19,400</b>	<b>19,140</b>	<b>20,610</b>
Personnel.....	267	278	

The following table shows the allocation of personnel for each sub-program for this activity:

	FY 1981	FY 1982	FY 1983
Advisory Committee on Reactor Safeguards.....	42	43	43
Atomic Safety and Licensing Board Panel.....	37	37	37
Atomic Safety and Licensing Appeal Panel.....	15	15	15
Office of the Executive Legal Director.....	98	106	106
Office of the State Program.....	39	28	28
Office of the International Program.....	35	31	31
Office for Analysis and Evaluation of Operation Data.....	22	33	40

Authorizations for program technical support provide funds for salaries and other costs needed to operate the Advisory Committee on Reactor Safeguards which reviews and reports on safety studies and facility license applications and studies potential hazards; the Atomic Safety and Licensing Board panel which conducts adjudicatory hearings regarding the granting, suspending, revoking and amending re-

views appeals for Licensing Boards; the Office of the Executive Legal Director which provides legal advice and services to the Executive Director of Operations and represents the Commission staff at programs which develop and direct programs of cooperation with states, local governments and interstate organizations; and the Office of International Programs which negotiates and implements international regulatory and safety information exchanges, licenses the imports and exports of nuclear materials and facilities, engages in non-proliferation and international safeguards policy planning and support for NRC international activities.

*Program direction and administration*

The Commission is requesting an authorization of \$41,680,000 for Program direction and support, which is an increase of \$1,604,000, or 4 percent.

The following chart indicates how the requested funds would be utilized by function:

	Estimated FY 1981	Estimated FY 1982	FY 1983
Salaries and benefits .....	\$25,425	\$25,898	\$26,400
Program support .....	2,092	1,962	1,962
Administrative support .....	11,859	12,350	12,958
Travel .....	700	1,470	1,330
<b>Total program costs .....</b>	<b>40,076</b>	<b>41,680</b>	<b>42,650</b>
Personnel .....	755	775	

The following table shows the allocation of personnel among the various components of this budget category:

	FY 1981	FY 1982	FY 1983
Office of the Commissioners .....	31	31	31
Office of the Secretary .....	42	43	42
Office of the General Counsel .....	26	30	30
Office of the Policy Evaluation .....	18	18	18
Office of the Inspector and Auditor .....	28	33	33
Office of the Congressional Affairs .....	9	9	9
Office of the Public Affairs .....	19	21	21
Executive Director for Operations .....	12	12	12
Office of Equal Employment Opportunity .....	6	7	7
Office of the Comptroller .....	68	68	68
Office of the Management and Program Analysis .....	76	76	76
Office of the Administration .....	419	425	429
<b>Total .....</b>	<b>754</b>	<b>773</b>	<b>777</b>

Authorizations for Program direction and administration provide funds for the salaries and expenses of the Commissioners, and the staffs of the Offices of the Secretary, General Counsel, Policy Evaluation, Inspector and Auditor, Congressional Affairs, Public Affairs, Office of the Executive Director, Equal Employment Opportunity, Comptroller, Planning and Analysis, Management Information and Program Control and Administration.

SECTION-BY-SECTION ANALYSIS, NUCLEAR REGULATORY COMMISSION, FISCAL YEAR 1981 AUTHORIZATION, AS REPORTED BY THE COMMITTEE ON ENERGY AND COMMERCE

SECTION 1—AMOUNTS AUTHORIZED

*Summary*

Section 1 of the bill provides the Nuclear Regulatory Commission with a total authorization of \$500,700,000 for fiscal year 1982, and \$530,000,000 for fiscal year 1983. The Commission is authorized to use up to one percent of the amount authorized for the purpose of making research grants and cooperative agreements with universities, and in doing so, is directed to pay close attention to the opportunities for entering into agreements with the appropriate historically predominant minority universities and research centers. The Commission's authority to reprogram any funds in excess of \$500,000 for purposes other than those specified in section 1(a) is limited until the authorizing committees of Congress have reviewed the proposed reprogramming.

*Discussion*

The total amount authorized is equal to the amount requested by the Commission and is identical to the request of both the Carter and Reagan Administrations. The Committee substitute restores to the Commission funds deleted by the Committee on Interior and Insular Affairs because this Committee believes that, in view of the present backlog in the licensing process, an across-the-board reduction as proposed by the Committee on Interior and Insular Affairs, would be counterproductive and might result in compromising safety objectives.

Section 1(b) authorizes the Commission to use up to 1 percent of the amount authorized to the Office of Nuclear Reactor Research to making research grants and other research arrangements with universities under the provisions of section 31(a) of the Atomic Energy Act. This subsection was amended by the Subcommittee on Energy Conservation and Power to provide that, in making such grants, the Commission should pay close attention to the opportunities for entering into agreements with appropriate historically predominant minority universities and research centers. It is understood that the use of the word "appropriate" in the amendment is to be interpreted to require that any such historically predominant minority university and research center be, in all respects, qualified to conduct the research.

Section 1(c) limits the Commission's authority to reprogram funds. Under this provision, any reprogramming of funds in excess of \$500,000 for purposes other than those specified in section 1(a) is prohibited until a 30-day period of continuous session has passed following the submission of a report by the Commission to the authorizing committees of Congress, unless each such committee, prior to the expiration of the 30-day period, transmits to the Commission written notification that the Committee does not object to the proposed action. The language of this provision, as reported by the committee, differs from the language requested by the Commission because the committee felt that the requested language provided the Commission with too much flexi-



bility to utilize funds for purposes other than those authorized by Congress, and that the substitute language provides more effective Congressional review of Commission actions.

SECTION 2—AUTHORITY TO RETAIN AND USE COOPERATIVE RESEARCH MONEYS

*Summary*

Section 2 authorizes the Commission to retain and use moneys received by the Commission for cooperative nuclear research programs to offset the salaries and expenses associated with the conduct of such programs and to allow such moneys to remain available until expended.

*Discussion*

The provision is necessary to avoid the requirements of 31 U.S.C. 484, which would require that such funds received for these purposes be submitted to the Treasury in which event an appropriation would be needed to make such funds available to the Commission.

SECTIONS 3 AND 4—AUTHORITY TO TRANSFER FUNDS AND PROHIBITION PAYMENTS IN ADVANCE OF APPROPRIATIONS

*Summary*

Section 3 authorizes the Commission to transfer fiscal years 1982 and 1983 funds to other Government agencies to pay the salaries and expenses incurred by those agencies in performing work of the Commission for which an appropriation was made.

Section 4 provides that, notwithstanding any other provision of the authorization, the Commission shall not have any authority to make payments except to the extent or in such amounts as are provided in advance in appropriation acts.

*Discussion*

The authorities provided by section 3 of the bill is technical in nature and are necessary to give the Commission the statutory authority to provide funds to other agencies to perform work for the Commission. Section 4 is also technical in nature, subjecting the Commission's expenditures to the totals contained in appropriation acts.

SECTION 5—CONSOLIDATION OF NRC'S OFFICES

*Summary*

Section 5 authorizes the Commission to use such funds as may be necessary for the purpose of accomplishing the interim consolidation of the Commission's headquarter staff offices in the District of Columbia and, to the extent necessary, in Bethesda, Md. Subparagraph (b) prohibits the utilization of any funds authorized to be appropriated under this Act, in connection with such interim consolidation, to relocate the offices of the members of the Commission outside the District of Columbia.

*Discussion*

This action is designed to address the serious problems adversely affecting the Commission's responsibilities which result from the fact that the Commission's staff is presently housed in ten different buildings located throughout the District of Columbia and suburban Mary-

land. The need to consolidate the Commission's staff was a primary recommendation of both the President's Commission on the Accident at Three Mile Island (the Kemeny Commission) and the NRC's Special Inquiry Group, who cited the problems resulting from the physical separation of the staff in coordinating the Commission's response capabilities in an emergency situation. Additionally, the Nuclear Safety Oversight Committee recently stressed the importance of quickly achieving an interim consolidation.

#### SECTION 6—TEMPORARY OPERATING LICENSES

*Summary*—Section 6 of the bill reported by the subcommittee authorizes the Commission to use such funds as may be necessary to issue temporary operating licenses for nuclear power reactors under the authorities contained in section 192 of the Atomic Energy Act in advance of the conduct or completion of any hearing regarding the issuance of an operating license required under section 192 and section 189 of the Atomic Energy Act, and without regard to subsection (d) of section 192 and without regard to the findings required by subsection (b) (3) of section 192.

*Discussion*—Following the accident at the Three Mile Island nuclear reactor, the Nuclear Regulatory Commission imposed a moratorium on the issuance of new operating licenses for the purpose of determining the cause of the accident and incorporating into its regulations requirements designed to avoid any repetition of the accident. The Commission's review consumed more time than initially anticipated, and diverted staff attention away from the licensing process. Meanwhile, the construction of reactors continued. As a result, it became apparent late last year that a limited number of plants would be sufficiently completed to allow fuel loading and to begin operation prior to the time when all the requirements for the issuance of an operating license would be met.

The Commission initially estimated that, of the 13 plants scheduled to be completed in 1981 or 1982, it would be able to complete the licensing process for only one of these plants prior to its presently anticipated completion date. The Commission further estimated that the remaining 12 plants would experience a total delay of 90 months between the completion of construction and the termination of the licensing process, with individual plants experiencing delays of between one and 13 months each. As the result of certain Administrative actions, the Commission now estimates that a total of 18 plants will now be completed in 1981 and 1982, and that 11 of these plants will experience licensing delays totalling 79 months, with individual plants experiencing delays of between one and 13 months. In its April 30, 1981 report to the Congress, the Commission cited a Department of Energy study which estimated that, based upon a total projected delay period of 102 months and upon the assumption that delay costs are limited to replacement power costs, the cost of delays in the licensing process for these plants would total \$2.3 billion. The nuclear industry has estimated that if these projections included utility financial carrying costs for these plants, the total estimated cost would be between \$2.7 and \$3.6 billion.

Although the Commission has already taken a number of administrative actions to reduce the anticipated delays, it is clear that they will not be sufficient to eliminate them and that substantial delays are still expected for several reactors through the next two fiscal years. As a result, on March 18, 1981, the Commission submitted a legislative proposal to amend the Atomic Energy Act to authorize the Commission to issue, prior to the conduct or completion of an on-the-record evidentiary hearing on contested issues, interim operating licenses, authorizing fuel loading and low-power operation and testing.

The committee amendment differs in several major respects from the Commission's legislative proposal. Under the NRC's requested legislation, the Commission's authority to issue interim operating licenses would be limited to fuel loading and a maximum level of operation of only 5 percent of its full rated power. With this authority, coupled with administrative actions, which have been proposed but not yet implemented, to reduce licensing delays, nine plants would still experience some licensing delay. Moreover, state utility commissions may not allow reactors with just low power licenses to be included in the ratebase, thus resulting in the imposition of increased costs and thereby defeating the purpose of the provision. Consequently, the committee believes that the low-power limitation is inadequate to deal with the anticipated delays of all the affected reactors.

Under the committee substitute, the Commission is given the authority to issue temporary operating licenses under the provisions of section 192 of the Atomic Energy Act in advance of the conduct or completion of any hearing required by that section or by section 189. It is left to the Commission to decide, in each case, whether any hearing required by section 189 or section 192 should be conducted or completed prior to the issuance of the temporary operating licenses and to establish the appropriate level of operation in light of the individual circumstances. Thus, any decision to dispense with any hearing required by the Atomic Energy Act is left to the Commission, as is the decision to set the appropriate level of power operation.

Under the committee substitute, an applicant can file a petition for a temporary operating license only after the report of the Advisory Committee on Reactor Safeguards, the staff's final safety evaluation report, and the staff's final environmental impact statement have been filed. Before issuing any temporary operating license, the Commission must publish a notice of the petition in the Federal Register and provide a 14-day period for parties to the proceeding to file affidavits in support of or opposition to the petition, which can be extended for an additional 10 days. If the Commission, following the publication of the notice and the expiration of the period for public comment, decides to issue a temporary operating license in advance of the conduct or completion of any hearing required by section 192 or by section 189, it can do so only if it first determines (i) that all the requirements of law other than the conduct or completion of any required hearing are met, including all the regulations of the Commission applicable to the licensing of an operating reactor, and (ii) that the temporary operation of the facility in accordance with the terms and conditions of the license will provide adequate protection of the environment during the period of the temporary operating license. Thus, the committee amendment does not, in any way, diminish the substantive standard required

for the issuance of a temporary operating license. In order to issue a temporary license, the Commission must still make all the determinations regarding the issuance of a normal operating license required by law regarding the applicant's compliance with the requirements of law and the rules and regulations of the Commission, including that the issuance of any such temporary operating license provides reasonable assurance that there is adequate protection of the public health and safety and the environment. The committee amendment merely allows the Commission to make these findings prior to the initiation or completion of any hearing on the operating license application. Following the issuance of any temporary operating license, the Commission remains obligated to conduct the hearing required by section 192 and any hearing required by section 189 of the Atomic Energy Act. Moreover, if the Commission at any time following the issuance of a temporary operating license determines that the applicant is not prosecuting its operating license application with due diligence, it is given the authority in section 192 to revoke the temporary operating license. The authority to issue temporary operating licenses expires at the end of fiscal year 1983.

#### SECTION 7—SHOLLY AMENDMENTS TO EXISTING LICENSES

*Summary*—Section 7 of the bill authorizes the Commission to use such funds as may be necessary to issue and make immediately effective amendments to licenses prior to the conduct or completion of any hearing required by section 189 of the Atomic Energy Act and without providing the prior notice and publication in the Federal Register referred to in section 189 if it determines the amendment involves no significant hazards consideration.

*Discussion*—On November 19, 1980, the U.S. Court of Appeals for the District of Columbia Circuit, in *Sholly v. the Nuclear Regulatory Commission*, held that section 189(a) of the Atomic Energy Act required that the Commission, upon request, conduct a hearing on any amendment to a license, even if the Commission determines that the amendment involved no significant hazards consideration. Although under the existing provisions of section 189(a), the Commission is given the authority to dispense with the required prior notice and publication in the Federal Register whenever it determines that the amendment involves no significant hazards consideration, the court ruled that this did not relieve the Commission of the responsibility to, upon request, hold a hearing prior to issuing and making immediately effective any such amendment.

On March 11, 1981, the Commission submitted to the committee proposed legislation which would explicitly authorize the Commission to issue a license amendment which involves no significant hazards consideration prior to the holding or completion of any requested public hearing. This request was based upon the Commission's concern that the requirement that a hearing be held prior to the issuance and immediate effectiveness of an amendment involving no significant hazards consideration to a license could result in a delay in the operation of a reactor and impose unnecessary burdens on the Commission's staff which are not related to significant safety considerations. The Commission has stated that in some cases, the need to

issue amendments to licenses arises quickly, frequently in relation to fuel reloading, and failure to act promptly on the amendment may result in the shutdown, continued outage or derating of the facility.

The committee amendment provides the Commission with the authority to issue and make immediately effective amendments to licenses prior to the conduct or completion of any hearing required by section 189(a) when it determines that the amendment involves no significant hazards consideration. However, the authority of the Commission to do so is discretionary, and does not negate the requirement imposed by the Sholly decision that such a hearing, upon request, be subsequently held. Moreover, the committee's action is in light of the fact that the Commission has already issued for public comment rules including standards for determining whether an amendment involves no significant hazards considerations. The Commission also has a long line of case-by-case precedents under which it has established criteria for such determinations. The Commission's authority to act under this provision expires at the end of fiscal year 1983.

#### SECTION 8—LICENSING STUDY

*Summary*—Section 8 of the bill is an amendment offered by Mr. Moorhead which authorizes the Commission to use such funds as may be necessary to recommend to the Congress proposed legislation and regulations which, if taken together, would reduce, by one-half, the time for filing, review and issuance of construction permits, operating licenses and amendments for applications filed after October 1, 1981. The Commission is directed to submit these recommendations by December 31, 1981, in a report to the appropriate Committees of Congress which is to include a description of the impact of each proposal on: (i) the length of the licensing process; (ii) the adequacy of the safety assurance; (iii) judicial review; (iv) staff resources; and (v) public participation.

*Discussion*—The time consumed in licensing nuclear power reactors has lengthened over the last few years, and this committee, in the past, has repeatedly expressed its interest in determining the causes of this situation. This amendment is designed to establish a basis for considering what administrative and legislative changes can be taken to streamline the licensing process and to evaluate the effect of each such proposal on a variety of factors. This amendment does not direct the Commission to promulgate or issue for public comment any regulations, but to instead formulate an integrated package of regulatory and legislative changes which, if taken as a whole, would reduce the licensing process by one-half, consistent with the Commission's statutory function of protecting the public health and safety. The Commission and each member would, of course, be free to provide comments on each such proposal, and it is expected that the Commission would afford its staff an opportunity to comment on each proposal.

#### SECTION 9—THREE MILE ISLAND WASTE MEMORANDUM OF UNDERSTANDING

*Summary*—Section 9 of the bill directs the Commission to enter into a memorandum of understanding with the Department of

Energy specifying agency procedures for the disposal of radioactive materials resulting from the clean up of Three Mile Island.

*Discussion*—To date, the Department of Energy has failed to respond to inquiries from the Nuclear Regulatory Commission regarding the establishment of interagency procedures regarding the disposal of radioactive wastes resulting from the clean up of the damaged Three Mile Island nuclear reactor. The disposal of these wastes is essential to the clean up of this facility and the failure of the Commission and the Department to enter into a Memorandum of Understanding is a serious impediment to the decontamination activities at the site. A memorandum of understanding is needed to define agency responsibility for the disposal of these materials. This amendment does not vest either the Commission or the Department of Energy with any authority to perform any action at the site beyond those already established by law. Any memorandum of understanding entered into pursuant to this section is to be in full accord with the statutory responsibilities of both the Department and the Commission imposed upon each agency by section 202 of the Energy Reorganization Act of 1974 relating to jurisdiction over commercially generated high level nuclear wastes.

#### SECTION 10—EMERGENCY PLANNING

*Summary*—Section 10 of the bill reasserts the Commission's authority, granted under section 109 of the Nuclear Regulatory Commission's Fiscal Year 1980 Authorization, to use from the amounts authorized to be appropriated such funds as may be necessary to issue an operating license in the absence of an approved state plan, where the Commission determines that there exists a state, local or utility emergency preparedness plan which provides reasonable assurance that the public health and safety will not be endangered by the operation of the facility.

*Discussion*—This provision is designed to clarify certain legal ambiguities in the NRC's emergency planning regulations as to whether the Commission, in the absence of a State or local emergency preparedness plan approved by the Federal Emergency Preparedness Agency, could issue an operating license if it determines that there exists a state, local or utility emergency preparedness plan which provides reasonable assurance that the public health and safety will not be endangered by the operation of the facility. This amendment resolves any legal ambiguity by restating the position contained in section 109 of Public Law 96-295 by requiring that the Commission's regulations be interpreted in a manner consistent with the previously expressed intent of Congress.

#### SECTION 11—PUBLIC MEETINGS ON SAFETY GOALS

##### *Summary*

Section 11 of the bill limits the authority of the Commission to promulgate or publish a safety goal for nuclear power reactors prior to the completion of public hearings and directs the Commission to expedite, to the maximum extent practicable, the development of the safety role so as to allow for its establishment no later than December 31, 1981.

### *Discussion*

The Senate Environment and Public Works Committee report on the Nuclear Regulatory Commission's fiscal year 1981 authorization bill contained language directing the Commission to develop a safety goal as a means of focusing on genuine safety concerns in order to avoid concentrating on issues which divert staff resources but which do not significantly improve safety. As the proposed safety goal is expected to have an impact upon the development of certain major regulatory requirements, such as degenerated core, remote citing, and hydrogen control, the committee believes that the Commission should give greater attention to the prompt establishment of these quantitative safety goals and therefore argues that the Commission, to the maximum extent practicable, allow for the establishment of these goals by December 31, 1981.

In urging the Commission to act in a timely manner, the committee is rejecting suggestions made in other forums that the means to accomplishing this objective is to suspend public hearings on the proposed goals. Instead, the committee substitute specifically provides that the Commission cannot publish or promulgate the safety goal until public hearings have been conducted. The committee believes that the legislative-type hearings, which are being arranged by the League of Women Voters, will provide a useful forum in obtaining meaningful public input into the formulation of the safety goal. Moreover, in attempting to meet the desired schedule, the committee does not expect the Commission to alter its anticipated intention of submitting the proposed goals to a second round of public comment in the fall. In order to keep the committee informed of its progress, the committee requests that the Commission submit a report to the authorizing committees of Congress by October 31, 1981, of the progress which has been made in developing and in implementing the safety goals.

### *Sholly versus the Nuclear Regulatory Commission*

The committee substitute includes a provision which gives the Commission the authority to issue and make immediately effective amendments to licenses in advance of the conduct or completion of any hearing required by section 189 of the Atomic Energy Act when the Commission finds that the amendment involves no significant hazards consideration. The committee notes that prior to November 1980 it had been the practice of the Commission not to hold any such hearing when it determined that the amendment involved no significant hazards consideration. The Commission based its decision not to hold a hearing on an interpretation of section 189, which specifically authorizes the Commission to dispense with the required prior notice and publication in the Federal Register whenever it determines that an amendment involves no significant hazards consideration. The Commission's position was that, as it was given the authority to dispense with the required prior notice and publication in the Federal Register, and as such prior notice and publication was normally a prerequisite to a hearing, it was reasonable to interpret this language to mean that the Commission was therefore also given the authority to dispense with any hearing regarding an amendment which involved no significant

hazards consideration, which would have been the subject of the prior notice and publication requirement. In November 1980 the U.S. Court of Appeals of the District of Columbia Circuit found otherwise and ruled that, while the Commission did have the authority to dispense with the prior notice and publication requirement, it still was mandated by the terms of the statute to hold the hearing even when the amendment involves no significant hazards consideration.

The committee notes that, as of January 31, 1981, there was a backlog of 2,771 licensing actions relating to operating reactors, and that current estimates project an increase during the fiscal year to 3,889, rising to 4,439 in fiscal year 1982. There are additional licensing amendments pending before the Office of Nuclear Material Safety and Safeguards relating to medical and research licenses, transportation packaging licenses, and low-level waste licenses. The requirement that a hearing be held whenever requested prior to the issuance of an amendment which involves no significant hazards consideration would only further complicate a serious situation. Moreover, many of these amendments involve only technical modifications which frequently arise during fuel reloading, and a requirement of a prior hearing could delay the restarting of a reactor. In order to avoid these problems, the Committee substitute authorizes the Commission to issue and make immediately effective license amendments prior to conduct or completion of any hearing required by section 189.

Although the Commission is given the authority to issue and make immediately effective amendments involving no significant hazards consideration prior to the conduct or completion of any hearing, the committee substitute maintains the requirement that the hearing be held. Thus, after issuing and making immediately effective the amendment, the Commission remains obligated under the rule in *Sholly's* case to hold the hearing mandated by section 189. Moreover, the committee expects that the Commission will make every effort to provide prior notice and publication in the Federal Register indicating its intent to issue any such license amendment so that parties have some opportunity to comment on the proposed action. The committee further expects that, in every instance, the Commission will provide prompt notice, including publication in the Federal Register, of any actual issuance of the license amendment prior to the conduct or completion of any hearing.

The committee is aware that there is some concern over the Commission's definition of the term "no significant hazards consideration", and observes that the Commission has already issued for public comment rules which include standards for determining whether an amendment involves no significant hazards consideration. The committee also notes the Commission has accumulated years of case-by-case precedents getting criteria for these determinations. The committee expects that the Commission will interpret the term "no significant hazards consideration" in a manner consistent with prior court decisions. Moreover, the committee believes that, in the process of establishing the standard for determining when an amendment involves no significant hazards consideration, the determination should represent a judgment on the nature of the issues raised by the license amendment rather than a conclusion about the merits of those issues.



## COMPARISON OF AUTHORIZATION REQUEST WITH COMMITTEE ACTION

The following table summarizes the NRC's request for authorization with the recommendations of the Interior and Insular Affairs Committee and the Committee on Energy and Commerce.

	NRC request	Interior	Energy and Commerce
<b>Fiscal year 1982:</b>			
Nuclear reactor regulation.....	\$75,610,000	\$74,097,800	\$75,610,000
Inspection and enforcement.....	67,880,000	61,513,400	67,680,000
Standards development.....	17,950,000	17,591,000	17,950,000
Nuclear materials safety and safeguards.....	46,700,000	45,766,000	46,700,000
Nuclear regulatory research.....	231,940,000	227,301,000	231,940,000
Program technical support.....	19,140,000	18,757,200	19,140,000
Program direction and administration.....	41,680,000	40,846,000	41,680,000
<b>Total.....</b>	<b>500,700,000</b>	<b>485,873,000</b>	<b>500,700,000</b>
<b>Fiscal year 1983:</b>			
Nuclear reactor regulation.....	78,280,000	76,714,400	78,280,000
Inspection and enforcement.....	70,270,000	62,564,600	70,270,000
Standards development.....	17,990,000	17,630,260	17,990,000
Nuclear materials safety and safeguards.....	48,020,000	47,059,600	48,020,000
Nuclear regulatory research.....	252,180,000	247,136,400	252,180,000
Program technical support.....	20,610,000	20,197,800	20,610,000
Program direction and administration.....	42,656,000	41,797,000	42,560,000
<b>Total.....</b>	<b>530,000,000</b>	<b>513,100,000</b>	<b>530,000,000</b>

## COST ESTIMATE

In accordance with rule XIII, clause 7(a) of the Rules of the House of Representatives, the committee has made an estimate of the budget authority which would be required to carry out the provisions of H.R. 2330 for the fiscal year beginning on October 1, 1981 and the fiscal year beginning on October 1, 1982.

In accordance with committee cost estimates, the bill authorizes \$500,700,000 for fiscal year 1982 and \$530,000,00 for fiscal year 1983. Although this amount is a significant budget component, it is identical to the amount contained in the Nuclear Regulatory Commission's budget request. Consequently, the committee recommendation should not adversely affect the overall budget projections for the 2 ensuing fiscal years. The committee's cost estimates are:

## Estimated authorization level:

Fiscal year:	Millions
1982.....	\$500.7
1983.....	530.0
1984.....	550.0
1985.....	550.0
1986.....	550.0

## Estimated outlays:

Fiscal year:	Millions
1982.....	484.0
1983.....	498.0
1984.....	528.0
1985.....	528.0
1986.....	528.0

*Basis of estimate*

For the purpose of this estimate, the subcommittee assumed that this bill will be enacted and the entire amount will be appropriated prior

to fiscal year 1982. The estimated annual outlays are based on the historical spending patterns of the Nuclear Regulatory Commission's activities.

The Nuclear Regulatory Commission has provided the committee with the following legislative program projections for fiscal years 1980-86.

U.S. NUCLEAR REGULATORY COMMISSION, FISCAL YEAR 1982 BUDGET ESTIMATES

[Dollar amounts in thousands, except whole dollars in narrative material; fiscal years]

	Legislative program projections						
	1980 actual	1981 estimate	1982 estimate	1983 estimate	1984 estimate	1985 estimate	1986 estimate
NRC total:							
Budget authority.....	1400	1454	1501	1530	1550	1550	1550
Budget outlays.....	378	437	484	498	528	528	528

<sup>1</sup> Budget authority includes \$6,820,000 for the proposed pay raise supplemental. Budget outlays associated with this supplemental total \$6,680,000.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of the Rules of the House of Representatives, the committee has determined that this legislation will have no significant inflationary impact on prices or costs in the national economy.

The cost estimate of the Congressional Budget Office is as follows:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
Washington, D.C., June 9, 1981.

HON. JOHN D. DINGELL,  
*Chairman, Committee on Energy and Commerce,  
Rayburn House Office Building, Washington, D.C.*

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for H.R. 2330, a bill to authorize appropriations to the Nuclear Regulatory Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and section 305 of the Energy Reorganization Act of 1974, as amended, and for other purposes.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

ALICE M. RIVLIN, *Director.*

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE, JUNE 9, 1981

1. Bill No.: H.R. 2330.
2. Bill title: A bill to authorize appropriations to the Nuclear Regulatory Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and section 305 of the Energy Reorganization Act of 1974, as amended, and for other purposes.
3. Bill status: As ordered reported by the House Committee on Energy and Commerce, June 4, 1981.

4. Bill purpose: This bill authorizes 2 years of funding for the Nuclear Regulatory Commission's (NRC) research and regulatory activities. The total amount authorized by this bill for the NRC is \$500.7 million for fiscal year 1982 and \$530 million for fiscal year 1983. This is identical to the President's revised March request for these programs.

The fiscal year 1982 authorization contained in this bill represents a 12-percent increase over the fiscal year 1981 appropriation of \$447.5 million. The largest increases are for inspection and enforcement (up 30.2 percent to \$67.7 million) and nuclear material safety and safeguards (up 22.9 percent to \$46.7 million). Four programs show modest increases: standards development is up 11.5 percent to \$18 million, nuclear regulatory research is up 8 percent to \$231.9 million, program technical support is up 3.5 percent to \$19.1 million, and program direction and administration is up 14 percent to \$41.7 million. One program, nuclear reactor regulation, is down 2 percent to \$75.6 million.

The fiscal year 1983 authorization of \$530 million contained in the bill is a 6 percent increase over the 1982 authorization level. The bill provides moderate increases for the seven program categories. Authorizations include \$18 million for standard development (basically unchanged), \$78.3 million for nuclear reactor regulation (a 4 percent increase), \$70.3 million for inspection and enforcement (a 4 percent increase), \$48 million for nuclear material safety and safeguards (up 3 percent), \$252.2 million for nuclear regulatory research (up 9 percent), \$20.6 million for program technical support (up 8 percent), and \$42.7 million for program direction and administration (a 2 percent increase).

The bill also amends the nuclear power plant licensing practices of the NRC.

5. Cost estimate:

[By fiscal years, in millions of dollars]

	1982	1983	1984	1985	1986
Authorization level.....	500.7	530.0			
Estimated outlays.....	305.4	461.0	203.3	61.0	

Assuming appropriation of the authorized amount, total NRC outlays for fiscal year 1982, including funds from prior year appropriations, are estimated to be \$485.2 million.

The costs of this bill fall within budget function 270.

6. Basis of estimate: For the purposes of this estimate, it is assumed that all funds authorized will be appropriated by the start of each fiscal year. The estimated outlays are based on the historical spending patterns of NRC programs. This estimate assumes a spendout rate of 61 percent the first year, 27.5 percent the second year, and 11.5 percent the third year.

7. Estimate comparison: None.

8. Previous CBO estimate: CBO has done previous estimates of two fiscal year 1982 and 1983 NRC authorization bills. On April 9, 1981, CBO did an estimate of H.R. 2330 as reported by the House Committee on Interior and Insular Affairs. That bill authorized \$485.9 million for

fiscal year 1982 and \$513.1 million for fiscal year 1983. On May 15, 1981, CBO did a cost estimate of S. 1207 as reported by the Senate Committee on Environment and Public Works. S. 1207 authorized \$495.7 million for fiscal year 1982 and \$530 for fiscal year 1983.

9. Estimate prepared by: Gary Kaitz (225-7760).

10. Estimate approved by:

C. G. NUCKOLS,  
(For James L. Blum,  
Assistant Director, for Budget Analysis.)

#### OVERSIGHT STATEMENT

During the 96th Congress, the Interstate and Foreign Commerce Committee thoroughly reviewed various aspects of the commercial nuclear industry. In exercising its oversight function, the Committee conducted oversight hearings and ordered that several reports be undertaken regarding nuclear issues. The following is a chronological listing of the hearings relating to nuclear issues held by the Interstate and Foreign Commerce Committee.

On February 27, 1979, the Subcommittee on Energy and Power held hearings to review the operations of the Nuclear Regulatory Commission.

On February 28, 1979, the Subcommittee on Energy and Power held a hearing to review the status of programs regarding the storage and disposal of nuclear waste.

On March 21 and 22, April 5 and 10, May 16, 23 and 30, and on June 4, 5, 15, 18 and 19, 1979, the Subcommittee on Oversight and Investigations held oversight hearings on hazardous waste disposal.

On April 19, 1979, the Subcommittee on Oversight and Investigations held a hearing on the health effects of low level radiation.

On April 23, May 24 and August 1, 1979, the Subcommittee on Oversight and Investigations held hearings on low level radiation effects on health.

On June 26 and 27, 1979, the Subcommittee on Energy and Power held hearings on the need for the federal government to provide centralized storage for spent fuel.

On November 5, 1979, the Subcommittee on Energy and Power held hearings to review the Nuclear Regulatory Commission's reaction to the accident at the Three Mile Island nuclear reactor and to obtain the Commission's response to the recommendations of the President's Commission on the accident at the Three Mile Island nuclear power plant.

On February 20, 1980, the Subcommittee on Energy and Power held a hearing on programs regarding the storage and disposal of nuclear waste.

On February 22, 1980, the Subcommittee on Energy and Power held hearings to review the operations of the Nuclear Regulatory Commission.

On July 25, 1980, the Subcommittee on Energy and Power held hearings on nuclear waste disposal issues.

On July 28, 1980, the Subcommittee on Energy and Power held a hearing on the condition of high-level liquid radioactive wastes at the West Valley Nuclear Fuels Service Center in New York.

On February 20, 1980, the Subcommittee on Energy Conservation and Power held hearings on the new Administration's nuclear waste policies.

On March 30, 1981, the Subcommittee on Energy Conservation and Power held hearings on the Nuclear Regulatory Commission's Authorization request for fiscal years 1982 and 1983.

On May 1, 1981, the Subcommittee on Energy Conservation and Power held hearings on financial conditions of Three Mile Island.

On June 5, 1981, the Subcommittee on Energy Conservation and Power held hearings on the impact of budget reductions on the government's uranium enrichment services program.

It is anticipated that additional oversight hearings and related activities will be conducted in the months ahead.

The Subcommittee has also initiated a number of studies on nuclear issues which have been or will be released during the present Congress. These include studies regarding the causes of the accident at the Three Mile Island nuclear power plant, the comparative environmental and financial costs of nuclear vs. coal plants, and the comparative costs of closing certain nuclear power plants vs. the cost bringing them into compliance with new regulatory requirements. Among the reports which have been issued during this Congress are:

"Federal Government Incentives to Coal and Nuclear Energy". Report to the Energy and Power Subcommittee by the Congressional Research Service. Committee Print 96-IFC20.

"Federal Facilities for Storing Spent Nuclear Fuel—Are They Needed?" Report to the Subcommittee on Energy and Power, Committee on Interstate and Foreign Commerce, by the General Accounting Office. Report No. EMP-79-82, June 27, 1979.

"Existing Nuclear Sites Can Be Used For New Powerplants and Nuclear Waste Storage". Report to the Subcommittee on Energy and Power, Committee on Interstate and Foreign Commerce by the General Accounting Office. Report No. EMD-80-67, April 1, 1980.

"Status of Efforts to Clean Up the Shut-Down Western New York Nuclear Service Center." reported to the Chairman, Subcommittee on Energy and Power, Committee on Interstate and Foreign Commerce, by the General Accounting Office. Report No. EMD-80-69, June 6, 1980.

"The Problem of Disposing of Nuclear Low Level Waste: Where do we go from here?" Report to the Subcommittee on Energy and Power by the General Accounting Office. Report No. EMD-80-69, March 31, 1980.

"Analysis of the Price-Anderson Act". Report to the Subcommittee on Energy and Power by the General Accounting Office. Report No. EMD-80-80, August 18, 1980.

"Three Mile Island: The Most Studied Nuclear Accident in History". Report to the Subcommittee on Energy and Power, Report No. EMD-80-109, September 9, 1980.

#### AGENCY REPORT

The recommendations of the Nuclear Regulatory Commission, dated February 23, 1981, and the CoCommission's recommendations, dated

April 3, 1981, regarding the authorization request for fiscal years 1982 and 1983, the Commission's request, dated March 11, 1981, regarding the request for statutory authority to issue and make immediately effective amendments to licenses in advance of the conduct or completion of any hearing, and the Commission's letter dated March 18, 1981, regarding the request for legislative authority to issue interim operating licenses follow:

U.S. NUCLEAR REGULATORY COMMISSION,  
*Washington, D.C., February 23, 1981.*

HON. JOHN D. DINGELL,  
*Chairman, Committee on Energy and Commerce,  
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: In compliance with your joint letter of December 14, 1980 requesting submission of a budget proposal for both fiscal year 1982 and fiscal year 1983 attached is draft authorizing legislation to support the budget request.

Although not giving approval to the fiscal year 1983 request, OMB did approve a fiscal year 1983 planning estimate for NRC in the amount of \$530 million. Accordingly, the program estimates for fiscal year 1983 should be recognized as approved planning targets and not budget requests.

Sincerely,

CARLTON KAMMERER,  
*Director, Office of Congressional Affairs.*

Enclosure.

NUCLEAR REGULATORY COMMISSION PROPOSED BILL FOR AUTHORIZATION  
OF APPROPRIATIONS FOR FISCAL YEAR 1982 AND FISCAL YEAR 1983

A BILL To authorize appropriations to the Nuclear Regulatory Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and section 305 of the Energy Reorganization Act of 1974, as amended, and for other purposes

*Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,*

TITLE I—AUTHORIZATION OF APPROPRIATIONS FOR  
FISCAL YEARS 1982 AND 1983

SEC. 101. (a) There is hereby authorized to be appropriated to the Nuclear Regulatory Commission in accordance with the provisions of section 261 of the Atomic Energy Act of 1954 (42 U.S.C. 2017) and section 305 of the Energy Reorganization Act of 1974 (42 U.S.C. 5875), for the fiscal years 1982 and 1983 to remain available until expended \$500,700,000 for fiscal year 1982 and \$530,000,000 for fiscal year 1983 to be allocated as follows:

(1) not more than \$75,610,000 for fiscal year 1982 and \$78,280,000 for fiscal year 1983, may be used for "Nuclear Reactor Regulation";

(2) not more than \$67,680,000 for fiscal year 1982 and \$70,270,000 for fiscal year 1983, may be used for "Inspection and Enforcement";

(3) not more than \$17,950,000 for fiscal year 1982 and \$17,990,000 for fiscal year 1983, may be used for "Standards Development";

(4) not more than \$46,700,000 for fiscal year 1982 and \$48,020,000 for fiscal year 1983, may be used for "Nuclear Material Safety and Safeguards";

(5) not more than \$231,940,000 for fiscal year 1982 and \$252,180,000 for fiscal year 1983, may be used for "Nuclear Regulatory Research";

(6) not more than \$19,140,000 for fiscal year 1982 and \$20,610,000 for fiscal year 1983, may be used for "Program Technical Support";

(7) not more than \$41,680,000 for fiscal year 1982 and \$42,650,000 for fiscal year 1983, may be used for "Program Direction and Administration."

SEC. 101. (b) the Commission may use not more than one per centum of the amounts authorized to be appropriated under paragraph (5) of subsection (a) to exercise its authority under section 31.a. of the Atomic Energy Act of 1954, as amended, to enter into grants and cooperative agreements with universities pursuant to that section. Grants made by the Commission shall be made in accordance with the Federal Grants and Cooperatives Agreements Act of 1977 and other applicable law.

SEC. 101. (c) No amount appropriated to the Nuclear Regulatory Commission pursuant to subsection (a) may be used for any purpose in excess of the amount expressly authorized to be appropriated therefore by paragraphs (1) through (7) of such subsection if such excess amount is greater than \$500,000, nor may the amount available from any appropriation for any purpose specified in such paragraphs be reduced by more than \$500,000, unless—

(1) a period of 30 calendar days (not including any day in which either House of Congress is not in session because of an adjournment of more than 3 calendar days to a day certain or an adjournment sine die) has passed after the receipt by the Committee on Interstate and Foreign Commerce and the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Environment and Public Works of the Senate of notice given by the Commission containing a full and complete statement of the action proposed to be taken and the facts and circumstances relied upon in support of such proposed action, or

(2) each such Committee has, before the expiration of such period, transmitted to the Commission a written notification that there is no objection to the proposed action.

SEC. 102. Moneys received by the Commission for the cooperative nuclear research programs may be retained and used for salaries and expenses associated with those programs, notwithstanding the provisions of section 3617 of the Revised Statutes (31 U.S.C. 484), and shall remain available until expended.

SEC. 103. From appropriations to the Nuclear Regulatory Commission under Section 101(a), the Commission may transfer to other agencies of the Government sums for salaries and expenses for the performance by such agencies of activities for which such appropriations

of the Commission were made. The sums so transferred may be merged with the appropriation of the agency to which the sums transferred.

SEC. 104. Notwithstanding any other provision of this Act, no authority to make payments hereunder shall be effective except to such extent or in such amounts as are provided in advance in appropriation Acts.

U.S. NUCLEAR REGULATORY COMMISSION,  
Washington, D.C., April 3, 1981.

HON. JOHN D. DINGELL,  
Chairman, Committee on Energy and Commerce,  
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: In accordance with the provisions of Section 261 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2017) and Section 305 of the Energy Reorganization Act of 1974, as amended (42 USC 5875), we are submitting proposed legislation which would authorize appropriations for fiscal year 1982 and fiscal year 1983.

The proposed legislation requests authorization for "Salaries and Expenses" of \$500,700,000 for fiscal year 1982 and of \$530,000,000 for fiscal year 1983. The primary factors influencing the NRC budget request are (1) the high priority on our reactor license application review efforts to minimize the time a completed reactor awaits licensing; (2) implementation of the Agency's TMI Action Plan; (3) a re-oriented research program in response to the recommendations of the various studies arising out of the TMI-2 accident; (4) increased inspection and enforcement activities resulting from the increase in the number of operating reactors; and (5) greater inspection emphasis and increased effort to resolve the issues of nuclear waste. Our budget request is discussed in more detail in the section-by-section analysis which accompanies the attached bill and in the NRC's more detailed budget justification transmitted separately.

The Office of Management and Budget has advised that the enactment of this legislative proposal would be in accord with the program of the President.

Sincerely,

JOSEPH M. HENDRIE.

Enclosure.

NUCLEAR REGULATORY COMMISSION PROPOSED BILL FOR AUTHORIZATION  
OF APPROPRIATIONS FOR FISCAL YEAR 1982 AND FISCAL YEAR 1983

A BILL To authorize appropriations to the Nuclear Regulatory Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and section 305 of the Energy Reorganization Act of 1974, as amended, and for other purposes.

*Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,*

TITLE I—AUTHORIZATION OF APPROPRIATIONS FOR  
FISCAL YEARS 1982 AND 1983

SEC. 101. (a) There is hereby authorized to be appropriated to the Nuclear Regulatory Commission in accordance with the provisions of section 261 of the Atomic Energy Act of 1954 (42 U.S.C. 2017) and



section 305 of the Energy Reorganization Act of 1974 (42 U.S.C. 5875), for the fiscal years 1982 and 1983 to remain available until expended \$500,700,000 for fiscal year 1982 and \$530,000,000 for fiscal year 1983 to be allocated as follows:

(1) not more than \$75,610,000 for fiscal year 1982 and \$78,000,000 for fiscal year 1983, may be used for "Nuclear Reactor Regulation;"

(2) not more than \$67,680,000 for fiscal year 1982 and \$70,270,000 for fiscal year 1983, may be used for "Inspection and Enforcement;"

(3) not more than \$17,950,000 for fiscal year 1982 and \$17,990,000 for fiscal year 1983, may be used for "Standards Development;"

(4) not more than \$46,700,000 for fiscal year 1982 and \$48,020,000 for fiscal year 1983, may be used for "Nuclear Material Safety and Safeguards;"

(5) not more than \$231,940,000 for fiscal year 1982 and \$252,180,000 for fiscal year 1983, may be used for "Nuclear Regulatory Research;"

(6) not more than \$19,140,000 for fiscal year 1982 and \$20,610,000 for fiscal year 1983, may be used for "Program Technical Support;"

(7) not more than \$41,680,000 for fiscal year 1982 and \$42,650,000 for fiscal year 1983, may be used for "Program Direction and Administration."

SEC. 101. (b) The Commission may use not more than one per centum of the amounts authorized to be appropriated under paragraph (5) of subsection (a) to exercise its authority under section 31.a. of the Atomic Energy Act of 1954, as amended, to enter into grants and cooperative agreements with universities pursuant to that section. Grants made by the Commission shall be made in accordance with the Federal Grants and Cooperative Agreements Act of 1977 and other applicable law.

SEC. 101. (c) No amount appropriated to the Nuclear Regulatory Commission pursuant to subsection (a) may be used for any purpose in excess of the amount expressly authorized to be appropriated therefore by paragraphs (1) through (7) of such subsection if such excess amount is greater than \$500,000, nor may the amount available from any appropriation for any purpose specified in such paragraphs be reduced by more than \$500,000, unless—

(1) a period of 30 calendar days (not including any day in which either House of Congress is not in session because of an adjournment of more than 3 calendar days to a day certain or an adjournment sine die) has passed after the receipt by the Committee on Interstate and Foreign Commerce and the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Environment and Public Works of the Senate of notice given by the Commission containing a full and complete statement of the action proposed to be taken and the facts and circumstances relied upon in support of such proposed action; or

(2) each such Committee has, before the expiration of such period, transmitted to the Commission a written notification that there is no objection to the proposed action.

SEC. 102. Moneys received by the Commission for the cooperative nuclear research program and the material access authorization program may be retained and used for salaries and expenses associated with those programs, notwithstanding the provisions of section 3617 of the Revised Statutes (31 U.S.C. 484), and shall remain available until expended.

SEC. 103. From appropriations to the Nuclear Regulatory Commission under Section 101(a), the Commission may transfer to other agencies of the Government sums for salaries and expenses for the performance by such agencies of activities for which such appropriations of the Commission were made. The sums so transferred may be merged with the appropriation of the agency to which the sums transferred.

SEC. 104. Notwithstanding any other provision of this Act, no authority to make payments hereunder shall be effective except to such extent or in such amounts as are provided in advance in appropriation Acts.

U.S. NUCLEAR REGULATORY COMMISSION,  
Washington, D.C., March 11, 1981.

HON. RICHARD L. OTTFINGER,  
*Chairman, Subcommittee on Energy Conservation and Power, Committee on Energy and Commerce, U.S. House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: Transmitted herewith is a Nuclear Regulatory Commission legislative proposal in the form of a draft bill to amend the Atomic Energy Act of 1954, as amended, to clarify that the Commission may issue a license amendment, where no significant hazards consideration is involved without holding a prior hearing and for other purposes. A draft bill is in Enclosure 1. An analysis of the proposal is in Enclosure 2. A memorandum explaining the need for the proposal is in Enclosure 3.

This proposal is in response to and seeks to overturn the decision of the U.S. Court of Appeals for the District of Columbia in *Sholly, et al. v. NRC, et al.*, No. 80-1691 (November 1, 1980). The court held that the NRC may not issue a license amendment if there is no significant hazards consideration when an interested person has filed a request for a hearing under Section 189(a) of the Atomic Energy Act, 42 U.S.C. 2239(a). The decision could also implicate the Commission's authority to issue immediately effective license amendments and orders when the public health, safety, and interest or the common defense and security requires. The court's decision mandating a prior hearing on demand on matters insignificant to the public health and safety seriously and immediately encumbers the regulation of nuclear power, and puts at risk a substantial number of nuclear power plants which would either have to be shut down or operate at reduced power if they are not accorded the authority sought in pending license amendment requests. The number of power plants affected will fluctuate over time depending upon which plants have license amendment applications pending and the nature of the license amendment requests.

The proposed legislation, if adopted, would amend Section 189 to clarify that the Commission may issue a license amendment which involves no significant hazards consideration without first holding a hearing. The bill would also clarify that Section 189 does not limit the NRC's authority to take immediate action by amendment or order to protect the public health, safety, and interest or common defense and security. This legislation is needed to overturn the adverse impacts of the *Sholly* decision on the regulation of nuclear energy. Unless overturned, this decision raises the prospect of a substantial curtailment of nuclear power plant operation for reasons which in the Commission's view are unrelated to the safety of the facility. We do not believe that prospect to have been intended by Congress in enacting Section 189 and urge approval of the proposed NRC legislation.

Sincerely,

JOSEPH M. HENDRIE.

Enclosures.

A BILL To amend the Atomic Energy Act to clarify that no prior public hearing is required for applications for amendment which involve no significant hazards consideration and for other purposes

*Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That:*

Section 189 of the Atomic Energy Act of 1954, as amended, is amended by adding the following new sentences at the end of paragraph (a) thereof:

"The Commission is authorized to issue and to make immediately effective an amendment to a license upon a determination by the Commission that the amendment involves no significant hazards consideration, notwithstanding the pendency before it of a request for a hearing from any person. The Commission is authorized to issue and to make immediately effective any amendment to a license, or any order to govern any activity subject to this Act, as it may deem necessary upon a determination that immediate effectiveness is required to protect the public health and safety, and [interest, or] the common defense and security."

#### SECTION ANALYSIS

The purpose of the amendment is to overturn the decision of the U.S. Court of Appeals for the District of Columbia Circuit in *Sholly v. NRC*, November 19, 1980. The amendment provides that the Commission may issue a license amendment upon a determination that it involves no significant hazards consideration without holding a prior hearing. It also clarifies that nothing in the Atomic Energy Act limits the agency's exercise of its powers to issue immediately effective license amendments or orders to protect the public health, safety, and interest or the common defense and security. This amendment does not affect the opportunity of an interested person for a hearing after the amendment has been issued.

#### LEGISLATIVE MEMORANDUM IN SUPPORT OF PROPOSED BILL

This memorandum sets forth the views of the U.S. Nuclear Regulatory Commission in support of a proposed amendment to Section 189 (a) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2239(a).

to overturn the decision of the U.S. Court of Appeals for the District of Columbia Circuit in *Sholly et al. v. NRC, et al.* (November 19, 1980). That decision seriously and immediately encumbers the regulation of nuclear power, and puts at risk a substantial number of nuclear power plants which would either have to shut down or operate at reduced power if they are not accorded the authority sought in pending license amendment requests. The number of power plants affected will fluctuate over time depending upon which plants have license amendment applications pending and the nature of the license amendment requests. The Commission urges enactment of this amendment.

#### STATEMENT OF FACTS

The lawsuit arose over the Commission's efforts to take necessary preliminary steps for the cleanup of the March 28, 1979 accident at Three Mile Island. As a result of that accident the TMI-2 containment building atmosphere held approximately 43,000 curies of radioactive krypton-85 which had been released from the nuclear fuel damaged during the accident. That radioactive krypton posed a barrier to progressing with the cleanup. There was no serious dispute, by anyone, that the krypton had to be removed. After a multi-month extensive public process, the Commission decided to vent the krypton to the atmosphere and amended the license to permit the venting at a faster rate than that permitted under the license's technical specifications while at the same time keeping radiation doses to the public at or below levels which the superseded release limits were intended to assure.

#### COURT OF APPEALS DECISION

In an opinion handed down November 19, 1980, the D.C. Circuit declared that the Commission's refusal to hold a hearing on its venting orders violated petitioners' statutory right to a hearing under Section 189(a) of the Atomic Energy Act, 42 U.S.C. 2239(a). *Sholly v. NRC*, — F.2d —, No. 80-1691 (Nov. 19, 1980). The court ruled that even where a license amendment involves no significant hazards consideration (such as the substitution of dose limits for release limits that allowed for the venting to be completed within two weeks rather than months) an interested person who requests a hearing is entitled by Section 189 (a) of the Atomic Energy Act to a hearing before the amendment becomes effective. The proposed amendment addresses this ruling.<sup>1</sup>

#### IMPORTANCE OF THE COURT OF APPEALS DECISION

The principal ruling of concern to the Commission is the D.C. Circuit's holding that even where an amendment to a nuclear power plant license involves no significant hazards consideration, an interested per-

<sup>1</sup>The court also ruled that the Commission's approval of venting the TMI-2 containment was itself a license amendment even though not characterized by the Commission as such. This ruling should not prove onerous for three reasons. It is applicable only to a situation where the relevant authority under a license has been revoked as the court mistakenly thought was the case with regard to the TMI-2 license. Second, the Commission does not consider itself bound to follow the court's misreading of the Commission's intent. Third, even prior to *Sholly* the granting of significant authority where none existed previously would have required a license amendment. Thus the Commission is not proposing to legislatively overrule the court's erroneous ruling with regard to the TMI-2 license.

son who requests a hearing is entitled by Section 189(a) of the Atomic Energy Act, 42 U.S.C. 2239, to a hearing before the amendment becomes effective. The practical effect of that ruling is substantial. Over the past four years the Commission has issued more than 1,600 amendments to nuclear power plant operating licenses based upon a no significant hazards consideration determination. Over the past few months some 20 nuclear power plants would either have had to shut down or operate at reduced power if they were not accorded the authority sought in no significant hazards license amendment requests. If, as the D.C. Circuit has held, hearings are necessary before this authority can be granted whenever an interested person requests one, there is the prospect of a substantial curtailment of nuclear power plant operations for reasons which in the Commission's view are unrelated to the safety of the nuclear power plants.

The large number of license amendment actions which the Commission must act upon, as is reflected in the yearly average of better than 400 amendments, is directly attributable to the kind of detailed regulation of nuclear power plant operation that the Commission has demanded. A nuclear power plant operating license, like that issued for Three Mile Island, Unit 2, the power plant involved in the *Sholly* case, is quite literally hundreds of pages long, and consists of highly detailed technical specifications. Any change in the license itself or in any of those hundreds of pages of technical specifications is a license amendment.

Since changes must often be made—for example, whenever a nuclear power plant refuels, which usually occurs at about 18-month intervals, the technical specifications often need to be adjusted to reflect the physical behavior of the fresh fuel placed in the reactor core—the consequence of the court's holding could be to keep a nuclear power plant shut down or prevent its operating at full-rated capacity, whenever the power plant refuels; and this despite the fact that in the Commission's best judgment there is no significant hazards consideration involved in adjusting the technical specifications to account for the behavior of the fresh fuel. A variety of other kinds of license amendment actions, such as extending the time for imposing a new requirement, or relieving the licensee of a particular maintenance check, could have similar results. For example, as the Commission moves to implement a whole host of new operating license requirements developed in response to the TMI-2 accident, any fine tuning of those requirements involving a delayed effective date or the substitution of one kind of licensing requirement for another could, under the court's ruling, prevent or impede a new power plant from coming on line or impede the operation of a nuclear power plant already in service until the issue was resolved after a hearing. And this despite the fact that the Commission thinks the license or technical specification amendment involved is not of safety significance. That result lacks practicality. The Commission does not think that Congress intended nuclear power regulation and the operation of nuclear power plants to be as episodic and dependent upon happenstance as the frequency of hearing requests on minor matters. Yet such a consequence is plainly a possible result of this Court's ruling that Section 189(a) of the Atomic Energy Act obliges the Commission to hold a

hearing on a no significant hazards consideration license amendment, on request, before the amendment becomes effective.<sup>2</sup> Nor does the Commission think that Congress intended the Commission to eliminate or grossly simplify the vast bulk of technical specifications which govern the operation of nuclear power plants in order to minimize the number of license amendment actions that must be dealt with.<sup>3</sup> With simplification comes a loss of governmental control, a loss of enforceability, and a loss of detailed assurance in a power plant's method of operation. It is questionable whether acceptance of those kinds of uncertainties best advances the public interest in assuring that nuclear power plants are operated safely. It is just as questionable that such a reading of Section 189(a) is the one that Congress intended.<sup>4</sup>

#### PROPOSED AMENDMENT

The Commission believes that the court's interpretation of Section 189(a) was erroneous and that the decision seriously encumbers the regulation of nuclear power by providing leverage to block, through hearing requests, needed license amendments which involve no significant hazards consideration. The Commission proposes to correct this situation through an amendment to Section 189(a) which, if adopted, would confirm the Commission's interpretation that there is no right to a prior hearing before an amendment may be made effective, if it presents no significant hazards consideration. The amendment would also clarify that Section 189(a) does not limit the Commission's authority to issue immediately effective amendments and orders when the public health, safety, and interest or the common defense and security requires. As to this latter point Commissioner Gilinsky believes that the proposed amendment should delete the words "and interest" and empower the Commission to take immediate action only when required by the public health and safety or the common defense and security. Commissioner Gilinsky believes that his proposal more accurately reflects the standard the Commission currently employs and that this is not the occasion to broaden the Commission's immediate effectiveness powers.

The amendment urged by the Commission would effectively end the adverse potential impacts of the *Sholly* decision. For the reasons described in this memorandum, the Commission urges adoption of the proposed amendment.

<sup>2</sup>The NRC, of course, does not know how many hearing requests, if any might be filed in connection with these license amendment requests. The Court's opinion, however, clearly provides an incentive for such filings.

The Commission also has as an alternative but not coextensive source of authority to issue immediately effective orders where the public health, safety or interest so requires. There is language in *Sholly* which could be interpreted as requiring a hearing on request prior to the NRC's exercise of its power to take immediately effective action. The second sentence of the proposed amendment clarifies that that is not the case, and the Commission is empowered to take such immediate action despite the pendency of a hearing request.

<sup>3</sup>Of course, any simplification of technical specifications would itself be a license amendment that under the *Sholly* decision could not be placed in effect until the completion of whatever hearing or hearings are requested by interested persons.

<sup>4</sup>The court of appeals' decision takes no account of these realities in its interpretation of Section 189. Beyond this in the NRC's view, the court's decision seriously misreads Congress' intent in passing the 1962 amendments to the Atomic Energy Act and erroneously refuses to give deference to the Commission's consistently held interpretation of its governing statute—that no prior hearing need be held when a finding is made that a license amendment involves no significant hazards consideration.

U.S. NUCLEAR REGULATORY COMMISSION,  
*Washington, D.C., March 18, 1981*

HON. THOMAS P. O'NEILL, JR.,  
*Speaker, U.S. House of Representatives, Washington, D.C.*

DEAR MR. SPEAKER: Transmitted herewith is a Nuclear Regulatory Commission proposal in the form of a draft bill to amend the Atomic Energy Act of 1954, as amended, to authorize the Commission to issue an interim operating license for a nuclear power plant, authorizing fuel loading and low-power operation and testing, in advance of the conduct or completion of an on-the-record evidentiary hearing on contested issues. The proposed legislation, which represents an extraordinary and temporary cure for an extraordinary and temporary situation, is set forth in Enclosure 1. An analysis of the proposed legislation is set forth in Enclosure 2. Enclosure 3 sets forth the proposed legislation in the form of a comparative text.

Under the Atomic Energy Act of 1954, as amended, no person may operate a nuclear power plant without first obtaining an operating license from the Nuclear Regulatory Commission. Under existing law, a formal on-the-record evidentiary hearing must be held, and a decision rendered on the basis of that record, if requested by any person whose interest may be affected, before the Commission may issue an operating license.

In the past, the scheduling and processing of licensing reviews has typically provided sufficient time to enable the hearings to be completed and the license issued by the time the nuclear plant is completed and ready to operate. For the first time, however, it appears that the hearing process for a significant number of nuclear power plants will last *beyond* the date when construction should be complete and the plants are ready to operate. This situation is an indirect consequence of the Three Mile Island (TMI) accident, which required a reexamination of the entire regulatory structure. After TMI, for a period of over a year-and-a-half, the Commission's attention and resources were focused on plants which were already licensed to operate and to the preparation of an action plan which specified a discrete set of TMI-related requirements for new operating reactors. During this period, utilities that had received construction permits continued to build the authorized plants.

The severe public interest impact of these delays has been discussed extensively before interested committees in the House and Senate. Although there may be differences of opinion on the precise overall impact of these delays, as well as in the different estimates of the consequences for each of the plants, the delay costs now are generally estimated to range in the tens of millions of dollars per month for each completed plant.

The Commission is making every effort to see that available resources are devoted to the completion of its licensing reviews of these plants, and that unnecessary delays in these hearings are avoided. Under existing law, however, the Commission lacks the authority to authorize fuel loading and low-power operation and testing on the basis of its safety and environmental evaluation; it must instead await the completion of the hearing process. The result, for the plants most affected by TMI-related actions, is likely to be delays of at least

several months in ultimate operation of the facilities, absent remedial action of Congress.

The proposed amendment to subsection 189a of the Act would authorize the Commission, if it finds that such action is in the public interest in order to avoid the consequences of delay in the operation of a completed nuclear power plant, to issue an interim operating license authorizing fuel loading and low-power operation and testing of the plant in advance of the conduct or completion of any required hearing. In all respects other than the completion of the hearing, the Commission would have to find that the requirements of all applicable law have been met prior to allowing such interim operations. Thus, the public health and safety, common defense and security, and environmental findings would still have to be made, even though the public interest findings is made. Furthermore, a hearing would still be held if requested by an interested person under section 189 of the Act. The proposed amendment would simply provide that in such a case, the requested hearing could be held or completed after issuance of the license authorizing fuel loading and low-power operation and testing. Moreover, any interim license issued under this authority would be subject to any subsequent findings and orders of the Commission after the conduct of any required hearing. The authority to issue such interim licenses would expire on December 31, 1983.

The effect of this proposed legislation would be to advance by at least several months the date of operation of the plants most affected by the TMI-related actions, where issuance of the operating license is contested. The savings of time could be much more substantial in cases where testing showed the need for modification and further testing. By placing a time limit of December 31, 1983 on the Commission's authority to issue such interim licenses, the proposed legislation would assure that the relaxation of licensing requirements would be confined to those plants which have been most directly affected by the Commission's post-TMI actions. Since the risks associated with low-power operation and testing are much smaller than those associated with normal full-power operation, we believe that this authority, limited to the relatively few plants likely to be most affected by our TMI-related effort, represents a minimal intrusion on our usual review and hearing process. The Commission cannot, under existing law, take these measures to reduce the delay in the licensing of the affected plants. The proposed legislation would result in very substantial cost savings for consumers in the service areas of the affected plants.

The proposed legislation deals essentially with matters of licensing procedures and, as indicated, would not alter any of the substantive standards and requirements of the Atomic Energy Act pertaining to the protection of public health and safety and the common defense and security or of NEPA. In light of this, the Commission has concluded that the proposed legislation would not significantly affect the quality of the human environment.

Additional comments by Commissioner Ahearne and myself are enclosed.

Sincerely,

JOSEPH M. HENDRIE.

Enclosures:



1. Draft Bill.
2. Analysis of Proposed Legislation.
3. Comparative Draft Bill.
4. Additional Comments of Commissioner Ahearne and Chairman Hendrie.

#### DRAFT BILL

To amend the Atomic Energy Act of 1954, as amended to authorize the Commission, upon determination that such action is necessary in the public interest, to issue an interim operating license authorizing fuel loading, low-power operation and testing of a nuclear power reactor in advance of the conduct of a hearing

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled.* That subsection 189a of the Atomic Energy Act of 1954, as amended, is amended by adding after the final sentence in the subsection: "Notwithstanding any other provisions of this Act, the Commission may, upon determination that such action is necessary in the public interest in order to avoid the consequences of unnecessary delay in the operation of a nuclear power reactor, issue for such a facility an interim operating license authorizing fuel loading, and operation and testing at power levels not to exceed five percent of rated full thermal power, in advance of the conduct or completion of any required hearing; *Provided*, That any operating license so issued shall be subject to any subsequent findings and orders of the Commission after the conduct of any required hearing; *and provided further*, That in all other respects the requirements of the Atomic Energy Act of 1954, as amended, shall be met. Prior to the issuance of any such interim license, the Commission shall publish in the Federal Register a notice of its intent to issue the license, and shall provide an opportunity for parties to the proceeding to comment on whether such action is necessary in the public interest. The authority to issue such an interim license for a nuclear power reactor in advance of the conduct or completion of a hearing shall expire on December 31, 1983."

#### ANALYSIS OF PROPOSED LEGISLATION

Under the Atomic Energy Act of 1954, as amended, no person may operate a nuclear power plant without first obtaining an operating license from the Commission. Under existing law, a formal on-the-record public hearing must be held before issuance of any operating license if requested by any person whose interest may be affected. The proposed amendment to subsection 189a authorizes the Commission, under the circumstances specified therein, to issue an interim operating license authorizing fuel loading and operation and testing at power levels not to exceed five percent of rated full thermal power, in advance of the conduct or completion of hearings on the issuance of the full-term license.

This authority could be used only if all legal requirements applicable to a license for fuel loading and low-power testing and operation have been satisfied, with the sole exception of the requirement that in a contested proceeding, operation can be authorized only after a decision based upon the record of a completed hearing. These legal requirements

include the Commission's findings as to public health and safety, the common defense and security, the environment, and antitrust considerations, as mandated by the Atomic Energy Act of 1954, as amended, the National Environmental Policy Act, and other applicable statutes.

Under the proposed legislation, the Commission may exercise the authority to permit fuel loading and lower-power operation and testing if it finds that such action is necessary in the public interest in order to avoid the consequences of unnecessary delay in the operation of the facility. This public interest finding would be based on the consideration of the costs, ultimately borne by consumers, of having a completed nuclear power plant standing idle while awaiting the completion of the hearing on the full-term license. These costs include the dollar costs of delay and of obtaining replacement power, and may also include the need for power from the facility and the energy equivalency of fossil fuel.

Any interim license issued under this authority will be subject to any subsequent findings and orders of the Commission after the conduct of the required hearing.

The proposed legislation requires the Commission, before authorizing issuance of a license for fuel loading and low-power operation and testing, to publish notice of its intended action in the Federal Register and to afford an opportunity for parties to comment on whether the intended action is necessary in the public interest.

Any final action of the Commission under this subsection is subject to judicial review.

The authority granted by the proposed legislation will expire on December 31, 1983, for a significant number of nuclear power plants—those most affected in the review process by Commission efforts to respond to the Three Mile Island accident—this time period should permit the Commission, with the full cooperation of prospective applicants, to schedule licensing reviews and proceedings so as to avoid, wherever possible, situations in which completed plants stand idle while awaiting completion of licensing proceedings.

#### [Comparative Text Draft Bill]

#### ATOMIC ENERGY ACT OF 1954, AS AMENDED

##### SEC. 189. HEARINGS AND JUDICIAL REVIEW.—

(a) In any proceeding under this Act, for the granting, suspending, revoking, or amending of any license or construction permit, or application to transfer control, and in any proceeding for the issuance or modification of rules and regulations dealing with the activities of licensees, and in any proceeding for the payment of compensation, an award, or royalties under sections 153, 157, 186 c., or 188, the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding. The Commission shall hold a hearing after thirty days' notice and publication once in the Federal Register, on each application under section 103 or 104 b. for a construction permit for a facility, and on any application under section 104c. for a construction permit for a testing facility. In cases where

such a construction permit has been issued following the holding of such hearing, the Commission may, in the absence of a request therefor by any person whose interest may be affected, issue an operating license or an amendment to a construction permit or an amendment to an operating license without a hearing, but upon thirty days' notice and publication once in the Federal Register of its intent to do so. The Commission may dispense with such thirty days' notice and publication with respect to any application for an amendment to a construction permit or an amendment to an operating license upon a determination by the Commission that the amendment involve no significant hazards consideration. *Notwithstanding any other provisions of this Act, the Commission may, upon determination that such action is necessary in the public interest in order to avoid the consequences of unnecessary delay in the operation of a nuclear power reactor, issue for such a facility an interim operating license authorizing fuel loading, and operation and testing at power levels not to exceed five percent of rated full thermal power, in advance of the conduct or completion of any required hearing: Provided, that any operating license so issued shall be subject to any subsequent findings and orders of the Commission after the conduct of any required hearing; and provided further, that in all other respects the requirements of the Atomic Energy Act of 1954, as amended, shall be met. Prior to the issuance of any such interim license, the Commission shall publish in the Federal Register a notice of its intent to issue the license, and shall provide an opportunity for parties to the proceeding to comment on whether such action is necessary in the public interest. The authority to issue such an interim license for a nuclear power reactor in advance of the conduct or completion of a hearing shall expire on December 31, 1983.*

#### ADDITIONAL COMMENTS OF COMMISSIONER AHEARNE

I accept the desirability of low-power interim licensing, given the problems we now face. If improvements in the licensing process cannot be made, then full-power interim licensing may be necessary. However, it is time for fundamental reforms in the role and practice of the hearing process. In particular, the Commission should direct Boards to serve to decide only issues that are raised by the parties, and of those, only those of substance. The threshold for admitted contentions should be significantly raised. *sua sponte* authority should be limited, and the Boards should be authorized to manage the proceedings with a strong hand. Failing these changes, I expect another Commission will be requesting full-power interim licensing legislation.

#### ADDITIONAL COMMENTS OF CHAIRMAN HENDRIE

I strongly support the legislative proposal made here for authority to issue interim operating licenses for fuel loading and low-power operation and testing. It would, in effect, advance the operating schedules of the affected units by several months and result in substantial savings for consumers.

But it is also my view that the authority for interim licensing could reasonably be extended to include full-power operation, with a further

substantial reduction in cost impacts. This authority would be needed with regard to only a small number of units, I estimate nine at most and more probably no more than six, that are particularly severely affected by the licensing delays following the Three Mile Island accident. For these units, even the lower-power interim license authority, together with all the measures the Commission can take under existing law, will probably not be enough to avoid licensing decision delays. Indeed, one of these units is already experiencing such a delay. The full-power interim licensing authority would remedy that situation for most of these units and would minimize the delay for the unit already affected.

## ADDITIONAL VIEWS OF HON. TOBY MOFFETT

It should be beyond dispute that the proper mission of the Nuclear Regulatory Commission is to insure the safety of the commercial nuclear power generating industry. Under the Acts of Congress which govern its existence, it is not mandated to promote the nuclear power industry. Its task is to safeguard the public health and safety from any risks arising from that industry.

Sections 6 and 7 of this bill as reported fundamentally ignore that basic fact. Both sections arise from an open hostility in some quarters to any actions taken either by the NRC or by citizens which have the effect of slowing down the construction and operation of nuclear power plants—no matter how well-founded and important the safety concerns may be which motivate those agency and citizen actions. The two sections of the bill arise from a quite mistaken premise that NRC safety hearings are an unnecessary and unproductive impediment to the growth of the nuclear power industry.

Moreover, Section 6 in particular is based on a wholly erroneous factual premise. That premise is that there is a platoon of nuclear plants now standing ready or near-ready for action and impeded only by NRC hearings that serve no genuine purpose. That is demonstrably untrue, despite a widespread effort by some in the industry to propagate that myth. I invite my colleagues to scrutinize carefully the reports being sent to Congress on a monthly basis by the NRC regarding the status of plants nearing completion and licensing. The facts reflected in those reports do not substantiate claims that interim licensing powers of the broad sort accorded NRC in Section 6 are needed.

Indeed, the irony is that one can safely predict that very few nuclear plants, will in fact go on line more rapidly because of this new interim authority, if it should be granted. Out of some 90 plants at various stages of construction, it is highly unlikely that more than four or five plants will in fact be ready to benefit from the expedited treatment of this provision. Yet for that modest hypothetical benefit to the industry, the hearing process, and the rights of citizens to obtain some assurance regarding the safety of new plants before their operation, have been significantly assaulted.

It is my hope that upon further reflection and examination of the facts the Congress will add several of the safeguards to Sections 6 and 7 which were sought by a number of amendments offered during full Committee markup June 4. I would point out that the June 5 deadline imposed by the sequential referral of this bill to the Committee created regrettable time pressures which were quite obvious during that markup. If the opportunity had existed for further discussion of the need for those amendments, I believe they might have prevailed. Moreover, I would note that the failure of the Committee

to adopt those amendments—several by rather narrow margins—arose from an unusual legislative situation. It is my understanding that some Members of the Committee felt obligated to stand by previous commitments to the bill as reported by the Subcommittee which made it impossible to support amendments which they would otherwise have approved.

Sections 6 and 7 should be amended in a fashion consistent with the safety concerns that motivated the amendments offered in the full Committee. I urge my colleagues to support that result as this bill is further considered.

TOBY MOFFETT.

ADDITIONAL VIEWS OF REPRESENTATIVE  
EDWARD J. MARKEY

I strongly believe that this Committee should have taken the prudent step to limit the provisions of Section 6. Our authorization of Nuclear Regulatory Commission issuance of temporary licenses for nuclear power plants should be limited to licenses that would allow only fuel loading, initial testing, and operation at power levels not exceeding five percent of rated full thermal power. Such a limit is identical to the bill submitted earlier this year by the Nuclear Regulatory Commission.

The surface issue in this debate is whether or not the NRC licensing process, including the right of NRC hearing boards to examine questions about safety raised by the general public, will be short-circuited. The surface issue is whether or not these hearings must be concluded prior to the issuance of a full power license to operate the plant. But the real issue is nuclear safety. The current language of H.R. 2330 permits the issuance of temporary licenses for full power nuclear plant operation, which I consider excessive and dangerous.

As Chairman Joseph Hendrie of the NRC said:

The underpinning for our safety assurances is our licensing process . . . (which) provides for the issuance of operating licenses only after multilevel review that includes public participation and input at key stages.

As the NRC Special Inquiry Group into the accident at Three Mile Island (the so-called Rogovin Report) explained:

The (adjudicatory hearing) boards do not . . . conduct an extensive review or audit of the quality of the NRC staff's safety review. Almost without exception, the issues before a board are raised by interested members of the public who have intervened as parties in the proceeding. . . . Intervenors have made an important impact on safety in some instances—sometimes as a catalyst in the prehearing stage of proceedings, sometimes by forcing more thorough review of an issue or improved review procedures on a reluctant agency.

In other words, the investigation of Three Mile Island revealed that one of the few checks on inadequate NRC casework staff attention to safety comes in a contested hearing. If this House votes to allow full power operation of nuclear plants before these hearings, we are voting to unlearn the lessons of Three Mile Island.

Three of the four NRC commissioners voted earlier this year to restrict their interim licensing bill to low power operation only. As Chairman Hendrie explained, "Since the risks associated with low-power operation and testing are much smaller than those associated

with normal full-power operation, we believe that this authority represents a minimal intrusion on our usual review and hearing process."

Commissioners Gilinsky, Bradford and Ahearne do not believe that operation beyond the 5-percent ceiling should be permitted in advance of the completion of any required hearing.

Let me sum up their views with a few selected quotes:

From Commissioner Ahearne: "Full power (temporary) licensing legislation would be bad public policy."

From Commissioner Gilinsky: "The interim full power license proposal would undermine the hearing process to a degree that is out of proportion to the possible gain."

From Commissioner Bradford: "Authorizing full-power operation pending final resolution of safety matters would make NRC's licensing proceedings appear a sham."

I have often criticized the Commission for not doing enough to protect the public health and safety, for allowing reactors to operate without sufficient safeguards.

If the Nuclear Regulatory Commission—that I believe is too lenient on safety matters—is cautious about full-power interim licensing, then why should this House step in where there experts fear to tread?

The May 1981 NRC status reports shows that only 10 plants will experience some degree of delay during 1981 and 1982. The total plant/month delay is at most 55 months. This is a reduction from the estimate of a 79-month delay, given in the April NRC report, and a reduction from the estimate of a 110-month delay in the March report.

NRC chairman Hendrie told a Senate subcommittee on March 31 that authority to grant low power temporary licenses would speed the plants most heavily impacted by "two, maybe three or even more months." If that is the case, the NRC proposal—which I believe this Committee should have adopted—would save 2-3 months per plant. Low power interim licenses, if approved for each plant subject to delay, would therefore wipe out 20 to 30 months of the estimated remaining delay of about 55 months. As it happens, if 3 months are thereby saved for each plant, 5 of the 10 plants would be taken off the delay list entirely. In addition, if low power testing reveals problems requiring corrective action and further review, the time savings for that particular reactor could be as much as six months, according to the NRC.

It is important to view the estimated delays with some skepticism. The NRC uses projections of construction completion provided by the utility industry. The utilities have historically been very optimistic about construction schedules. I am simply echoing here the words of the NRC itself: "Historically the staff has found that the applicants' estimated completion dates are optimistic compared to the NRC estimates; therefore, the slippage based on applicants' dates is greater than when based on staff estimates." When we bandy about these figures—so many months of delay per plant—we are using these very shaky utility estimates, which the NRC admits are "historically optimistic." Delay in the licensing of safe nuclear power plants is a serious matter. But so is the risk of another accident, worse than we



experienced at Three Mile Island. The theme of the nuclear industry lobby is that meaningful public participation and thorough NRC licensing board scrutiny are expendable luxuries unrelated to safety. Nothing could be further from the truth.

In this regard, I urge my colleagues to consider carefully the views in this matter presented on March 31, 1981 before the Senate Subcommittee on Nuclear Regulation by NRC Commissioner Peter Bradford. Commissioner Bradford addressed his remarks in support of the limit on temporary licenses at the low power level. In his remarks are found an eloquent defense of the importance of public hearings as an integral part of the nuclear regulatory process.

I want, however, to speak a moment on the importance of the hearing process itself, to respond briefly to the question of just why we undertake these time-consuming inquiries that are sometimes imprecise and often expensive. If we are to tamper with them without doing violence to their purpose and their benefits—real and potential—we must remind ourselves just what the purposes and the benefits are. To do so comprehensively would be a major undertaking, but I want at least to attempt a sketch this morning.

The fact is that nuclear power is a uniquely favored industry in terms of its relationship to local fears and concerns. All of the operating plants and all of the plants whose "delays" we are concerned about were exempted by the preemptive sections of the Atomic Energy Act from any sort of state or local regulation of a radiation hazard that could force the plant's neighbors to evacuate their homes or that could—in the most unlikely case—render those homes uninhabitable for decades. In terms of basic American traditions of state and local government, this was a breathtakingly radical step—one that could probably only have been taken in an era in which public faith in the benign omniscience of the federal government ran much higher than it does today.

Furthermore, as if preemption weren't enough, the two-step licensing process postponed the hearing of many serious safety questions until the operating license hearings—after the plant was already built and an immense financial and social commitment made to its operation. While even the more enlightened representatives of the industry would prefer more thorough construction permit hearings today, the fact is that the historic process was set up to suit the needs of a rapidly developing technology, and the plants in the operating license hearings today received construction permit reviews that were not only pre-Three Mile Island, but that were often the Atomic Energy Commission's equivalent to a lick and a promise.

Against this background, the NRC hearing process can be understood as the federal side of two bargains. First, all effective state and local scrutiny of radiation hazard was preempted, but those concerns could be raised and examined in depth in federal hearings. Second, plans could be built on

the basis of relatively flimsy construction permit reviews on the understanding that at least the operating license review and hearing be thorough. While the proposals before you today can be reconciled with these commitments, others now under discussion in the Commission and in parts of the Congress would welsh on both of these commitments by making the hearing process even more of a sham in terms of effective safety review than it is today.

\* \* \* \* \*

We look to public hearings to serve two purposes. They should provide a strong and skeptical independent check on the NRC's internal reviews, and they provide the only avenue for citizens to resolve concerns about a new and serious hazard being introduced into their communities. When we talk of "streamlining" them, we must keep these purposes and the bargains that underlie them in mind.

After years of sitting on the two committees that oversee nuclear power, I can only agree with the Kemeny Commission Report to the President on the Accident at Three Mile Island. To the extent that we allow the NRC and the nuclear industry to return to "business as usual," with the closed-shop mindset that preceded the TMI accident, we are only setting the stage for a far greater catastrophe.

Section 6 of this bill revives that style of regulation. I intend, therefore, to urge that the House amend this bill to restrict the issuance of temporary operating licenses to reactor operation no higher than low power. Such erosion of public participation represents a reasonable compromise. It has been proposed by the NRC, which opposed taking any further interim license step. It expedites the licensing process without sacrificing safety reviews.

EDWARD J. MARKEY.

## ADDITIONAL VIEWS OF HON. MIKE SYNAR

There is no question that the Congress can and should take appropriate legislative action to address the problem of licensing delays for new nuclear power reactors. The Three Mile Island accident in 1979 resulted in the Nuclear Regulatory Commission refocusing on safety issues and away from new licensing proceedings. This shift in emphasis at NRC imposed lengthy delays on several operating license applicants. The NRC still has not satisfactorily resolved the delay problem nor, it seems, can it do so short of new legislative authority.

For the 22 nuclear power units scheduled for completion during calendar years 1981 and 1982, the NRC has projected licensing application delays for ten units. (Twelve are listed as having no projected delay.) For those ten, the NRC projects delays ranging from one to 12 months.

The NRC is instituting administrative changes to reduce these delays. Other changes will be implemented in the near future and still others are being planned to speed up licensing. It is likely, however, that some of those ten plants will still experience delays between the time of completion of the unit and final action by the NRC on the utility's permanent operating license application.

Therefore, it has become clear that the NRC requires new legislative authority to help resolve the licensing delay problem.

Allowing a plant to needlessly sit idle while the utility awaits action on its operating license application can impose costly burdens on ratepayers for replacement power and related costs. It should be noted, however, that not all delays are related to inaction or regulatory delay on the part of the Nuclear Regulatory Commission.

The NRC submitted to Congress a legislative proposal to grant the Commission new authority to issue temporary, or interim, operating licenses for units experiencing licensing delays. The NRC proposal, adopted by a three to one vote of the Commission, requested authority to grant interim licenses for fuel loading and low-power testing, prior to the conduct or completion of the public hearings required in a contested operating license procedure. The Commission termed even this new authority "an extraordinary and temporary cure for an extraordinary and temporary situation."

The Congress can and should take appropriate steps to grant NRC the limited authority and discretion it requires to alleviate the licensing delay problem for those ten units. However, the Committee's provision on temporary licensing goes well beyond the limits of reasonable authority and instead allows the NRC almost unbounded discretion to act its will with little constraint.

Section 6 of the Committee bill allows the NRC to issue full-power operating licenses, prior to any public hearing, for an indefinite period of time. In addition, the bill in no way prohibits the Commission from

delegating the actual decision to issue an interim license to the Commission staff, and does not require any finding by the Commission that the utility will actually experience a delay in the licensing process prior to receiving an interim operating license.

In my view, the bill should contain some minimal regulatory constraints to ensure adequate licensing safeguards and to protect the integrity of the participatory licensing process. These minimal and reasonable constraints would not and need not delay the licensing process; rather, they would ensure the safety and quality of the process when we speed it up.

These issues need to be addressed individually and in detail, so that Members of the House realize exactly how broad and unprecedented is the authority granted the Commission under the H.R. 2330, as reported by the full Energy and Commerce Committee.

First, there is nothing in the Committee language which imposes a duration on temporary operating licenses granted by the Commission. Temporary should mean temporary; it should not mean indefinite. Yet that is precisely what the Committee provision allows. I offered an amendment to impose a one-year time limit on these temporary licenses. The NRC's listing of plants either now completed or scheduled for completion this year or next, indicates that the longest projected delay for any plant on the list is 12 months. Some projected delays are as low as one month. Limiting the duration of temporary operating licenses serves two purposes: first, it reinforces the fact that the Congress does not intend for these temporary licenses to be effective for an indefinite period of time; and, second, it keeps pressure on the Commission to hold the required public hearings in contested cases, ensure any necessary modifications to the operating license application, and make a final decision on that reactor case. If the hearing process extends past one year, or if faults are found with the operating license application which necessitates further delay, the one-year temporary license could be renewed. But the one-year-at-a-time duration keeps the NRC actively focused on that application and ensures that the temporary license won't be issued—for an indefinite period of time—and then shoved to the back burner while the NRC goes on to other matters.

Despite the fact that the one-year license could be renewed if necessary, all the information we have gathered indicates that the NRC should be able to process the applications for all those cases having projected delays within that time frame. Further, the Congress should make clear its hope that these cases will be processed as expeditiously as possible.

Surely no one intends for these temporary licenses to run indefinitely in order to delay or circumvent the public hearing process. And if we agree in principle that a reasonable time limit should be placed on temporary licenses, then one year is more than adequate to process most or all of the cases.

The argument has been made that some cases may be delayed longer than the NRC has projected. While that may be true, the increased delay may not always be the fault of NRC regulatory delays; moreover, the temporary license could in any necessary case be renewed, as I have stated before. But the principle is the same: to keep pressure

on the NRC to act expeditiously on reactor cases. In this regard, the Congress should continue to make known its concern over licensing delays and encourage the NRC to act expeditiously when possible, and continue to implement additional administrative changes to further reduce licensing delays.

A second argument has been made that application for a renewal of the one-year operating license would cause further delays in the licensing process. This is simply not true. First, no hearing would be required for renewal. And, if a utility were approaching the expiration of the one-year license, they would file for a renewal prior to that expiration so that NRC could act quickly to renew if the evidence indicates that further delay is inevitable.

The operating license process at NRC has incurred delays since the TMI accident in 1979, and some feel that because we have experienced these licensing delays, we should now proceed to give the NRC more than enough authority and discretion to take virtually any action to speed the licensing process and get completed units on line. No regulatory agency should have unbounded authority and discretion. We have too often in the past given such discretion to regulatory bodies within government, and we are now trying to repair the damage by way of regulatory reform legislation.

A final argument made in opposition to limiting temporary operating licenses suggests that a State public utility commission or State corporation commission would be reluctant to include in a utility's rate base operation of the unit for a temporary time if it were possible that the temporary license would not be renewed after one year. This is simply ridiculous. Any operating license issued by the NRC, whether temporary or permanent, can be revoked at any time. The state utility and corporation commissions are well aware of this fact, and it has never prevented a commission from including reactor operation in a utility rate base. So there is no reason to believe that a commission would be any more reluctant to do so under this proposal than they would be under the existing situation. Finally, the issue of how a State utility or corporation commission would act in this regard has always been, and should continue to be, strictly a State matter. It is solely up to the commissions of the individual states as to any action concerning a utility's rate base, and the federal government should not interfere or be concerned with that state prerogative.

The second issue of concern to me deals with the issue of accountability. There is nothing in existing law, and nothing in the Energy and Commerce Committee interim licensing Section of H.R. 2330, which requires the decision to issue an interim license to be made by a majority of the Commission. In fact, there is nothing to prohibit the Commission from delegating this crucial decision to the NRC staff. The Commissioners of the NRC are paid with taxpayers dollars to make this kind of important decision, and should be required to do so in this case. I was distressed to learn during debate on this issue in full Committee that this kind of function is routinely delegated to NRC staff. Absent public hearings on a utility's operating license application, the accountability should rest with the Commissioners themselves as to whether or not a unit can operate under a temporary license.

In addition, in response to the suggestion that requiring a Commission vote on temporary licenses would delay the process, it is clear that almost no delay should be necessary. If the case presented to the Commission is clear-cut that temporary operating authority should be granted the utility, then the procedure by which the Commission meets and acts on the temporary license application should be relatively short and simple. Requiring the Commission to take this action does have the advantage of forcing the Commission to focus specifically on individual cases and make decisions for which they are accountable. If the case is not clear-cut, then the Commission should give more than routine attention to the matter.

The third issue relates to whether or not the Commission, prior to issuing a temporary license, should have to find that the utility will actually experience a delay in the regular licensing process. In my mind, this simple finding of delay is another reasonable constraint on the Commission's discretion. Certainly the Congress does not intend for the Commission to issue a temporary operating license to a utility which is not expected to experience a licensing delay. So, including such a provision would simply have reinforced the Congress' intention that only those utilities having projected licensing delays would be eligible for interim operating licenses. Unfortunately, the Committee rejected this proposal as well.

The fourth, and to some extent most serious, issue with respect to interim licenses is the authority of the Commission, under the Committee language, to issue full-power operating licenses prior to any public hearings on a contested application. The Senate Environment and Public Works Committee very prudently adopted an interim licensing provision which authorizes the Commission to initially grant interim licenses for fuel-loading and low-power testing only. Those licenses could then be amended following the testing period to allow an operating power higher than low-power testing (5 percent). While this authority—allowing increases in operating power levels—goes well beyond what the NRC requested, I believe it is an appropriate level of authority under current circumstances.

The provisions adopted by the Energy and Commerce Committee, however, go even further, by allowing the NRC, at its discretion, to issue temporary operating licenses at any power level, up to and including full power, without first requiring a low-power testing period.

The testing phase is a crucial "trial and error" period in the operation of any reactor, and while my proposal would not have specified the length of time for low-power testing, that phase would still have been mandatory before proceeding to a higher operating power level. Under my proposal, the decision as to when a reactor was ready for this increase, following low-power testing, would be at the discretion of the Commission. This initial phase is standard operating procedure for utilities, and should continue to be mandatory. Once the reactor has been through an adequate low-power testing period, as determined by the NRC, the utility could file a petition with the Commission for an increase in operating power. If testing has gone well, the NRC could simply amend the temporary operating license to authorize a higher power level. No delay would be incurred, since the reactor would continue to operate at low power while the NRC considered and acted on

the petition for an increase in power. No hearing would be necessary prior to such an amendment being adopted by the NRC.

Surely no one intends for the NRC to issue full-power operating license before low-power testing has been successfully completed. Since this two-step procedure is traditional within the industry and with the NRC's regular licensing process, the Congress should continue to require that low-power testing be completed before full power can be authorized. In order to ensure this important phase of operation, the Congress should stipulate it directly by including such a requirement in the bill.

Low-power testing is conducted to find out as early as possible if there are any construction flaws or other safety problems which might pose a bigger risk, both safety-wise and financially, if they became apparent only after the plant reached full power. This testing phase, therefore, is in the interests of the utilities as well as the public.

Again, I would reiterate that no delay would be incurred by the utility in getting approval of this second-step amendment to the temporary operating license, since the reactor would continue to operate at low power until a decision by the NRC on the utility petition.

This two-step process doesn't cause delays, but it does ensure the continued safety and integrity of the operating process. NRC Commissioner Peter A. Bradford, in a letter to Rep. Broyhill dated May 18, 1981, pointed out very cogently why this traditional low-power testing period should be continued prior to full-power operation:

... our three serious reactor accidents (FERMI-I, the Browns Ferry Fire, and Three Mile Island) all occurred very early in the lives of the respective power plants. . . .

While the Energy and Commerce Committee may "hope" the Commission will continue this crucial procedure, absent statutory language in the bill, there is nothing to preclude the NRC from issuing a full-power operating license immediately.

I hope the House, in considering these issues further, will adopt some minimal regulatory constraints upon the Commission's authority to issue interim licenses, such as I have suggested.

Unfortunately, the full Energy and Commerce Committee chose not to include any of these modest provisions in its bill, although I, and others, felt they greatly improved the interim licensing provision.

Nuclear power generation is unique by its nature and unique in its risks. While unfortunate, it is not surprising that it has therefore generated unique and oftentimes burdensome regulations and costly delays.

In attempting to resolve the licensing delay problem, the Congress is not faced with a simple choice between too much regulation or no regulation at all. Rather, Congress is faced with finding that delicate and appropriate balance between the two widely divergent choices. The Energy and Commerce Committee bill fails to strike this balance.

The primary responsibility of the NRC has always been and remains the protection of public health and safety. And, while it has become necessary to also now consider the financial burden of delays on utilities and their ratepayers, it can ill-afford to abrogate its first responsibility in the process of meeting this latest obligation.

The future of nuclear power in our nation depends upon the support and faith of the American public—faith not only in the nuclear industry itself, but in the ability of government to adequately regulate it.

Neither the industry nor the Congress can afford to jeopardize the faith and support of the public by permitting run-away regulatory discretion.

The Congress should adopt an interim licensing provision, along the lines of the Senate proposal, which could gain the support of industry, the public and most every Member of Congress. This broad-based support will be crucial as we move to quicken the pace of reactor licensing.

To achieve this support will require a legislative proposal which provides utilities with the necessary relief from costly and lengthy licensing delays, but which also preserves the integrity of the process by imposing some accountability on the Commission and which incorporate some minimal safeguards in the process, rather than running roughshod over the process.

MIKE SYNAR.



## ADDITIONAL VIEWS ON H.R. 2330

### *The need for nuclear licensing reforms*

The nuclear licensing reforms adopted in this bill are decidedly pro-consumer and anti-inflation. These regulatory reforms would speed the licensing of nuclear powerplants while maintaining safety and environmental protection.

At a time when consumers face soaring electric bills across the land, these reforms will help avoid over \$2 billion in higher electric rates and consumer costs due to Nuclear Regulatory Commission delays in licensing nuclear plants. In addition, the Department of Energy estimates these reforms will help reduce U.S. oil consumption by over 200,000 barrels per day equivalent.

Although we would have liked to have seen the Committee adopt stronger and more comprehensive reforms of the NRC licensing logjam, we believe the bipartisan, moderate compromise adopted by the Committee represents a long-overdue, common-sense step toward solving the short-term licensing problems at the NRC. According to DOE, if these problems are *not* solved, 11 to 13 powerplants will sit idle a collective total of 79 to 102 months over the next 2 years at a cost to consumers of tens of millions of dollars per day in higher costs of replacement power and carrying charges. In addition, 57 other plants scheduled to be completed by 1985 may also be caught in "pancaking" regulatory delays that make the current costs of delay look like spare change.

It is a tribute to the broad, bipartisan support for these moderate licensing reforms that they were adopted by the Committee without amendment.

However, the current logjam at the NRC is only a symptom of the disease of irrational over-regulation. This over-regulation burdens our economy and clouds our progress toward energy self-sufficiency.

When the French and Japanese can license a nuclear powerplant in less than 7 years and it takes us 12 to 15 years, something is terribly wrong with our regulatory process. The problem is not technological, the problem is political. As a national association of some 1,000 scientists, engineers, and scholars (including professor Hans A. Bethe of Cornell and six other Nobel Laureates), recently wrote us:

It is essential that this country find means to more sensibly and prudently license commercial nuclear reactors. The current regulatory inaction and industrial stagnation is contributing to the erosion of our nation's international economic and technical position . . . There is a clear and present need for putting licensing "back on track". The American public cannot continue to bear the billions of dollars in delay costs . . . Nor can the United States sit idle with its com-

mercial nuclear program while the rest of the Western world leaves it in technical "backwater". . . .

If the American economy is going to turn around and expand once again, creating more jobs and "a bigger slice of the pie" for millions of working American families, we are going to have to expand our energy mix with every domestic source available to fuel that economy—production as well as conservation. And if nuclear is to remain an option in that energy mix, as the American people in national opinion polls tell us it should, then we must incorporate balance into the regulatory process, a balance between the costs and benefits of regulation.

For these reasons, the reforms adopted in this legislation are only an interim step, and we expect this Committee, the new Administration, industry, and the public to address the need for comprehensive nuclear licensing reform during this Congress. And when we do, we know of two groups who will be watching us very carefully—the American consumers who pay high electric bills, and the OPEC oil suppliers who count their profits from those bills in the billions of dollars.

JAMES T. BROYHILL.  
 CLARENCE J. BROWN.  
 JAMES M. COLLINS.  
 NORMAN F. LENT.  
 MATTHEW J. RINALDO.  
 TOM CORCORAN.  
 ROBERT WHITTAKER.  
 THOMAS J. TAUKE.  
 DON RITTER.  
 HAROLD ROGERS.  
 DAN COATS.  
 THOMAS J. BLILEY, JR.  
 CARLOS J. MOORHEAD.  
 WILLIAM E. DANNEMEYER.

## Union Calendar No. 89

97TH CONGRESS  
1ST SESSION

# H. R. 2330

[Report No. 97-22, Parts I and II]

To authorize appropriations to the Nuclear Regulatory Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and section 305 of the Energy Reorganization Act of 1974, as amended, and for other purposes.

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### IN THE HOUSE OF REPRESENTATIVES

MARCH 4, 1981

Mr. UDALL introduced the following bill; which was referred to the Committee on Interior and Insular Affairs

APRIL 10, 1981

Reported with an amendment, referred to the Committee on Energy and Commerce for a period ending not later than June 5, 1981, for consideration of such provisions of the bill and amendment as fall within the jurisdiction of that committee pursuant to clause 1(h), rule X, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

JUNE 2, 1981

Referred to the Committee on Science and Technology for a period ending not later than June 5, 1981, for consideration only of such portions of the bill and amendment authorizing funds for the development of a long-term nuclear powerplant safety systems plan pursuant to subsection 205(f) of the Energy Reorganization Act of 1974, as amended, as fall within that committee's jurisdiction over energy research and development pursuant to clause 1(r)(11), rule X

JUNE 4, 1981

Referral to the Committee on Energy and Commerce extended for an additional period ending not later than June 9, 1981

JUNE 5, 1981

Discharged from the Committee on Science and Technology

JUNE 9, 1981

Reported with an amendment from the Committee on Energy and Commerce, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike all after the enacting clause and omit the part printed in italic and insert the part printed in boldface roman]

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## A BILL

To authorize appropriations to the Nuclear Regulatory Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and section 305 of the Energy Reorganization Act of 1974, as amended, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **TITLE I—AUTHORIZATION OF APPROPRIATIONS**

4 **FOR FISCAL YEARS 1982 AND 1983**

5 **SEC. 101.** (a) There is hereby authorized to be appropri-  
6 ated to the Nuclear Regulatory Commission in accordance  
7 with the provisions of section 261 of the Atomic Energy Act  
8 of 1954 (42 U.S.C. 2017) and section 305 of the Energy  
9 Reorganization Act of 1974 (42 U.S.C. 5875), for the fiscal  
10 years 1982 and 1983 to remain available until expended

1 \$500,700,000 for fiscal year 1982 and \$530,000,000 for  
2 fiscal year 1983 to be allocated as follows:

3 (1) not more than \$75,610,000 for fiscal year  
4 1982 and \$78,280,000 for fiscal year 1983, may be  
5 used for "Nuclear Reactor Regulation";

6 (2) not more than \$67,680,000 for fiscal year  
7 1982 and \$70,270,000 for fiscal year 1983, may be  
8 used for "Inspection and Enforcement";

9 (3) not more than \$17,950,000 for fiscal year  
10 1982 and \$17,990,000 for fiscal year 1983, may be  
11 used for "Standards Development";

12 (4) not more than \$46,700,000 for fiscal year  
13 1982 and \$48,020,000 for fiscal year 1983, may be  
14 used for "Nuclear Material Safety and Safeguards";

15 (5) not more than \$231,940,000 for fiscal year  
16 1982 and \$252,180,000 for fiscal year 1983, may be  
17 used for "Nuclear Regulatory Research";

18 (6) not more than \$19,140,000 for fiscal year  
19 1982 and \$20,610,000 for fiscal year 1983, may be  
20 used for "Program Technical Support";

21 (7) not more than \$41,680,000 for fiscal year  
22 1982 and \$42,650,000 for fiscal year 1983, may be  
23 used for "Program Direction and Administration".

24 (b) The Commission may use not more than 1 per  
25 centum of the amounts authorized to be appropriated under

1 paragraph (5) of subsection (a) to exercise its authority under  
2 section 31.a. of the Atomic Energy Act of 1954, as amended,  
3 to enter into grants and cooperative agreements with univer-  
4 sities pursuant to that section. Grants made by the Commis-  
5 sion shall be made in accordance with the Federal Grants  
6 and Cooperative Agreements Act of 1977 and other applica-  
7 ble law.

8 (e) No amount appropriated to the Nuclear Regulatory  
9 Commission pursuant to subsection (a) may be used for any  
10 purpose in excess of the amount expressly authorized to be  
11 appropriated therefor by paragraphs (1) through (7) of such  
12 subsection if such excess amount is greater than \$500,000,  
13 nor may the amount available from any appropriation for any  
14 purpose specified in such paragraphs be reduced by more  
15 than \$500,000, unless—

16 (1) a period of thirty calendar days (not including  
17 any day in which either House of Congress is not in  
18 session because of an adjournment of more than three  
19 calendar days to a day certain or an adjournment sine  
20 die) has passed after the receipt by the Committee on  
21 Energy and Commerce and the Committee on Interior  
22 and Insular Affairs of the House of Representatives  
23 and the Committee on Environment and Public Works  
24 of the Senate of notice given by the Commission con-  
25 taining a full and complete statement of the action pro-

1 posed to be taken and the facts and circumstances  
2 relied upon in support of such proposed action; or

3 (2) each such committee has, before the expiration  
4 of such period, transmitted to the Commission a writ-  
5 ten notification that there is no objection to the pro-  
6 posed action.

7 ~~SEC. 102:~~ Moneys received by the Commission for the  
8 cooperative nuclear research programs may be retained and  
9 used for salaries and expenses associated with those pro-  
10 grams, notwithstanding the provisions of section 3617 of the  
11 Revised Statutes (31 U.S.C. 484), and shall remain available  
12 until expended.

13 ~~SEC. 103:~~ From appropriations to the Nuclear Regula-  
14 tory Commission under section 101(a), the Commission may  
15 transfer to other agencies of the Government sums for sala-  
16 ries and expenses for the performance by such agencies of  
17 activities for which such appropriations of the Commission  
18 were made. The sums so transferred may be merged with the  
19 appropriation of the agency to which the sums transferred.

20 ~~SEC. 104:~~ Notwithstanding any other provision of this  
21 Act, no authority to make payments hereunder shall be effec-  
22 tive except to such extent or in such amounts as are provided  
23 in advance in appropriation Acts.

24 *SECTION 1. (a) There is hereby authorized to be appro-*  
25 *priated to the Nuclear Regulatory Commission in accordance*

1 *with the provisions of section 261 of the Atomic Energy Act*  
2 *of 1954 (42 U.S.C. 2017) and section 305 of the Energy*  
3 *Reorganization Act of 1974 (42 U.S.C. 5875), for the fiscal*  
4 *years 1982 and 1983 to remain available until expended,*  
5 *\$485,873,000 for fiscal year 1982 and \$513,100,000 for*  
6 *fiscal year 1983 to be allocated as follows:*

7           (1) *Not more than \$74,097,800 for fiscal year*  
8           *1982 and \$76,714,400 for fiscal year 1983, may be*  
9           *used for "Nuclear Reactor Regulation", of which an*  
10          *amount not to exceed \$1,000,000 is authorized each*  
11          *said fiscal year to be used to accelerate the effort in*  
12          *gas-cooled thermal reactor preapplication review.*

13          (2) *Not more than \$61,513,400 for fiscal year*  
14          *1982 and \$62,564,600 for fiscal year 1983, may be*  
15          *used for "Inspection and Enforcement".*

16          (3) *Not more than \$17,591,000 for fiscal year*  
17          *1982 and \$17,630,200 for fiscal year 1983, may be*  
18          *used for "Standards Development".*

19          (4) *Not more than \$45,766,000 for fiscal year*  
20          *1982 and \$47,059,600 for fiscal year 1983, may be*  
21          *used for "Nuclear Material Safety and Safeguards".*

22          (5) *Not more than \$227,301,200 for fiscal year*  
23          *1982 and \$247,136,400 for fiscal year 1983, may be*  
24          *used for "Nuclear Regulatory Research", of which an*  
25          *amount not to exceed \$3,500,000 for fiscal year 1982*



1       and \$4,500,000 for fiscal year 1983 is authorized to  
2       be used to accelerate the effort in gas-cooled thermal re-  
3       actor safety research.

4               (6) Not more than \$18,757,200 for fiscal year  
5       1982 and \$20,197,800 for fiscal year 1983, may be  
6       used for "Program Technical Support".

7               (7) Not more than \$40,846,400 for fiscal year  
8       1982 and \$41,797,000 for fiscal year 1983, may be  
9       used for "Program Direction and Administration".

10       (b) The Commission may use not more than 1 per  
11       centum of the amounts authorized to be appropriated under  
12       paragraph (5) of subsection (a) to exercise its authority  
13       under section 31 a. of the Atomic Energy Act of 1954 to  
14       enter into grants and cooperative agreements with universi-  
15       ties pursuant to that section. Grants made by the Commis-  
16       sion shall be made in accordance with the Federal Grants  
17       and Cooperative Agreements Act of 1977 and other applica-  
18       ble law.

19       (c)(1) Not more than \$500,000 of the amount appropri-  
20       ated for a fiscal year to the Nuclear Regulatory Commission  
21       under any paragraph of subsection (a) for purposes of the  
22       program specified in that paragraph may be used by the  
23       Commission in that fiscal year for purposes of a program  
24       referred to in any other paragraph of subsection (a), and the  
25       amount available from appropriations for a fiscal year for

1 purposes of any program specified in any paragraph of such  
2 section (a) may not be reduced for that fiscal year by more  
3 than \$500,000.

4 (2) The limitations on reprogramming contained in para-  
5 graph (1) shall not apply where the Commission submits to  
6 the Committee on Interior and Insular Affairs and the Com-  
7 mittee on Energy and Commerce of the United States House  
8 of Representatives and to the Committee on Environment  
9 and Public Works of the United States Senate a notification  
10 containing a full and complete statement of the action pro-  
11 posed to be taken and the facts and circumstances relied on  
12 in support of such proposed action, and if—

13 (A) each such committee, before the expiration of  
14 a thirty-day period, transmits to the Commission a  
15 written notification that the committee does not object  
16 to the proposed action; or

17 (B) a thirty-day period passes during which no  
18 such committee transmits to the Commission a written  
19 notification that the committee disapproves of the pro-  
20 posed action.

21 The thirty-day period referred to in this paragraph shall com-  
22 mence upon the receipt by each such committee of the notice  
23 referred to in the preceding sentence. In computing such  
24 period there shall not be taken into account any day in which  
25 either House of Congress is not in session because of an ad-

1 *journalment of more than three calendar days to a day certain*  
2 *or an adjournment sine die. Each committee referred to in*  
3 *this paragraph may approve or disapprove a proposal of the*  
4 *Commission under this paragraph in such manner as such*  
5 *committee deems appropriate.*

6       *SEC. 2. Moneys received by the Commission for the*  
7 *cooperative nuclear research programs may be retained and*  
8 *used for salaries and expenses associated with those pro-*  
9 *grams, notwithstanding the provisions of section 3617 of the*  
10 *Revised Statutes (31 U.S.C. 484), and shall remain availa-*  
11 *ble until expended.*

12       *SEC. 3. During the fiscal years 1982 and 1983, trans-*  
13 *fers of sums from salaries and expenses of the Nuclear Regu-*  
14 *latory Commission may be made to other agencies of the*  
15 *United States Government for the performance of work for*  
16 *which the appropriation is made, and in such cases the sums*  
17 *so transferred may be merged with the appropriation so*  
18 *transferred.*

19       *SEC. 4. Notwithstanding any other provision of this*  
20 *Act, no authority to make payments hereunder shall be effec-*  
21 *tive except to the extent or in such amounts as are provided*  
22 *in advance in appropriation Acts.*

23       *SEC. 5. (a) Except as provided in subsection (b), of the*  
24 *amounts authorized to be appropriated under this Act for the*  
25 *fiscal years 1982 and 1983, not more than \$200,000 may be*

1 used by the Nuclear Regulatory Commission for the acquisi-  
2 tion (by purchase, lease, or otherwise) and installation of  
3 equipment to be used for the "small test prototype nuclear  
4 data link" program or for any other program for the collec-  
5 tion and transmission to the Commission of data from li-  
6 censed nuclear reactors during abnormal conditions at such  
7 reactors.

8 (b)(1) The limitation contained in subsection (a) shall  
9 not apply to equipment for which the Commission prepares  
10 and submits to Congress a specific acquisition and installa-  
11 tion proposal unless either House of Congress rejects such  
12 proposal within sixty calendar days of such submission.

13 (2) A proposal may be submitted to the Congress under  
14 paragraph (1) only after the Commission has conducted a  
15 full and complete study and analysis of the issues involved  
16 and prepared a detailed report setting forth the results of such  
17 study and analysis. Such proposal shall be accompanied by  
18 such report and by a concise statement, based on the report,  
19 setting forth the reasons and justification for the proposal.

20 (3) The study and analysis referred to in paragraph (2)  
21 shall include, at a minimum, an examination of—

22 (A) the appropriate role of the Commission during  
23 abnormal conditions at a nuclear reactor licensed by  
24 the Commission;

1           (B) the information which should be available to  
2           the Commission to enable the Commission to fulfill  
3           such role and to carry out other related functions;

4           (C) various alternative means of assuring that  
5           such information is available to the Commission in a  
6           timely manner; and

7           (D) any changes in existing Commission authori-  
8           ty necessary to enhance the Commission response to  
9           abnormal conditions at a nuclear reactor licensed by  
10          the Commission.

11       The study shall include a cost-benefit analysis of each alter-  
12       native examined under subparagraph (C).

13       SEC. 6. Of the amounts authorized to be appropriated  
14       by this Act for the fiscal year 1982, not more than  
15       \$30,000,000 may be used to continue tests at the Loss-of-  
16       Fluid Test Facility.

17       SEC. 7. (a) Of the amounts authorized to be appropri-  
18       ated pursuant to paragraph (7) of subsection 1(a), such sums  
19       as may be necessary shall be available for interim consolida-  
20       tion of Nuclear Regulatory Commission headquarters staff  
21       offices in the District of Columbia and, to the extent neces-  
22       sary, in Bethesda, Maryland.

23       (b) No amount authorized to be appropriated under this  
24       Act may be used, in connection with the interim consolida-  
25       tion of Nuclear Regulatory Commission offices, to relocate

1 *the offices of members of the Commission outside of the Dis-*  
2 *trict of Columbia.*

3       *SEC. 8. (a) No part of the funds authorized to be appro-*  
4 *priated under this Act may be used to provide assistance to*  
5 *the General Public Utilities Corporation for purposes of the*  
6 *decontamination, cleanup, repair, or rehabilitation of facili-*  
7 *ties at Three Mile Island Unit 2.*

8       *(b) The prohibition contained in subsection (a) shall not*  
9 *relate to the responsibilities of the Nuclear Regulatory Com-*  
10 *mission for monitoring or inspection of the decontamination,*  
11 *cleanup, repair, or rehabilitation activities at Three Mile*  
12 *Island and such prohibition shall not apply to the use of*  
13 *funds by the Nuclear Regulatory Commission to carry out*  
14 *regulatory functions of the Commission under the Atomic*  
15 *Energy Act of 1954 with respect to the facilities at Three*  
16 *Mile Island.*

17                   **TITLE I—AUTHORIZATION OF**  
18           **APPROPRIATIONS FOR FISCAL YEAR 1982**

19       **SECTION 1. (a) There is hereby authorized to**  
20 **be appropriated to the Nuclear Regulatory Com-**  
21 **mission in accordance with the provisions of sec-**  
22 **tion 261 of the Atomic Energy Act of 1954 (42**  
23 **U.S.C. 2017) and section 305 of the Energy Reorga-**  
24 **nization Act of 1974 (42 U.S.C. 5875), for the fiscal**  
25 **years 1982 and 1983 to remain available until ex-**

1 pended \$500,700,000 for fiscal year 1982 and  
2 \$530,000,000 for fiscal year 1983 to be allocated as  
3 follows:

4 (1) Not more than \$75,610,000 for fiscal  
5 year 1982 and \$78,280,000 for fiscal year 1983,  
6 may be used for "Nuclear Regulatory Regula-  
7 tion".

8 (2) Not more than \$67,680,000 for fiscal  
9 year 1982 and \$70,270,000 for fiscal year 1983,  
10 may be used for "Inspection and Enforce-  
11 ment".

12 (3) Not more than \$17,950,000 for fiscal  
13 year 1982 and \$17,990,000 for fiscal year 1983,  
14 may be used for "Standards Development".

15 (4) Not more than \$46,700,000 for fiscal  
16 year 1982 and \$48,020,000 for fiscal year 1983,  
17 may be used for "Nuclear Material Safety  
18 and Safeguards".

19 (5) Not more than \$231,940,000 for fiscal  
20 year 1982 and \$252,180,000 for fiscal year  
21 1983, may be used for "Nuclear Regulatory  
22 Research".

23 (6) Not more than \$19,140,000 for fiscal  
24 year 1982 and \$20,610,000 for fiscal year 1983,

1        may be used for "Program Technical Sup-  
2        port".

3            (7) Not more than \$41,680,000 for fiscal  
4        year 1982 and \$42,650,000 for fiscal year 1983,  
5        may be used for "Program Direction and Ad-  
6        ministration".

7        (b) The Commission may use not more than 1  
8        per centum of the amounts authorized to be ap-  
9        propriated under paragraph (5) of subsection (a)  
10       to exercise its authority under section 31 a. of the  
11       Atomic Energy Act of 1954 to enter into grants  
12       and cooperative agreements with universities pur-  
13       suant to that section. Such grants should be made  
14       with the Commission paying close attention to op-  
15       portunities for entering into agreements with ap-  
16       propriate historically predominate minority uni-  
17       versities and research centers. Grants made by the  
18       Commission shall be made in accordance with the  
19       Federal Grants and Cooperative Agreements Acts  
20       of 1977 and other applicable law.

21       (c)(1) Not more than \$500,000 of the amount  
22       appropriated for a fiscal year to the Nuclear Regu-  
23       latory Commission under any paragraph of sub-  
24       section (a) for purposes of the program specified  
25       in that paragraph may be used by the Commission



1 in that fiscal year for purposes of a program re-  
2 ferred to in any other paragraph of subsection (a),  
3 and the amount available for appropriations for a  
4 fiscal year for purposes of any program specified  
5 in any paragraph of subsection (a) may not be re-  
6 duced for that fiscal year by more than \$500,000.

7 (2) The limitations on reprogramming con-  
8 tained in paragraph (1) shall not apply where the  
9 Commission submits to the Committee on Interior  
10 and Insular Affairs and the Committee on Energy  
11 and Commerce of the United States House of Rep-  
12 resentatives and to the Committee on Environ-  
13 ment and Public Works of the United States  
14 Senate a notification containing a full and com-  
15 plete statement of the action proposed to be taken  
16 and the facts and circumstances relied on in sup-  
17 port of such proposed action, and if—

18 (A) each such committee, before the expi-  
19 ration of a thirty-day period, transmits to the  
20 Commission a written notification that the  
21 committee does not object to the proposed  
22 action; or

23 (B) a thirty-day period passes during  
24 which no such committee transmits to the  
25 Commission a written notification that the

1       committee disapproves of the proposed  
2       action.

3       The thirty-day period referred to in this paragraph  
4       shall commence upon the receipt by each such  
5       committee of the notice referred to in the preced-  
6       ing sentence. In computing such period there shall  
7       not be taken into account any day in which either  
8       House of Congress is not in session because of an  
9       adjournment of more than three calendar days to  
10      a day certain or an adjournment sine die. Each  
11      committee referred to in this paragraph may ap-  
12      prove or disapprove a proposal of the Commission  
13      under this paragraph in such manner as such  
14      committee deems appropriate.

15      SEC. 2. Moneys received by the Commission  
16      for the cooperative nuclear research programs  
17      may be retained and used for salaries and ex-  
18      penses associated with those programs, notwith-  
19      standing the provisions of section 3617 of the Re-  
20      vised Statutes (31 U.S.C. 484), and shall remain  
21      available until expended.

22      SEC. 3. During the fiscal year 1982 and 1983,  
23      transfers of sums from salaries and expenses of  
24      the Nuclear Regulatory Commission may be made  
25      to other agencies of the United States Government

1 for the performance of work for which the appro-  
2 priation is made, and in such cases the sums so  
3 transferred may be merged with the appropriation  
4 so transferred.

5       **SEC. 4.** Notwithstanding any other provision  
6 of this Act, no authority to make payments here-  
7 under shall be effective except to the extent or in  
8 such amounts as are provided in advance in ap-  
9 propriations Acts.

10       **SEC. 5.** (a) Of the amounts authorized to be  
11 appropriated pursuant to paragraph (7) of section  
12 1(a), such sums as may be necessary shall be avail-  
13 able for interim consolidation of Nuclear Regula-  
14 tory Commission headquarters staff offices in the  
15 District of Columbia and, to the extent necessary,  
16 in Bethesda, Maryland.

17       (b) No amount authorized to be appropriated  
18 under this Act may be used, in connection with the  
19 interim consolidation of Nuclear Regulatory Com-  
20 mission offices, to relocate the offices of members  
21 of the Commission outside of the District of Co-  
22 lumbia.

23       **SEC. 6.** Of the amounts authorized to be ap-  
24 propriated under section 1, the Nuclear Regula-  
25 tory Commission may use such sums as may be

1 necessary to issue temporary operating licenses  
2 for nuclear power reactors as provided in section  
3 192 of the Atomic Energy Act of 1954, as amended,  
4 except that such temporary operating licenses  
5 may be issued—

6 (1) in advance of the conduct or comple-  
7 tion of any hearing required by section 192  
8 or by section 189 of such Act, and

9 (2) without regard to subsection (d) of  
10 such section 192 and the finding required by  
11 subsection (b)(3) of that section.

12 **SEC. 7.** Of the amounts authorized to be ap-  
13 propriated under section 1, the Nuclear Regula-  
14 tory Commission may use such sums as may be  
15 necessary to issue and make immediately effective  
16 amendments to licenses for nuclear power reac-  
17 tors where the Commission determines that an  
18 amendment involves no significant hazards con-  
19 sideration. Such an amendment may be issued and  
20 made immediately effective—

21 (1) in advance of the conduct and com-  
22 pletion of any required hearing, and

23 (2) without providing the prior notice  
24 and publication in the Federal Register re-

1       ferred to in section 189 of the Atomic Energy  
2       Act of 1954.

3       In all other aspects the amendment shall meet the  
4       requirements of the Atomic Energy Act of 1954.

5       SEC. 8. (a) Of the amounts authorized to be  
6       appropriated by section 1, such sums as may be  
7       necessary shall be used by the Nuclear Regulatory  
8       Commission to recommend legislation and regula-  
9       tions which if taken together would reduce by one-  
10      half the time for the filing, review, and issuance of  
11      construction permits, operating licenses, and li-  
12      cense amendments for a facility for which an ap-  
13      plication is filed on or after October 1, 1981, under  
14      sections 103, 104(b), or 189 of the Atomic Energy  
15      Act of 1954.

16      (b) The recommended regulations and legisla-  
17      tion shall be transmitted to Congress pursuant to  
18      this section on or before December 31, 1981, along  
19      with a report on each of the proposed regulations  
20      and legislation which describes their expected  
21      impact on reducing and stabilizing the time re-  
22      quired to issue construction permits, operating li-  
23      cense, and license amendments; safety assurance;  
24      judicial review; staff resources and public partici-  
25      pation.

1       **SEC. 9.** Of the amounts authorized to be ap-  
2       **propriated** under section 1 for the Office of Nucle-  
3       **ar Materials, Safety and Safeguards**, such sums as  
4       **may be necessary** shall be used by the Nuclear  
5       **Regulatory Commission** to promptly enter into a  
6       **memorandum of understanding** with the Depart-  
7       **ment of Energy** specifying inter-agency proce-  
8       **dures for the disposition** of radioactive materials  
9       **resulting from the cleanup** of Three Mile Island  
10       **Unit 2**, except those materials approved for dispo-  
11       **sition prior to the effective date** of this Act.

12       **SEC. 10.** Of the amounts authorized to be ap-  
13       **propriated** under section 1, the Nuclear Regula-  
14       **tory Commission** may use such sums as may be  
15       **necessary**, in the absence of a State or local emer-  
16       **gency preparedness plan** which has been approved  
17       **by the Federal Emergency Management Agency**,  
18       **to issue an operating license** for a nuclear power  
19       **reactor**, if it determines that there exists a State,  
20       **local, or utility plan** which provides reasonable as-  
21       **surance that public health and safety** is not endan-  
22       **gered by operation** of the facility concerned.

23       **SEC. 11.** No funds authorized to be appropri-  
24       **ated under this Act** may be used by the Commis-  
25       **sion to promulgate or publish a safety goal** for nu-

1 clear reactor regulation until public hearings have  
2 been conducted by the Commission respecting the  
3 establishment of such safety goal. Development of  
4 a safety goal for nuclear reactor regulation should  
5 be expedited, to the maximum extent practicable,  
6 so as to allow for the establishment of a safety  
7 goal by the Commission no later than December  
8 31, 1981.

Union Calendar No. 89

97TH CONGRESS  
1ST SESSION

# H. R. 2330

[Report No. 97-22, Parts I and II]

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## A BILL

To authorize appropriations to the Nuclear Regulatory Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and section 305 of the Energy Reorganization Act of 1974, as amended, and for other purposes.

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JUNE 9, 1981

Reported with an amendment from the Committee on Energy and Commerce, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed



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AUTHORIZING APPROPRIATIONS FOR THE NUCLEAR  
REGULATORY COMMISSION

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JUNE 9, 1981.—Committed to the Committee of the Whole House on the State  
of the Union and ordered to be printed

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Mr. DINGELL, from the Committee on Energy and Commerce,  
submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 2330]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 2330) to authorize appropriations to the Nuclear Regulatory Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and section 305 of the Energy Reorganization Act of 1974 as amended and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment to the bill as amended by the Committee on Interior and Insular Affairs, which was referred to the Committee on Energy and Commerce is as follows:

Strike out all after the enacting clause and omit the part printed in italic and insert in lieu thereof the following:

TITLE I—AUTHORIZATION OF APPROPRIATIONS FOR FISCAL  
YEAR 1982

SECTION 1. (a) There is hereby authorized to be appropriated to the Nuclear Regulatory Commission in accordance with the provisions of section 261 of the Atomic Energy Act of 1954 (42 U.S.C. 2017) and section 305 of the Energy Reorganization Act of 1974 (42 U.S.C. 5875), for the fiscal years 1982 and 1983 to remain available until expended \$500,700,000 for fiscal year 1982 and \$530,000,000 for fiscal year 1983 to be allocated as follows:

(1) Not more than \$75,010,000 for fiscal year 1982 and \$78,280,000 for fiscal year 1983, may be used for "Nuclear Regulatory Regulations".

As introduced, H.R. 2330 provided for the authorization of funds to the Nuclear Regulatory Commission for fiscal years 1982 and 1983. It contained no amendments to existing law. The Committee on Energy and Commerce considered and reported an amendment in the form of a substitute which not only provides an authorization for appropriations for fiscal years 1982 and 1983, but which also provides the Commission with specific directives to perform certain actions and which gives the Commission the authority to avoid anticipated delays in the licensing process. Nothing in the substitute has applicability beyond fiscal year 1983. There are no amendments to existing law in the Committee substitute.

#### *Legislative background*

On February 23, 1981, the Nuclear Regulatory Commission forwarded to the Congress proposed legislation authorizing appropriations for the Commission for fiscal years 1982 and 1983. Thereafter, on March 4, 1981, Congressman Morris K. Udall, chairman of the Interior and Insular Affairs Committee introduced the bill (H.R. 2330) which was referred to the Committee on Interior and Insular Affairs. The bill, with a substitute, was ordered reported by that Committee on April 1, 1981.

#### *Committee action*

On April 10, 1981, the bill, as reported by the Committee on Interior and Insular Affairs, was, pursuant to the Rules of the House, sequentially referred to the Committee on Energy and Commerce. On Wednesday, May 13, 1981, the Subcommittee on Energy Conservation and Power met in open session for the purpose of marking up the bill, H.R. 2330, and voted favorably to report the bill to the Committee with a substitute text.

On Thursday, June 4, 1981, the Committee on Energy and Commerce met in open session and considered the Subcommittee on Energy Conservation and Power's substitute, and considered additional amendments, after which the committee, by a voice vote ordered the bill reported to the House with an amendment in the nature of a substitute.

#### *Summary of H.R. 2330*

The committee amendment to H.R. 2330 authorizes appropriations to the Nuclear Regulatory Commission for fiscal year 1982 and 1983. The bill, as reported by the committee, authorizes a total of \$500,700,000 for fiscal year 1982 and \$530,000,000 for fiscal year 1983, with the funds for each year being divided into seven categories which correspond to the Commission's major program areas.

Under the committee amendment, the Commission is directed to use not more than 1 percent of the funds authorized to enter into grants and cooperative agreements with universities, and is further directed, in making such grants, to pay close attention to opportunities for entering into such agreements with appropriate historically predominant minority universities and research centers.

The committee amendment to H.R. 2330 establishes a procedure for congressional review and prior approval of any proposed action by the

Commission of any proposed action in excess of \$100,000, other than those authorized in section 1(a).

The Commission is authorized to use such sums as may be necessary to accomplish the interim consolidation of the NRC's headquarters staff in the District of Columbia and, to the extent necessary, in Bethesda, Md., but is prohibited from using any funds for the purpose of moving the office of the Commissioners outside of the District of Columbia.

The Commission is also authorized to use such sums as may be necessary to issue temporary operating licenses in advance of the conduct or completion of any hearing required under section 192 or section 189 of the Atomic Energy Act and without regard to subsection (d) of section 192 and without regard to the findings required by subsection (b) (3) of section 192. The Commission is also authorized to issue and make immediately effective amendments to licenses in advance of or prior to the completion of any required hearing where the Commission determines that such amendment involves no significant hazards consideration.

The committee substitute also directs the Commission to submit to the Congress, by December 31, 1981, a report, including recommendations for legislation and regulations which, if taken together, would reduce by one-half the time for the filing, review and issuance of construction permits, operating licenses and license amendments for applications filed after October 1, 1981.

Under the committee amendment, the Commission is authorized to enter into a memorandum of understanding with the Department of Energy specifying interagency procedures for the disposition of radioactive materials resulting from the cleanup of the Three Mile Island Unit 2, except for those materials approved for disposition prior to the effective date of this Act.

The committee amendment also authorizes the Commission, in the absence of a State or local emergency preparedness plan which has been approved by the Federal Emergency Management Agency to issue operating licenses for nuclear power reactors if it determines that there exists a State, local or utility plan which provides reasonable assurance that the public health and safety is not endangered by the operation of the facility.

Finally, the subcommittee amendment also provides that the Commission's safety goal cannot be finalized until all the legislative-type public hearings are complete. The Commission is urged to complete this safety goal, to the maximum extent practicable, by December 31, 1981.

#### COMMITTEE COMMENTS

##### *Amounts authorized*

H.R. 2330, as reported by the Committee on Energy and Commerce authorizes a total of \$500,700,000 for fiscal year 1982 and \$530,000,000 for fiscal year 1983 to the Nuclear Regulatory Commission. While this is identical to the total amounts requested by both the Carter and Reagan administrations, the totals for fiscal year 1982 are \$14,828,000 and, for fiscal year 1983, \$16,900,000, above the amounts authorized by the Committee on Interior and Insular Affairs.

Although the Commission has already taken a number of administrative actions to reduce the anticipated delays, it is clear that they will not be sufficient to eliminate them and that substantial delays are still expected for several reactors through the next two fiscal years. As a result, on March 18, 1981, the Commission submitted a legislative proposal to amend the Atomic Energy Act to authorize the Commission to issue, prior to the conduct or completion of an on-the-record evidentiary hearing on contested issues, interim operating licenses, authorizing fuel loading and low-power operation and testing.

The committee amendment differs in several major respects from the Commission's legislative proposal. Under the NRC's requested legislation, the Commission's authority to issue interim operating licenses would be limited to fuel loading and a maximum level of operation of only 5 percent of its full rated power. With this authority, coupled with administrative actions, which have been proposed but not yet implemented, to reduce licensing delays, nine plants would still experience some licensing delay. Moreover, state utility commissions may not allow reactors with just low power licenses to be included in the ratebases, thus resulting in the imposition of increased costs and thereby defeating the purpose of the provision. Consequently, the committee believes that the low-power limitation is inadequate to deal with the anticipated delays of all the affected reactors.

Under the committee substitute, the Commission is given the authority to issue temporary operating licenses under the provisions of section 192 of the Atomic Energy Act in advance of the conduct or completion of any hearing required by that section or by section 189. It is left to the Commission to decide, in each case, whether any hearing required by section 189 or section 192 should be conducted or completed prior to the issuance of the temporary operating licenses and to establish the appropriate level of operation in light of the individual circumstances. Thus, any decision to dispense with any hearing required by the Atomic Energy Act is left to the Commission, as is the decision to set the appropriate level of power operation.

Under the committee substitute, an applicant can file a petition for a temporary operating license only after the report of the Advisory Committee on Reactor Safeguards, the staff's final safety evaluation report, and the staff's final environmental impact statement have been filed. Before issuing any temporary operating license, the Commission must publish a notice of the petition in the Federal Register and provide a 14-day period for parties to the proceeding to file affidavits in support of or opposition to the petition, which can be extended for an additional 10 days. If the Commission, following the publication of the notice and the expiration of the period for public comment, decides to issue a temporary operating license in advance of the conduct or completion of any hearing required by section 192 or by section 189, it can do so only if it first determines (i) that all the requirements of law other than the conduct or completion of any required hearing are met, including all the regulations of the Commission applicable to the licensing of an operating reactor, and (ii) that the temporary operation of the facility in accordance with the terms and conditions of the license will provide adequate protection of the environment during the period of the temporary operating license. Thus, the committee amendment does not, in any way, diminish the substantive standard required

for the issuance of a temporary operating license. In order to issue a temporary license, the Commission must still make all the determinations regarding the issuance of a normal operating license required by law regarding the applicant's compliance with the requirements of law and the rules and regulations of the Commission, including that the issuance of any such temporary operating license provides reasonable assurance that there is adequate protection of the public health and safety and the environment. The committee amendment merely allows the Commission to make these findings prior to the initiation or completion of any hearing on the operating license application. Following the issuance of any temporary operating license, the Commission remains obligated to conduct the hearing required by section 192 and any hearing required by section 189 of the Atomic Energy Act. Moreover, if the Commission at any time following the issuance of a temporary operating license determines that the applicant is not prosecuting its operating license application with due diligence, it is given the authority in section 192 to revoke the temporary operating license. The authority to issue temporary operating licenses expires at the end of fiscal year 1983.

#### SECTION 7—WHOLLY AMENDMENTS TO EXISTING LICENSES

**Summary**—Section 7 of the bill authorizes the Commission to use such funds as may be necessary to issue and make immediately effective amendments to licenses prior to the conduct or completion of any hearing required by section 189 of the Atomic Energy Act and without providing the prior notice and publication in the Federal Register referred to in section 189 if it determines the amendment involves no significant hazards consideration.

**Discussion**—On November 19, 1980, the U.S. Court of Appeals for the District of Columbia Circuit, in *Sholly v. the Nuclear Regulatory Commission*, held that section 189(a) of the Atomic Energy Act required that the Commission, upon request, conduct a hearing on any amendment to a license, even if the Commission determines that the amendment involved no significant hazards consideration. Although under the existing provisions of section 189(a), the Commission is given the authority to dispense with the required prior notice and publication in the Federal Register whenever it determines that the amendment involves no significant hazards consideration, the court ruled that this did not relieve the Commission of the responsibility to, upon request, hold a hearing prior to issuing and making immediately effective any such amendment.

On March 11, 1981, the Commission submitted to the committee proposed legislation which would explicitly authorize the Commission to issue a license amendment which involves no significant hazards consideration prior to the holding or completion of any requested public hearing. This request was based upon the Commission's concern that the requirement that a hearing be held prior to the issuance and immediate effectiveness of an amendment involving no significant hazards consideration to a license could result in a delay in the operation of a reactor and impose unnecessary burdens on the Commission's staff which are not related to significant safety considerations. The Commission has stated that in some cases, the need to

issue amendments to licenses arises quickly, frequently in relation to fuel reloading, and failure to act promptly on the amendment may result in the shutdown, continued outage or derating of the facility.

The committee amendment provides the Commission with the authority to issue and make immediately effective amendments to licenses prior to the conduct or completion of any hearing required by section 189(a) when it determines that the amendment involves no significant hazards consideration. However, the authority of the Commission to do so is discretionary, and does not negate the requirement imposed by the Sholly decision that such a hearing, upon request, be subsequently held. Moreover, the committee's action is in light of the fact that the Commission has already issued for public comment rules including standards for determining whether an amendment involves no significant hazards considerations. The Commission also has a long line of case-by-case precedents under which it has established criteria for such determinations. The Commission's authority to act under this provision expires at the end of fiscal year 1983.

#### SECTION 8—LICENSING STUDY

*Summary*—Section 8 of the bill is an amendment offered by Mr. Moorhead which authorizes the Commission to use such funds as may be necessary to recommend to the Congress proposed legislation and regulations which, if taken together, would reduce, by one-half, the time for filing, review and issuance of construction permits, operating licenses and amendments for applications filed after October 1, 1981. The Commission is directed to submit these recommendations by December 31, 1981, in a report to the appropriate Committees of Congress which is to include a description of the impact of each proposal on: (i) the length of the licensing process; (ii) the adequacy of the safety assurance; (iii) judicial review; (iv) staff resources; and (v) public participation.

*Discussion*—The time consumed in licensing nuclear power reactors has lengthened over the last few years, and this committee, in the past, has repeatedly expressed its interest in determining the causes of this situation. This amendment is designed to establish a basis for considering what administrative and legislative changes can be taken to streamline the licensing process and to evaluate the effect of each such proposal on a variety of factors. This amendment does not direct the Commission to promulgate or issue for public comment any regulations, but to instead formulate an integrated package of regulatory and legislative changes which, if taken as a whole, would reduce the licensing process by one-half, consistent with the Commission's statutory function of protecting the public health and safety. The Commission and each member would, of course, be free to provide comments on each such proposal, and it is expected that the Commission would afford its staff an opportunity to comment on each proposal.

#### SECTION 9—THREE MILE ISLAND WASTE MEMORANDUM OF UNDERSTANDING

*Summary*—Section 9 of the bill directs the Commission to enter into a memorandum of understanding with the Department of

Energy specifying agency procedures for the disposal of radioactive materials resulting from the clean up of Three Mile Island.

*Discussion*—To date, the Department of Energy has failed to respond to inquiries from the Nuclear Regulatory Commission regarding the establishment of interagency procedures regarding the disposal of radioactive wastes resulting from the clean up of the damaged Three Mile Island nuclear reactor. The disposal of these wastes is essential to the clean up of this facility and the failure of the Commission and the Department to enter into a Memorandum of Understanding is a serious impediment to the decontamination activities at the site. A memorandum of understanding is needed to define agency responsibility for the disposal of these materials. This amendment does not vest either the Commission or the Department of Energy with any authority to perform any action at the site beyond those already established by law. Any memorandum of understanding entered into pursuant to this section is to be in full accord with the statutory responsibilities of both the Department and the Commission imposed upon each agency by section 202 of the Energy Reorganization Act of 1974 relating to jurisdiction over commercially generated high level nuclear wastes.

#### SECTION 10—EMERGENCY PLANNING

*Summary*—Section 10 of the bill reasserts the Commission's authority, granted under section 109 of the Nuclear Regulatory Commission's Fiscal Year 1980 Authorization, to use from the amounts authorized to be appropriated such funds as may be necessary to issue an operating license in the absence of an approved state plan, where the Commission determines that there exists a state, local or utility emergency preparedness plan which provides reasonable assurance that the public health and safety will not be endangered by the operation of the facility.

*Discussion*—This provision is designed to clarify certain legal ambiguities in the NRC's emergency planning regulations as to whether the Commission, in the absence of a State or local emergency preparedness plan approved by the Federal Emergency Preparedness Agency, could issue an operating license if it determines that there exists a state, local or utility emergency preparedness plan which provides reasonable assurance that the public health and safety will not be endangered by the operation of the facility. This amendment resolves any legal ambiguity by restating the position contained in section 109 of Public Law 96-295 by requiring that the Commission's regulations be interpreted in a manner consistent with the previously expressed intent of Congress.

#### SECTION 11—PUBLIC MEETINGS ON SAFETY GOALS

##### *Summary*

Section 11 of the bill limits the authority of the Commission to promulgate or publish a safety goal for nuclear power reactors prior to the completion of public hearings and directs the Commission to expedite, to the maximum extent practicable, the development of the safety goal so as to allow for its establishment no later than December 31, 1981.

### Discussion

The Senate Environment and Public Works Committee report on the Nuclear Regulatory Commission's fiscal year 1981 authorization bill contained language directing the Commission to develop a safety goal as a means of focusing on genuine safety concerns in order to avoid concentrating on issues which divert staff resources but which do not significantly improve safety. As the proposed safety goal is expected to have an impact upon the development of certain major regulatory requirements, such as degenerated core, remote siting, and hydrogen control, the committee believes that the Commission should give greater attention to the prompt establishment of these quantitative safety goals and therefore argues that the Commission, to the maximum extent practicable, allow for the establishment of these goals by December 31, 1981.

In urging the Commission to act in a timely manner, the committee is rejecting suggestions made in other forums that the means to accomplishing this objective is to suspend public hearings on the proposed goals. Instead, the committee substitute specifically provides that the Commission cannot publish or promulgate the safety goal until public hearings have been conducted. The committee believes that the legislative-type hearings, which are being arranged by the League of Women Voters, will provide a useful forum in obtaining meaningful public input into the formulation of the safety goal. Moreover, in attempting to meet the desired schedule, the committee does not expect the Commission to alter its anticipated intention of submitting the proposed goals to a second round of public comment in the fall. In order to keep the committee informed of its progress, the committee requests that the Commission submit a report to the authorizing committees of Congress by October 31, 1981, of the progress which has been made in developing and in implementing the safety goals.

#### *Sholly versus the Nuclear Regulatory Commission*

The committee substitute includes a provision which gives the Commission the authority to issue and make immediately effective amendments to licenses in advance of the conduct or completion of any hearing required by section 189 of the Atomic Energy Act when the Commission finds that the amendment involves no significant hazards consideration. The committee notes that prior to November 1980 it had been the practice of the Commission not to hold any such hearing when it determined that the amendment involved no significant hazards consideration. The Commission based its decision not to hold a hearing on an interpretation of section 189, which specifically authorizes the Commission to dispense with the required prior notice and publication in the Federal Register whenever it determines that an amendment involves no significant hazards consideration. The Commission's position was that, as it was given the authority to dispense with the required prior notice and publication in the Federal Register, and as such prior notice and publication was normally a prerequisite to a hearing, it was reasonable to interpret this language to mean that the Commission was therefore also given the authority to dispense with any hearing regarding an amendment which involved no significant

hazards consideration, which would have been the subject of the prior notice and publication requirement. In November 1980 the U.S. Court of Appeals of the District of Columbia Circuit found otherwise and ruled that, while the Commission did have the authority to dispense with the prior notice and publication requirement, it still was mandated by the terms of the statute to hold the hearing even when the amendment involves no significant hazards consideration.

The committee notes that, as of January 31, 1981, there was a backlog of 2,771 licensing actions relating to operating reactors, and that current estimates project an increase during the fiscal year to 3,889, rising to 4,439 in fiscal year 1982. There are additional licensing amendments pending before the Office of Nuclear Material Safety and Safeguards relating to medical and research licenses, transportation packaging licenses, and low-level waste licenses. The requirement that a hearing be held whenever requested prior to the issuance of an amendment which involves no significant hazards consideration would only further complicate a serious situation. Moreover, many of these amendments involve only technical modifications which frequently arise during fuel reloading, and a requirement of a prior hearing could delay the restarting of a reactor. In order to avoid these problems, the Committee substitute authorizes the Commission to issue and make immediately effective license amendments prior to conduct or completion of any hearing required by section 189.

Although the Commission is given the authority to issue and make immediately effective amendments involving no significant hazards consideration prior to the conduct or completion of any hearing, the committee substitute maintains the requirement that the hearing be held. Thus, after issuing and making immediately effective the amendment, the Commission remains obligated under the rule in *Sholly's* case to hold the hearing mandated by section 189. Moreover, the committee expects that the Commission will make every effort to provide prior notice and publication in the Federal Register indicating its intent to issue any such license amendment so that parties have some opportunity to comment on the proposed action. The committee further expects that, in every instance, the Commission will provide prompt notice, including publication in the Federal Register, of any actual issuance of the license amendment prior to the conduct or completion of any hearing.

The committee is aware that there is some concern over the Commission's definition of the term "no significant hazards consideration", and observes that the Commission has already issued for public comment rules which include standards for determining whether an amendment involves no significant hazards consideration. The committee also notes the Commission has accumulated years of case-by-case precedents getting criteria for these determinations. The committee expects that the Commission will interpret the term "no significant hazards consideration" in a manner consistent with prior court decisions. Moreover, the committee believes that, in the process of establishing the standard for determining when an amendment involves no significant hazards consideration, the determination should represent a judgment on the nature of the issues raised by the license amendment rather than a conclusion about the merits of those issues.

section 305 of the Energy Reorganization Act of 1974 (42 U.S.C. 5875), for the fiscal years 1982 and 1983 to remain available until expended \$500,700,000 for fiscal year 1982 and \$530,000,000 for fiscal year 1983 to be allocated as follows:

(1) not more than \$75,610,000 for fiscal year 1982 and \$78,000,000 for fiscal year 1983, may be used for "Nuclear Reactor Regulation;"

(2) not more than \$67,680,000 for fiscal year 1982 and \$70,270,000 for fiscal year 1983, may be used for "Inspection and Enforcement;"

(3) not more than \$17,950,000 for fiscal year 1982 and \$17,990,000 for fiscal year 1983, may be used for "Standards Development;"

(4) not more than \$46,700,000 for fiscal year 1982 and \$48,020,000 for fiscal year 1983, may be used for "Nuclear Material Safety and Safeguards;"

(5) not more than \$231,940,000 for fiscal year 1982 and \$252,180,000 for fiscal year 1983, may be used for "Nuclear Regulatory Research;"

(6) not more than \$19,140,000 for fiscal year 1982 and \$20,610,000 for fiscal year 1983, may be used for "Program Technical Support;"

(7) not more than \$41,880,000 for fiscal year 1982 and \$42,650,000 for fiscal year 1983, may be used for "Program Direction and Administration."

Sec. 101. (b) The Commission may use not more than one per centum of the amounts authorized to be appropriated under paragraph (5) of subsection (a) to exercise its authority under section 31.a. of the Atomic Energy Act of 1954, as amended, to enter into grants and cooperative agreements with universities pursuant to that section. Grants made by the Commission shall be made in accordance with the Federal Grants and Cooperative Agreements Act of 1977 and other applicable law.

Sec. 101. (c) No amount appropriated to the Nuclear Regulatory Commission pursuant to subsection (a) may be used for any purpose in excess of the amount expressly authorized to be appropriated therefore by paragraphs (1) through (7) of such subsection if such excess amount is greater than \$500,000, nor may the amount available from any appropriation for any purpose specified in such paragraphs be reduced by more than \$500,000, unless—

(1) a period of 30 calendar days (not including any day in which either House of Congress is not in session because of an adjournment of more than 3 calendar days to a day certain or an adjournment sine die) has passed after the receipt by the Committee on Interstate and Foreign Commerce and the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Environment and Public Works of the Senate of notice given by the Commission containing a full and complete statement of the action proposed to be taken and the facts and circumstances relied upon in support of such proposed action; or

(2) each such Committee has, before the expiration of such period, transmitted to the Commission a written notification that there is no objection to the proposed action.

Sec. 102. Moneys received by the Commission for the cooperative nuclear research program and the material access authorization program may be retained and used for salaries and expenses associated with those programs, notwithstanding the provisions of section 3617 of the Revised Statutes (31 U.S.C. 484), and shall remain available until expended.

Sec. 103. From appropriations to the Nuclear Regulatory Commission under Section 101(a), the Commission may transfer to other agencies of the Government sums for salaries and expenses for the performance by such agencies of activities for which such appropriations of the Commission were made. The sums so transferred may be merged with the appropriation of the agency to which the sums transferred.

Sec. 104. Notwithstanding any other provision of this Act, no authority to make payments hereunder shall be effective except to such extent or in such amounts as are provided in advance in appropriation Acts.

U.S. NUCLEAR REGULATORY COMMISSION,  
Washington, D.C., March 11, 1981.

HON. RICHARD L. OTTINGER,  
Chairman, Subcommittee on Energy Conservation and Power, Committee on Energy and Commerce, U.S. House of Representatives,  
Washington, D.C.

DEAR MR. CHAIRMAN: Transmitted herewith is a Nuclear Regulatory Commission legislative proposal in the form of a draft bill to amend the Atomic Energy Act of 1954, as amended, to clarify that the Commission may issue a license amendment, where no significant hazards consideration is involved without holding a prior hearing and for other purposes. A draft bill is in Enclosure 1. An analysis of the proposal is in Enclosure 2. A memorandum explaining the need for the proposal is in Enclosure 3.

This proposal is in response to and seeks to overturn the decision of the U.S. Court of Appeals for the District of Columbia Circuit in *Sholly, et al. v. NRC, et al.*, No. 80-1691 (November 19, 1980). The court held that the NRC may not issue a license amendment even if there is no significant hazards consideration when an interested person has filed a request for a hearing under Section 189(a) of the Atomic Energy Act, 42 U.S.C. 2239(a). The decision could also implicate the Commission's authority to issue immediately effective license amendments and orders when the public health, safety, and interest or the common defense and security requires. The court's decision mandating a prior hearing on demand on matters insignificant to the public health and safety seriously and immediately encumbers the regulation of nuclear power, and puts at risk a substantial number of nuclear power plants which would either have to be shut down or operate at reduced power if they are not accorded the authority sought in pending license amendment requests. The number of power plants affected will fluctuate over time depending upon which plants have license amendment applications pending and the nature of the license amendment requests.

The proposed legislation, if adopted, would amend Section 189 to clarify that the Commission may issue a license amendment which involves no significant hazards consideration without first holding a hearing. The bill would also clarify that Section 189 does not limit the NRC's authority to take immediate action by amendment or order to protect the public health, safety, and interest or common defense and security. This legislation is needed to overturn the adverse impacts of the *Sholly* decision on the regulation of nuclear energy. Unless overturned, this decision raises the prospect of a substantial curtailment of nuclear power plant operation for reasons which in the Commission's view are unrelated to the safety of the facility. We do not believe that prospect to have been intended by Congress in enacting Section 189 and urge approval of the proposed NRC legislation.

Sincerely,

JOSEPH M. HENDRIE.

Enclosures.

**A BILL** To amend the Atomic Energy Act to clarify that no prior public hearing is required for applications for amendment which involve no significant hazards consideration and for other purposes

*As it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That:*

Section 189 of the Atomic Energy Act of 1954, as amended, is amended by adding the following new sentences at the end of paragraph (a) thereof:

"The Commission is authorized to issue and to make immediately effective an amendment to a license upon a determination by the Commission that the amendment involves no significant hazards consideration, notwithstanding the pendency before it of a request for a hearing from any person. The Commission is authorized to issue and to make immediately effective any amendment to a license, or any order to govern any activity subject to this Act, as it may deem necessary upon a determination that immediate effectiveness is required to protect the public health, safety, and [interest, or] the common defense and security."

**SECTION ANALYSIS**

The purpose of the amendment is to overturn the decision of the U.S. Court of Appeals for the District of Columbia Circuit in *Sholly v. NRC*, November 19, 1980. The amendment provides that the Commission may issue a license amendment upon a determination that it involves no significant hazards consideration without holding a prior hearing. It also clarifies that nothing in the Atomic Energy Act limits the agency's exercise of its powers to issue immediately effective license amendments or orders to protect the public health, safety, and interest or the common defense and security. This amendment does not effect the opportunity of an interested person for a hearing after the amendment has been issued.

#### LEGISLATIVE MEMORANDUM IN SUPPORT OF PROPOSED BILL

This memorandum sets forth the views of the U.S. Nuclear Regulatory Commission in support of a proposed amendment to Section 189 (a) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2239 (a).

to overturn the decision of the U.S. Court of Appeals for the District of Columbia Circuit in *Sholly et al. v. NRC, et al.* (November 19, 1980). That decision seriously and immediately encumbers the regulation of nuclear power, and puts at risk a substantial number of nuclear power plants which would either have to shut down or operate at reduced power if they are not accorded the authority sought in pending license amendment requests. The number of power plants affected will fluctuate over time depending upon which plants have license amendment applications pending and the nature of the license amendment requests. The Commission urges enactment of this amendment.

#### STATEMENT OF FACTS

The lawsuit arose over the Commission's efforts to take necessary preliminary steps for the cleanup of the March 28, 1979 accident at Three Mile Island. As a result of that accident the TMI-2 containment building atmosphere held approximately 43,000 curies of radioactive krypton-85 which had been released from the nuclear fuel damaged during the accident. That radioactive krypton posed a barrier to progressing with the cleanup. There was no serious dispute, by anyone, that the krypton had to be removed. After a multi-month extensive public process, the Commission decided to vent the krypton to the atmosphere and amended the license to permit the venting at a faster rate than that permitted under the license's technical specifications while at the same time keeping radiation doses to the public at or below levels which the superseded release limits were intended to assure.

#### COURT OF APPEALS DECISION

In an opinion handed down November 19, 1980, the D.C. Circuit declared that the Commission's refusal to hold a hearing on its venting orders violated petitioners' statutory right to a hearing under Section 189 (a) of the Atomic Energy Act, 42 U.S.C. 2239 (a). *Sholly v. NRC*, — F.2d —, No. 80-1691 (Nov. 19, 1980). The court ruled that even where a license amendment involves no significant hazards consideration (such as the substitution of dose limits for release limits that allowed for the venting to be completed within two weeks rather than months) an interested person who requests a hearing is entitled by Section 189 (a) of the Atomic Energy Act to a hearing before the amendment becomes effective. The proposed amendment addresses this ruling.<sup>1</sup>

#### IMPORTANCE OF THE COURT OF APPEALS DECISION

The principal ruling of concern to the Commission is the D.C. Circuit's holding that even where an amendment to a nuclear power plant license involves no significant hazards consideration, an interested per-

<sup>1</sup> The court also ruled that the Commission's approval of venting the TMI-2 containment was itself a license amendment even though not characterized by the Commission as such. This ruling should not prove onerous for three reasons. It is applicable only to a situation where the relevant authority under a license has been revoked as the court mistakenly thought was the case with regard to the TMI-2 license. Second, the Commission does not consider itself bound to follow the court's misreading of the Commission's intent. Third, even prior to *Sholly* the granting of significant authority where none existed previously would have required a license amendment. Thus the Commission is not proposing to legislatively overrule the court's erroneous ruling with regard to the TMI-2 license.

son who requests a hearing is entitled by Section 189 (a) of the Atomic Energy Act, 42 U.S.C. 2239, to a hearing before the amendment becomes effective. The practical effect of that ruling is substantial. Over the past four years the Commission has issued more than 1,600 amendments to nuclear power plant operating licenses based upon a no significant hazards consideration determination. Over the past few months some 20 nuclear power plants would either have had to shut down or operate at reduced power if they were not accorded the authority sought in no significant hazards license amendment requests. If, as the D.C. Circuit has held, hearings are necessary before this authority can be granted whenever an interested person requests one, there is the prospect of a substantial curtailment of nuclear power plant operations for reasons which in the Commission's view are unrelated to the safety of the nuclear power plants.

The large number of license amendment actions which the Commission must act upon, as is reflected in the yearly average of better than 400 amendments, is directly attributable to the kind of detailed regulation of nuclear power plant operation that the Commission has demanded. A nuclear power plant operating license, like that issued for Three Mile Island, Unit 2, the power plant involved in the *Sholly* case, is quite literally hundreds of pages long, and consists of highly detailed technical specifications. Any change in the license itself or in any of those hundreds of pages of technical specifications is a license amendment.

Since changes must often be made—for example, whenever a nuclear power plant refuels, which usually occurs at about 18-month intervals, the technical specifications often need to be adjusted to reflect the physical behavior of the fresh fuel placed in the reactor core—the consequence of the court's holding could be to keep a nuclear power plant shut down or prevent its operating at full-rated capacity, whenever the power plant refuels; and this despite the fact that in the Commission's best judgment there is no significant hazards consideration involved in adjusting the technical specifications to account for the behavior of the fresh fuel. A variety of other kinds of license amendment actions, such as extending the time for imposing a new requirement, or relieving the licensee of a particular maintenance check, could have similar results. For example, as the Commission moves to implement a whole host of new operating license requirements developed in response to the TMI-2 accident, any fine tuning of those requirements involving a delayed effective date or the substitution of one kind of licensing requirement for another could, under the court's ruling, prevent or impede a new power plant from coming on line or impede the operation of a nuclear power plant already in service until the issue was resolved after a hearing. And this despite the fact that the Commission thinks the license or technical specification amendment involved is not of safety significance. That result lacks practicality. The Commission does not think that Congress intended nuclear power regulation and the operation of nuclear power plants to be as episodic and dependent upon happenstance as the frequency of hearing requests on minor matters. Yet such a consequence is plainly a possible result of this Court's ruling that Section 189 (a) of the Atomic Energy Act obliges the Commission to hold a

hearing on a no significant hazards consideration license amendment, on request, before the amendment becomes effective.<sup>3</sup> Nor does the Commission think that Congress intended the Commission to eliminate or grossly simplify the vast bulk of technical specifications which govern the operation of nuclear power plants in order to minimize the number of license amendment actions that must be dealt with.<sup>4</sup> With simplification comes a loss of governmental control, a loss of enforceability, and a loss of detailed assurance in a power plant's method of operation. It is questionable whether acceptance of those kinds of uncertainties best advances the public interest in assuring that nuclear power plants are operated safely. It is just as questionable that such a reading of Section 189 (a) is the one that Congress intended.<sup>4</sup>

#### PROPOSED AMENDMENT

The Commission believes that the court's interpretation of Section 189 (a) was erroneous and that the decision seriously encumbers the regulation of nuclear power by providing leverage to block, through hearing requests, needed license amendments which involve no significant hazards consideration. The Commission proposes to correct this situation through an amendment to Section 189 (a) which, if adopted, would confirm the Commission's interpretation that there is no right to a prior hearing before an amendment may be made effective, if it presents no significant hazards consideration. The amendment would also clarify that Section 189 (a) does not limit the Commission's authority to issue immediately effective amendments and orders when the public health, safety, and interest or the common defense and security requires. As to this latter point Commissioner Gilinsky believes that the proposed amendment should delete the words "and interest" and empower the Commission to take immediate action only when required by the public health and safety or the common defense and security. Commissioner Gilinsky believes that his proposal more accurately reflects the standard the Commission currently employs and that this is not the occasion to broaden the Commission's immediate effectiveness powers.

The amendment urged by the Commission would effectively end the adverse potential impacts of the *Sholly* decision. For the reasons described in this memorandum, the Commission urges adoption of the proposed amendment.

<sup>3</sup> The NRC, of course, does not know how many hearing requests, if any might be filed in connection with these license amendment requests. The Court's opinion, however, clearly provides an incentive for such filings.

The Commission also has as an alternative but not coextensive source of authority to issue immediately effective orders where the public health, safety or interest so requires. There is language in *Sholly* which could be interpreted as requiring a hearing on request prior to the NRC's exercise of its power to take immediately effective action. The second sentence of the proposed amendment clarifies that that is not the case, and the Commission is empowered to take such immediate action despite the pendency of a hearing request.

<sup>4</sup> Of course, any simplification of technical specifications would itself be a license amendment that under the *Sholly* decision could not be placed in effect until the completion of whatever hearing or hearings are requested by interested persons.

<sup>5</sup> The court's opinion's decision takes no account of these realities in its interpretation of Section 189. Beyond this in the NRC's view, the court's decision seriously misreads Congress' intent in passing the 1962 amendments to the Atomic Energy Act and erroneously refuses to give deference to the Commission's consistently held interpretation of its governing statute—that no prior hearing need be held when a finding is made that a license amendment involves no significant hazards consideration.



U.S. NUCLEAR REGULATORY COMMISSION,  
Washington, D.C., March 18, 1981

Hon. THOMAS P. O'NEILL, Jr.,  
Speaker, U.S. House of Representatives, Washington, D.C.

DEAR MR. SPEAKER: Transmitted herewith is a Nuclear Regulatory Commission proposal in the form of a draft bill to amend the Atomic Energy Act of 1954, as amended, to authorize the Commission to issue an interim operating license for a nuclear power plant, authorizing fuel loading and low-power operation and testing, in advance of the conduct or completion of an on-the-record evidentiary hearing on contested issues. The proposed legislation, which represents an extraordinary and temporary cure for an extraordinary and temporary situation, is set forth in Enclosure 1. An analysis of the proposed legislation is set forth in Enclosure 2. Enclosure 3 sets forth the proposed legislation in the form of a comparative text.

Under the Atomic Energy Act of 1954, as amended, no person may operate a nuclear power plant without first obtaining an operating license from the Nuclear Regulatory Commission. Under existing law, a formal on-the-record evidentiary hearing must be held, and a decision rendered on the basis of that record, if requested by any person whose interest may be affected, before the Commission may issue an operating license.

In the past, the scheduling and processing of licensing reviews has typically provided sufficient time to enable the hearings to be completed and the license issued by the time the nuclear plant is completed and ready to operate. For the first time, however, it appears that the hearing process for a significant number of nuclear power plants will last beyond the date when construction should be complete and the plants are ready to operate. This situation is an indirect consequence of the Three Mile Island (TMI) accident, which required a reexamination of the entire regulatory structure. After TMI, for a period of over a year-and-a-half, the Commission's attention and resources were focused on plants which were already licensed to operate and to the preparation of an action plan which specified a discrete set of TMI-related requirements for new operating reactors. During this period, utilities that had received construction permits continued to build the authorized plants.

The severe public interest impact of these delays has been discussed extensively before interested committees in the House and Senate. Although there may be differences of opinion on the precise overall impact of these delays, as well as in the different estimates of the consequences for each of the plants, the delay costs now are generally estimated to range in the tens of millions of dollars per month for each completed plant.

The Commission is making every effort to see that available resources are devoted to the completion of its licensing reviews of these plants, and that unnecessary delays in these hearings are avoided. Under existing law, however, the Commission lacks the authority to authorize fuel loading and low-power operation and testing on the basis of its safety and environmental evaluation; it must instead await the completion of the hearing process. The result, for the plants most affected by TMI-related actions, is likely to be delays of at least

several months in ultimate operation of the facilities, absent remedial action of Congress.

The proposed amendment to subsection 189a of the Act would authorize the Commission, if it finds that such action is in the public interest in order to avoid the consequences of delay in the operation of a completed nuclear power plant, to issue an interim operating license authorizing fuel loading and low-power operation and testing of the plant in advance of the conduct or completion of any required hearing. In all respects other than the completion of the hearing, the Commission would have to find that the requirements of all applicable law have been met prior to allowing such interim operations. Thus, the public health and safety, common defense and security, and environmental findings would still have to be made, even though the public interest findings is made. Furthermore, a hearing would still be held if requested by an interested person under section 189 of the Act. The proposed amendment would simply provide that in such a case, the requested hearing could be held or completed after issuance of the license authorizing fuel loading and low-power operation and testing. Moreover, any interim license issued under this authority would be subject to any subsequent findings and orders of the Commission after the conduct of any required hearing. The authority to issue such interim licenses would expire on December 31, 1983.

The effect of this proposed legislation would be to advance by at least several months the date of operation of the plants most affected by the TMI-related actions, where issuance of the operating license is contested. The savings of time could be much more substantial in cases where testing showed the need for modification and further testing. By placing a time limit of December 31, 1983 on the Commission's authority to issue such interim licenses, the proposed legislation would assure that the relaxation of licensing requirements would be confined to those plants which have been most directly affected by the Commission's post-TMI actions. Since the risks associated with low-power operation and testing are much smaller than those associated with normal full-power operation, we believe that this authority, limited to the relatively few plants likely to be most affected by our TMI-related effort, represents a minimal intrusion on our usual review and hearing process. The Commission cannot, under existing law, take these measures to reduce the delay in the licensing of the affected plants. The proposed legislation would result in very substantial cost savings for consumers in the service areas of the affected plants.

The proposed legislation deals essentially with matters of licensing procedure and, as indicated, would not alter any of the substantive standards and requirements of the Atomic Energy Act pertaining to the protection of public health and safety and the common defense and security or of NEPA. In light of this, the Commission has concluded that the proposed legislation would not significantly affect the quality of the human environment.

Additional comments by Commissioner Ahearne and myself are enclosed.

Sincerely,

JOSEPH M. HENDRIZ.

Enclosures:

AA61-2

PDR

## Calendar No. 141

97TH CONGRESS }  
1st Session }

SENATE }

REPORT  
No. 97-113AUTHORIZING APPROPRIATIONS TO THE NUCLEAR  
REGULATORY COMMISSION

MAY 15, 1981.—Ordered to be printed

Filed under authority of the order of the Senate of MAY 13 (legislative day,  
APRIL 27), 1981Mr. SIMPSON, from the Committee on Environment and Public Works,  
submitted the following

## REPORT

(To accompany S. 1207)

The Committee on Environment and Public Works, reports an original bill (S. 1207) to authorize appropriations to the Nuclear Regulatory Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and section 305 of the Energy Reorganization Act of 1974, as amended, and for other purposes and recommends that the bill do pass.

## GENERAL STATEMENT

The bill, as reported, authorizes \$495,700,000 for salaries and expenses of the Nuclear Regulatory Commission (NRC) for fiscal year 1982. The authorization is \$5 million below the Commission's request for \$500,700,000 for fiscal year 1982. The authorization included in the bill is an increase of \$43.4 million over the fiscal year 1981 funding level for the agency of \$452,300,000. The committee's recommendation will permit an increase of 96 permanent staff positions, from 3300 in fiscal year 1981 to 3396 in fiscal year 1982.

The bill also authorizes \$530,000,000 for salaries and expenses for the agency for fiscal year 1983. This is the amount requested by the NRC for fiscal year 1983.

The committee recognizes the high priority of the nuclear regulatory program, including the need to assure the protection of the public health and safety. The committee also recognizes the need to address the present nuclear power plant licensing backlog. However, the committee also determined that the NRC must bear at least some of

the burden of reduced government spending made necessary by current economic conditions. For this reason, a \$5 million reduction in NRC's budget ceiling for fiscal year 1982 was recommended by the committee and was incorporated in the Senate budget resolution.

## DISCUSSION OF INTENT

### NUCLEAR REACTOR REGULATION (SECTION 101.(A)(1))

#### SUMMARY

The bill includes authorizations of \$75,610,000 for fiscal year 1982 and \$78,280,000 for fiscal year 1983, which are equivalent to the Commission's requests.

#### DISCUSSION

The Commission requested \$75,610,000 for fiscal year 1982, which is an increase of \$290,000 over NRC's fiscal year 1981 estimate. The request also provides for 681 people, which is a decrease of 3 positions over NRC's fiscal year 1981 estimate. NRC's fiscal year 1983 request reflects an increase of \$2,670,000 and 24 positions over the fiscal year 1982 request.

The Office of Nuclear Reactor Regulation's (NRR) primary objective is to assure that the design, siting, construction, and operation of nuclear reactors adequately protects the public health and safety and the environment. In fiscal years 1980 and 1981, NRR resources were concentrated on analyzing the accident at Three Mile Island Unit 2 and the generic lessons applicable to the licensing and regulation of nuclear power plants to be drawn from the accident.

The agency's fiscal year 1982 budget request for NRR reflects a shift away from case-by-case application of the TMI lessons learned to an integration of those lessons into the regulatory and licensing process and application of a standard operating policy for all future licenses. Central to this effort will be a more disciplined licensing process, including increased use of probabilistic risk assessment, evaluation of operating experience data, and systematic review of regulatory requirements. As a result of the lessons learned from the accident at TMI-2, NRC has identified a need to augment its reactor safety programs in human factors engineering, plant systems, and operator licensing. In order to meet these new demands while continuing to work toward reducing the excess backlog of operating reactor licensing actions and insuring that the NRC licensing review will not result in the delay of reactor fuel load dates, NRC has requested increases in funding and staff positions for operator licensing and safety technology.

An increase of \$3,750,000 and 13 positions in the operator licensing area will provide the necessary support for administration of examinations for the licensing of reactor operators, the certification of students in reactor operator training programs, and the annual requalification of reactor operators. An increase of \$1,007,000 and 24 positions in the safety technology field will permit NRC to devote its attention to issues deferred as a result of the TMI-2 accident, including several unresolved safety issues, over 100 designated generic safety issues, numerous generic studies, and risk assessment and operating experience evaluations. In addition, the increase will permit NRC to

devote further attention to establishing immediate and long-term research needs, revision of Standard Technical Specifications and Standard Review Plans, and analysis of small break loss-of-coolant accidents.

The NRC request of \$6,915,000 for regulatory activities associated with operating power reactors, a decrease of \$3,077,000 from the fiscal year 1981 estimate, will permit the NRC to continue its program to improve the current methodology and approach for operating reactor licensing actions and complete approximately 2,000 such licensing actions. According to the NRC, funding at this level will be sufficient to move forward with its program to reduce the excess backlog of licensing actions to zero by fiscal year 1984.

The NRC request of \$10,200,000 and 157 staff positions for case-work reflects a decrease of \$3,950,000 and 41 staff positions in the fiscal year 1981 estimated levels. Highest priority in this area will continue to be given to operating license reviews, with the emphasis on near-term operating license applications. Licensing reviews will be scheduled in a timely manner to ensure that the review process will not delay the reactor fuel load and startup testing. In addition, the requested funding will permit the NRC to continue to integrate the lessons of the TMI accident into the operating license, construction permit, and standard plant reviews.

For fiscal year 1983, NRC has requested \$78,289,000 and 705 staff positions for NRR. By this time, the TMI-related tasks should be fully assimilated into the NRC operating procedures. Funding will be directed to continuing the effort to eliminate the excess backlog of operating reactor licensing actions, implementing the final phase of the systematic evaluation of operating reactors, and continuing the annual requalification of reactor operators. In addition, the budget request, an increase of \$2,670,000 over the fiscal year 1982 request, will enable NRR to continue its oversight of the TMI-2 cleanup operation, phase out the DOE laboratory licensing assistance program and utilize in-house capability to meet the projected caseload requirements for construction permits and operating licenses reviews, and support the first full year of the national reliability evaluation program, a program to identify high risk accident sequences and major contributions to risk for operating power reactors.

The committee, in approving the request for increased funding and personnel, is not recommending any changes to the proposed program, at this time.

#### INSPECTION AND ENFORCEMENT (SECTION 101.(a)(2))

##### SUMMARY

The bill includes an authorization of \$67,424,000 for fiscal year 1982 and \$70,270,000 for fiscal year 1983, which is equivalent to the administration's request.

##### DISCUSSION

The administration requested an authorization of \$67,680,000 for fiscal year 1982, which is an increase of \$7,980,000 over NRC's 1981 estimate. The request provides for 1,006 people, which is an

increase of 30 positions over NRC's 1981 position allocation. The administration's fiscal 1983 request reflects an increase of \$2,590,000 and 66 positions over the fiscal year 1982 request.

The primary objective of this activity is to ensure, through field inspection, investigation, and enforcement, that nuclear reactors, fuel cycle facilities, and materials are used in a safe manner and in full compliance with NRC licenses, rules, and regulations. During fiscal year 1982 twelve additional people will be added to expand the resident inspection program for reactors under construction so that by the end of fiscal year 1982 every power reactor site will have at least one resident inspector. During fiscal 1982 nine additional people will also be added as resident inspectors to new operating sites to provide two residents at all multiple unit operating sites and approximately 50 percent of single unit sites. Six additional people will also be added to bolster the emergency preparedness program. During fiscal 1983 a new technical training center will be co-located with TVA training facility near Chattanooga, Tenn. Limited staffing increases are also expected in fiscal 1983 for construction inspectors and resident inspectors for new reactors coming on line.

The committee recommends a reduction of \$256,000 in the NRC request for the Office of Inspection and Enforcement for fiscal year 1982, and recommends no reduction in the request for fiscal year 1983.

#### NUCLEAR MATERIAL SAFETY AND SAFEGUARDS (SECTION 101.(a)(3))

##### SUMMARY

The bill includes an authorization of \$46,257,000 for fiscal year 1982 and \$48,020,000 for fiscal year 1983, which is equivalent to the administration's request.

##### DISCUSSION

The administration requested an authorization of \$46,700,000 for fiscal year 1982, which is an increase of \$7,980,000 over NRC's 1981 estimate. The request provides for 329 people, which is the same as the 1981 position allocation. The administration's fiscal year 1983 request reflects an increase of \$1,320,000 and 19 positions over the fiscal year 1982 request.

This program provides for NRC licensing and regulation of all commercial nuclear materials and facilities except reactors and for safeguarding material from sabotage, theft, or diversion at all facilities. In addition, this program represents the Commission's main focus for efforts in spent fuel storage and nuclear waste management. Reflecting an ever-increasing recognition of the importance of waste management, an additional \$6,640,000 is included in the area in fiscal 1982. During fiscal 1982 a review of site screening plans for basalt and bedded salt formations for repositories for nuclear waste will be completed.

The committee recommends a reduction of \$443,000 in the Agency's fiscal year 1982 request for this Office. The committee recommends no reduction in the agency's request for fiscal year 1983.

## NUCLEAR REGULATORY RESEARCH (SECTION 101.(a)(4))

## SUMMARY

The bill includes an authorization for fiscal year 1982 of \$245,670,000, which is a reduction of \$4,220,000 below the Commission's request, and an authorization for fiscal year 1983 of \$270,170,000, which is equivalent to the Commission's request. Of the totals, \$45,500,000 is for the loss of fluid test research program in both fiscal years 1982 and 1983, \$20,400,000 is for safety research in fast breeder reactors for fiscal years 1982 and 1983, and \$3.5 million has been allocated for gas-cooled reactors safety research for fiscal year 1982 and \$4.5 million in fiscal year 1983 for this purpose.

On April 5, 1981, the Commission consolidated the offices of Nuclear Regulatory Research and Standards Development. The authorized amounts are for both the agency's Research and Standards Development functions.

## DISCUSSION

The Commission requested an authorization of \$249,890,000 for fiscal year 1982, which was reduced by the committee by the sum of \$4,220,000 to \$245,670,000. The Commission requested \$270,170,000 for fiscal year 1983. The fiscal year 1982 request included 327 people, an increase of 2 positions over fiscal year 1981, and 4 additional positions in fiscal year 1983.

This program now incorporates those functions previously included under the category of the Office of Standards Development. The development of the standards needed by NRC to regulate nuclear facilities and materials from the standpoint of safety, safeguards, environmental protection, and radiation protection will now be accomplished under this program.

This program, which accounts for approximately one-half of the Commission's total budget, consists of eight major elements, the largest of which is loss of coolant accidents (LOCA) and transient research. The accident at Three Mile Island focused attention on the need for better understanding of transients and small and medium break loss-of-coolant accidents (LOCA's), including fuel damage and hydrogen generation. This element is directed toward that goal.

Another program element is the loss-of-fluid test (LOFT) facility. LOFT provides a unique, nuclear test facility to assess the performance of many safety features for light water reactors under accident conditions. In fiscal year 1982, the LOFT program will perform the final two tests in the large-break loss-of-coolant-accident series. Fiscal year 1982 test results will provide important information on reactor behavior under conditions leading to fuel damage, and on the conservatism of NRC's emergency core cooling rule for large-sized break loss-of-coolant accidents.

The plant operational safety research element addresses human-factors engineering, plant system behavior during transients, instrumentation and control, mechanical, structural, and materials behavior, seismic effects, and design verification of important safety

equipment. The goal is to provide the NRC with independently generated safety information relating to ways to reduce human, mechanical, electrical, and structural failures to provide a technical basis for decisions and rules that will result in fewer and less severe accidents that may affect the health and safety of the public.

Research in severe accident phenomena and mitigation is being conducted to provide data and analysis methods for describing the behavior and consequences of core melt accidents; defining the radiological releases from the reactor containment; evaluating and testing the systems for mitigating severe accidents, continuing the development of the safety analysis codes and models for gas cooled reactors; and coordinating with industry and other governmental efforts in obtaining post accident data from the Three Mile Island plant during cleanup operations. This program also includes advanced reactor research. The Commission's budget request contained no funds for continuation of the fast breeder reactor program for fiscal year 1982 or beyond. The bill directs NRC to reallocate \$20.4 million in both fiscal years 1982 and 1983 to fast breeder reactor research. The bill also directs an acceleration of efforts in gas-cooled thermal reactor safety research, and authorizes \$3.5 million in fiscal year 1982 and \$4.5 million fiscal year 1983 for this purpose.

The siting and environmental research element is directed at research on earthquake phenomena, the movement of radio-nuclides in air, water, and soils, the biological effects of radiation on people, and the socioeconomic impacts of facility construction and operation. Additional funds requested in fiscal year 1982 are to support increased deep geophysical exploration of key Eastern United States earthquake zones to define seismic risk, and for conducting meteorological dispersion testing in coastal areas. Increased funding is also requested to support studies on occupational exposures and radiation health effects.

The nuclear waste management research program provides technical information to support the regulation of storage and disposal of high-level wastes, and low-level wastes from nuclear power plant operations and from the uses of radioisotopes in commercial, medical, and research applications. Uranium mill tailings are also included. Additional funds have been requested to expand and accelerate work on important issues in licensing high-level waste repositories, in siting, operating, or decommissioning low-level waste facilities; and in disposing of uranium mill tailings.

In the safeguards and fuel cycle facility safety element, research is focused on providing confirmation of the performance and effectiveness of various systems employed in nuclear facilities to prevent or limit the release of radioactive materials from nuclear activities and to provide a comprehensive and more realistic basis for emergency planning, physical protection against theft and sabotage, and the control and accounting of special nuclear material. Increased funding in this area is being requested principally to support additional systems performance research on the application of "as low as reasonable achievable criteria" for worker protection to nuclear facilities other than nuclear power plants.

Systems and system reliability analyses research involves the application of engineering techniques to nuclear safety issues throughout the nuclear fuel cycle. Insights gained from the Three Mile Island

accident have caused this research to increase in importance and to be applied across the entire field of nuclear safety.

Highlights of the standards development functions now included in this Office include continuing efforts as a result of the Three Mile Island accident on regulations addressing system designs to deal with degraded and melted reactor core conditions and on reactor operator qualifications and testing. Standards development work will also focus on the development of technical criteria for high level radioactive waste disposal, and low level waste disposal. NRC also will be revising its comprehensive radiation protection standards.

The Nuclear Regulation Subcommittee's authorization hearing focused attention on the NRC's regulatory research program. Of particular interest to the subcommittee were NRC's ongoing efforts to provide long-range planning for its research program and needs; to carefully define and to monitor research programs to ensure that they remain relevant and useful to NRC's other regulatory programs and to coordinate NRC's research program with that of the Department of Energy to minimize any unnecessary duplication and conflict. The committee intends to continue to monitor NRC's efforts in these areas in order to assure that the NRC research effort is well-managed, efficient, and supportive of the regulatory needs and responsibilities of the agency.

#### PROGRAM TECHNICAL SUPPORT (SECTION 101.(a)(5))

##### SUMMARY

The bill includes an authorization for fiscal year 1982 of \$19,095,000, which is a reduction of \$45,000 below the Commission's request, and an authorization for fiscal year 1983 of \$20,610,000, which is equivalent to the Commission's request.

##### DISCUSSION

The Commission requested an authorization of \$19,140,000 in fiscal year 1982, which was reduced by the committee by the sum of \$45,000 to \$19,095,000. The Commission requested \$20,610,000 for fiscal year 1983. The fiscal year 1982 request included 278 people, an increase of 11 over fiscal year 1981, and 299 people in fiscal year 1983. This budget category includes the staff offices that provide direct program technical support: The Advisory Committee on reactor Safeguards, The Atomic Safety and Licensing Board Panel, The Atomic Safety and Licensing Appeal Panel, The Office of Executive Legal Director, The Office of State Programs, The Office of International Programs, and the Office of Analysis and Evaluation of Operations Data.

The increases in personnel are: three technical positions on The Advisory Committee on Reactor Safeguards staff, and eight positions in the Office of Analysis and Evaluation of Operations Data. The Advisory Committee on Reactor Safeguards staff increase will support a strengthened role for the ACRS in assessing the safety of operating reactors and will provide the ACRS with increased capability to do independent analysis of reactor safety issues. The increase



of eight positions in the Office of Analysis and Evaluation of Operations Data staff will assist that office in dealing with the increased amount of operational data from the newer and more complex reactors, in carrying out analysis of non-reactor operating experience, and in disseminating recommendations for action to other NRC offices and the nuclear industry.

#### PROGRAM DIRECTION AND ADMINISTRATION (SECTION 101.(a)6)

##### SUMMARY

The bill includes an authorization for fiscal year 1982 of \$41,644,000, which is a reduction of \$36,000 below the Commission's request, and an authorization for fiscal year 1983 of \$42,650,000, which is equivalent to the Commission's request.

##### DISCUSSION

The Commission requested an authorization of \$41,680,000 in fiscal year 1982, which was reduced by the committee in the sum of \$36,000 to \$41,644,000. The Commission requested \$42,650,000 for fiscal year 1983. The fiscal year 1982 request included 775 people, an increase of 20 over fiscal year 1981, and 786 people in fiscal year 1983.

This budget category includes the staff offices of the Commission: Commission, Secretary, General Counsel, Policy Evaluation, Inspector and Auditor, Congressional Affairs, and Public Affairs. It also includes the staff offices of the Executive Director for Operations: Executive Director, Equal Employment Opportunity, Comptroller, Management and Program Analysis, and Administration.

The increases in personnel are allocated in the following manner: Office of the General Counsel, three; Office of the Inspector and Auditor, four; Office of Public Affairs, three; Executive Director for Operations, one; Office of Equal Employment Opportunity, two; Office of Small and Disadvantage Business Utilization, two; and Office of Administration, two.

#### TWO-YEAR AUTHORIZATION

##### SUMMARY

The bill provides for a 2-year authorization for fiscal years 1982 and 1983.

##### DISCUSSION

In its submittals, the NRC has provided the Committee with detailed budget proposals and a comprehensive justification for both fiscal years 1982 and 1983. Accordingly, this bill authorizes funding for fiscal years 1982 and 1983.

#### INTERIM OPERATING LICENSE (SECTION 201)

##### SUMMARY

The bill amends section 192 of the Atomic Energy Act of 1954, as amended, to authorize the NRC to issue interim operating licenses for nuclear power plants.

## DISCUSSION

Following the March 1979 accident at the Three Mile Island nuclear power plant, the NRC devoted principal attention to evaluating the accident and its implications for the safe regulation of nuclear power in this country, and to developing the necessary regulatory improvements for presently operating nuclear power plants. During this period, construction continued on those nuclear power plants with construction permits, although only very limited NRC effort was applied to preparing and completing the necessary safety review and hearing requirements for the issuance of operating licenses for these facilities. Largely as a result of this situation, it became apparent in late 1980 that some delays would be experienced between the time when construction of these plants would be sufficiently completed to allow fuel loading and the start of operation, and the time when all requirements for the issuance of an operating license, including the hearing requirements, of the Atomic Energy Act, would be met.

Beginning with the Commission's January 1981 report to the Congress on the status of the agency's actions on operating reactors and licensing reviews of new facilities, it became apparent that substantial delays would be experienced for those plants that were projected to be completed in 1981 and 1982. Of the 13 plants expected to be completed in 1981 and 1982, the NRC reported that the licensing process for only one plant would be finished on or before the anticipated construction completion date. For the remaining 12 plants, the NRC projected a total delay of 90 months between the expected completion of construction and the satisfaction of all licensing requirements. According to the NRC, individual plants would experience delays of between 1 and 13 months each.

Since January, the NRC has undertaken a major study of administrative changes to the licensing process that could reduce the time required to complete the licensing process for these plants. Some limited administrative changes, including the reallocation of NRC staff resources to nuclear power plant licensing and stricter scheduling of licensing hearings, have now been adopted by the Commission. Others, including streamlined prehearing procedures and modifications to the Commission's own review procedures of Atomic Safety and Licensing Board decisions following the public hearing (the Immediate Effectiveness Rule), are likely in the near future.

Nevertheless, even taking into account administrative changes that have been made or that are likely to be made in the near future, it is clear that substantial licensing delays will still be experienced for those plants scheduled to be completed in 1981 and 1982. According to the NRC's most recent report to the Congress, dated April 30, 1981, 18 nuclear power plants will be completed in 1981 and 1982. Of these, 11 plants will experience delays, between the projected date of construction completion and the expected licensing date, totaling 79 months. According to the NRC report, these plants will experience individual delays of between 1 and 13 months per plant. Table 1 contains a plant-by-plant description of the expected licensing delays for these plants, based upon the NRC's January and April reports.

TABLE 1.—PLANTS EXPECTED TO BE COMPLETED IN 1981 AND 1982

Name and location	January report			April report			
	Completed	Licensed	Delay	Completed <sup>1</sup>	Licensed <sup>2</sup>	Delay	Change of delay
Sumner, South Carolina	October 1981	June 1982	8	August 1981	January 1982	5	Reduced 3 mo.
Diablo Canyon 1, California	March 1981	March 1982	12	January 1981	January 1982	12	No change.
Diablo Canyon 2, California	October 1981	March 1982	5	October 1981	January 1982	3	Reduced 2 mo.
San Onofre 2, California	July 1981	April 1982	9	June 1981	February 1982	8	Reduced 1 mo.
Zimmer, Ohio	November 1981	July 1982	8	November 1981	May 1982	6	Reduced 2 mo.
McGuire, North Carolina	February 1981	March 1982	13	January 1981	July 1981	6	Reduced 7 mo.
Enrico Fermi 2, Michigan	November 1982	June 1983	7	November 1982	September 1982	0	Reduced 7 mo.
Susquehanna 1, Pennsylvania	March 1982	November 1982	8	June 1981	June 1982	12	Increased 4 mo.
Waterford 3, Louisiana	October 1982	April 1983	6	October 1982	November 1982	1	Reduced 5 mo.
Shoreham, New York	September 1982	October 1982	1	May 1982	August 1982	3	Increased 2 mo.
Commanche Peak, Texas	December 1982	February 1983	2	December 1981	October 1982	10	Increased 8 mo.
Salem 2, New Jersey	April 1980	March 1981	11	April 1980	May 1981	13	Increased 2 mo.
Farley 2, Alabama	March 1981	March 1981	0	March 1981	March 1981	0	No change.
LaSalle 1, Illinois	(?)	(?)	(?)	June 1981	May 1981	0	
Sequoyah 2, Tennessee	(?)	(?)	(?)	May 1981	May 1981	0	
Grand Gulf 1, Mississippi	(?)	(?)	(?)	December 1981	December 1981	0	
Watts Bar 1, Tennessee	(?)	(?)	(?)	June 1982	January 1982	0	
WNP 2, Washington	(?)	(?)	(?)	July 1982	July 1982	0	
Total delays			90			79	Reduced 11 mo.

<sup>1</sup> NRC has provided the applicant's projected completion dates for the April report. Prior reports included NRC projected completion dates.

<sup>2</sup> The expected license date includes a 2-mo reduction in each case that would result from anticipated Commission action to reinstate the immediate effectiveness rule. A second option to fully

reinstate the immediate effectiveness rule that does not now have majority support on the Commission could save an additional month in each case.

<sup>3</sup> Not included: January report.

The committee received varying projections of the financial costs to the utilities and their ratepayers of these delays. Representatives of the nuclear industry testified that anticipated licensing delays for those plants expected to be completed in 1981 and 1982 could cost between \$2.7 and \$3.6 billion, based upon an average cost of \$30 million to \$40 million per plant per month. Other witnesses criticized these estimates for inappropriately including utility financial carrying costs for the plants—costs that constitute about one-half of the utility estimates. These witnesses agreed, however, that replacement energy costs—the other half of the utility estimates—were appropriate costs associated with these licensing delays, although they disagreed with the way the industry representatives calculated these costs. The Commission's April 1981 report to the Congress included delay costs estimates by the Department of Energy of \$2.3 billion, based upon a total projected delay period of 102 months of reactor operation and upon the assumption that delay costs are limited to replacement power plant costs only.

Although there are uncertainties as to the precise costs of the projected licensing delays for these plants, the available estimates of these costs, even if limited only to the cost of replacement power, indicate that the cost to the utilities and to their ratepayers will be in the range of tens of millions of dollars a month for each completed plant.

The present situation in which these nuclear power plants are expected to be completed and to sit idle for periods of up to a year per plant is without precedent in the history of the commercial nuclear power program. The committee believes that these projected delays, and the financial costs that these delays would impose on the electric utilities and their ratepayers, are unacceptable. In order to relieve the burden of these delays, the committee recommends that the Atomic Energy Act of 1954 be amended to allow the Commission to issue interim operating licenses for these plants prior to the conduct or completion of the hearing that may be required before NRC may issue the final operating license for the plant.

On March 18, 1981, the Commission submitted a legislative proposal to amend the Atomic Energy Act to authorize the Commission to issue an interim operating license for a nuclear power plant, authorizing fuel loading and low-power operation and testing, in advance of the conduct or completion of an on-the-record evidentiary hearing on contested issues. The Nuclear Regulation Subcommittee held two hearings on the NRC proposal, introduced by request as S. 913, on March 25 and March 31.

The committee amendment differs in several significant respects from the NRC legislative proposal. First, unlike the NRC proposal, the committee amendment does not limit the Commission's interim operating authority to low-power levels. Rather, the committee amendment permits a step-by-step progression by the Commission in authorizing initial fuel loading and low-power testing, and then subsequent operation at higher power levels, up to and including full-power levels, in those cases in which the Commission determines that such action is necessary. Under the NRC proposal, interim operation would be restricted by statute to not more than five percent of full power.

In response to questions from the committee, NRC advised that for the average plant, the authorization to test and to operate at low-power levels should reduce by about 2 months the delay due to the licensing review. Should the low-power testing reveal problems requiring corrective action and further review, NRC advised that the time savings could be as much as 6 months. According to the Commission's April 1981 data, which assumes some administrative improvements not yet taken, nine plants would still experience delays using the NRC's 2-month average. Even using the NRC's 6-month outside figure, four plants would still experience delays. Thus, in order to deal effectively with the delay situation, the committee amendment gives the Commission discretion to allow interim operation at greater than low-power levels.

Under the Committee amendment, separate petitions from the utility, notice and public comment periods, and determinations by the NRC are required before the Commission can allow operation at each succeeding power level, beyond the low-power testing level, under the interim operating license.

Second, the Committee amendment differs from the NRC proposal in that it establishes a detailed procedural framework for considering and issuing interim operating licenses. This detailed framework is patterned after the requirements of the present section 192 of the Atomic Energy Act. The present section 192 authorized the NRC from 1972 to 1973 to issue temporary operating licenses in the wake of the decision by the United States Court of Appeals for the District of Columbia Circuit in *Calvert Cliff's Coordinating Committee v. AEC* invalidating the AEC's environmental review procedures. The NRC legislative proposal represented a more abbreviated amendment to the hearing provision in subsection 189 a. of the Atomic Energy Act. The Committee believes that the detailed procedures for issuing interim operating licenses that are contained in the Committee amendment represent useful and needed safeguards to govern the Commission's actions in exercising this extraordinary authority and to preserve for the public a meaningful right to participate in licensing decisions.

Under the Committee amendment, a petition for the issuance of an interim operating license cannot be filed with the Commission until the Advisory Committee on Reactor Safeguards (ACRS) report, the NRC staff Safety Evaluation Report, the NRC staff environmental statement, and a State, local or utility emergency plan have been filed. In the case of the NRC staff Safety Evaluation Report, the petition for an interim operating license may be submitted to the Commission after the filing of the initial Safety Evaluation Report and the staff's supplement to the report prepared in response to the ACRS report for the plant.

Before issuing an interim operating license or amending the license to allow operation at succeeding power levels, NRC must provide notice of the petition and a 30-day period for public comment. Upon the expiration of the 30-day comment period, the Commission may issue the interim operating license, or amend the license to allow interim operation at staged power levels, if the Commission itself determines that: (1) all requirements of law other than the conduct or completion of any required hearing are met; (2) there is reasonable assurance that interim operation of the facility in accordance with the

terms and conditions of the license will provide adequate protection to the public health and safety and the environment; and (3) denial of the interim license will result in delay between the time when the facility is sufficiently completed to permit interim operation and the time when a final operating license would otherwise be issued.

In the case of subsequent petitions to amend an interim operating license to allow interim operation at staged power levels above low-power testing levels, the Commission itself is required to determine that there is reasonable assurance that interim operation at the succeeding power level provides adequate protection to the public health and safety and the environment; that all requirements of the Act other than the conduct or completion of the required hearing continue to be met; and that there continues to be a period of time during which interim operation is needed before the facility will receive its final operating license. Although the Committee amendment does not specify a time after the 30-day public comment period for Commission action on the petition, the Committee expects the Commission to act as expeditiously as possible on petitions for interim operating licenses and for amendments to such licenses. Under the Committee amendment, the Commission's authority to issue new interim operating licenses would expire on December 31, 1983. This reflects the intent of the Committee that this provision is a temporary and extraordinary remedy to an extraordinary situation and should not set a precedent for licensing decisions subsequent to its expiration.

The Committee has also included in its amendment procedural safeguards to assure that the issuance of the interim operating license does not prejudice the outcome of the licensing hearing for the final operating license for the plant or prejudice the rights of any party to the hearing to raise any issue in the hearing and to have that issue decided. In addition, the Committee amendment requires that any party to the hearing or any Licensing Board member conducting the hearing promptly notify the Commission of any information made available as part of the hearing that the terms and conditions of the interim operating license are not being met or that such terms and conditions are insufficient to meet the requirements of section 192b. (2).

Finally, the Committee amendment, unlike the NRC legislative proposal, would authorize and direct NRC to adopt appropriate administrative remedies to minimize the need for the issuance of interim operating licenses. The Commission has conducted a detailed review of possible administrative changes to the licensing process that could improve the efficiency of the process and thereby reduce the need for, or duration of, interim operating licenses. Examples include more informal prehearing procedures, greater discipline in scheduling and conducting licensing hearings, allocation of additional NRC staff and funding to licensing casework, and reinstatement of some form of the Immediate Effectiveness Rule. The Committee does not intend that the interim operating license amendment be viewed as a substitute for needed administrative improvements to the licensing process itself, and the Committee expects the Commission to move forward aggressively in these areas. At the same time, the Commission should avoid administrative changes, such as the proposal to eliminate formal discovery against the NRC staff, that are likely

to create an additional lengthening of the hearing process, as well as to add further confusion to the process. The Committee intends to monitor the Commission's efforts to further expedite the licensing process by administrative means to assure that this statutory requirement is carried out.

#### SHOLLY AMENDMENT (SECTION 202)

##### SUMMARY

The bill amends section 189 *b.* of the Atomic Energy Act of 1954, as amended, to authorize the NRC to issue and to make immediately effective an amendment to a license upon a determination by the Commission that the amendment involves no significant hazards consideration, notwithstanding the pendency before it of a request for a hearing.

##### DISCUSSION

The NRC, on March 11, 1981, submitted to the Committee proposed legislation that would expressly authorize the NRC to issue a license amendment involving no significant hazards consideration prior to holding a requested public hearing. The legislation was introduced by request as S. 912.

On November 19, 1980, the United States Court of Appeals for the District of Columbia Circuit, in *Sholly v. NRC*, \* \* \* F.2d \* \* \* held that the NRC may not issue a license amendment, even if it involves no significant hazards consideration, prior to holding a hearing requested by an interested person under section 189 *a.* of the Atomic Energy Act of 1954, as amended.

The case arose out of a determination by the NRC that a license amendment permitting the venting of krypton gas from the containment building at the Three Mile Island Unit 2 facility into the atmosphere involved no significant hazards consideration and therefore that the venting could take place notwithstanding a pending request for a hearing on the proposed order. Rejecting the NRC's interpretation of its authority under section 189 *a.*, the U.S. Court of Appeals held that section 189 *a.* entitles a person who so requests to a hearing before a license amendment becomes effective, irrespective of whether the amendment involves no significant hazards consideration. The Committee provision, in effect, overrules the decision in *Sholly v. NRC*.

By including this provision, the Committee seeks to address the concern expressed by the Commission that a requirement that the NRC grant a requested hearing prior to making effective a license amendment involving no significant hazards consideration could result in unnecessary disruption or delay in the operation of a nuclear power plant and could impose unnecessary regulatory burdens upon the NRC that are not related to significant safety benefits. At the same time, the Committee expects the NRC to exercise its authority under this section only in the case of amendments not involving significant safety questions. Moreover, the Committee stresses its strong desire to preserve for the public a meaningful right to participate in decisions regarding the commercial use of nuclear power. Thus, the provision does not dispense with the requirement for a hearing, and the NRC, if requested, must conduct a hearing after the license amendment takes effect.

This provision should be read in conjunction with section 302 of the bill directing the NRC, within 90 days after enactment, to promulgate regulations establishing standards for determining whether an amendment to a license involves no significant hazards consideration, criteria for providing or dispensing with prior notice and public comment on such determination, and procedures for consultation on such determination with the State in which the facility is located. The authority granted the Commission under section 202 of the bill does not take effect until the Commission has promulgated the standards required by section 301 for determining whether a license amendment involves no significant hazards consideration.

The Committee recognizes that reasonable persons may differ on whether a license amendment involves a significant hazards consideration. Therefore, the Committee expects the Commission to develop and promulgate standards that, to the maximum extent practicable draw a clear distinction between license amendments that involve a significant hazards consideration and those that involve no significant hazards consideration. The Committee anticipates, for example, that, consistent with prior practice, the Commission's standards would not permit a "no significant hazards consideration" determination for license amendments to permit reracking of spent fuel pools. Moreover, it expects that the Commission, to the extent practicable, will develop and promulgate standards that can be applied with ease and certainty. In addition, the determination of "no significant hazards consideration" should represent a judgment on the nature of the issues raised by the license amendment rather than a conclusion about the merits of those issues.

Recognizing that the rulemaking process often can take a significant period of time, the Committee encourages the Commission to begin preparing its proposed standards as soon as possible, even prior to enactment of this provision. In that regard, the Committee notes that the Commission has already issued for public comment rules including standards for determining whether an amendment involves no significant hazards consideration. The Committee believes that the Commission should be able to build upon this past effort, and it expects the Commission to act expeditiously in promulgating the required standards within the time specified in section 301.

The requirement in section 301 that the Commission promulgate criteria for providing or dispensing with prior notice and public comment on a proposed determination that a license amendment involves no significant hazards consideration reflects the intent of the Committee that, wherever practicable, the Commission should publish notice of, and provide for public comment on, such a proposed determination. The Commission has advised the Committee that in some cases the need to issue the proposed amendment will arise quickly, and failure to act on the amendment may result in the shut-down or derating of the plant. The Committee recognizes that the need to act promptly in such situations may foreclose the opportunity for prior public notice and comment. However, in all other cases, the Committee expects the Commission to exercise its authority in a manner that will provide for prior public notice and comment.

Section 301 of the bill also requires the Commission to promulgate procedures for consulting with a State in which the relevant facility

standards  
 [unclear]  
 [unclear]  
 [unclear]  
 [unclear]



is located on a determination that an amendment to the facility license involves no significant hazards consideration. The requirement complements the directive in section 202 that the Commission, in determining whether an amendment involves no significant hazards consideration, shall consult with the situs State. The Committee expects that the procedures for State consultation will include the following elements:

- (1) The State would be notified of a licensee's request for an amendment;
- (2) The State would be advised of the NRC's evaluation of the amendment request;
- (3) The NRC's proposed determination on whether the license amendment involves no significant hazards consideration would be discussed with the State and the NRC's reasons for making that determination would be explained to the State;
- (4) The NRC would listen to and consider any comments provided by the State official designated to consult with the NRC; and
- (5) The NRC would make a good faith attempt to consult with the State prior to issuing the license amendment.

At the same time, however, the procedures for State consultation would not:

- (1) Give the State a right to veto the proposed NRC determination;
- (2) Give the State a right to a hearing on the NRC determination before the amendment becomes effective;
- (3) Give the State the right to insist upon a postponement of the NRC determination or issuance of the amendment; or
- (4) Alter present provisions of law that reserve to the NRC exclusive responsibility for setting and enforcing radiological health and safety requirements for nuclear power plants.

In requiring the NRC to exercise good faith in consulting with a state in determining whether a license amendment involves no significant hazards consideration, the Committee recognizes that a limited number of cases may arise when the NRC, despite its good faith efforts, cannot contact a responsible State official for purposes of prior consultation. Inability to consult with a responsible State official following good faith attempts should not prevent the NRC from making effective a license amendment involving no significant hazards consideration, if the NRC deems it necessary to avoid the shut-down of a power plant.

The Committee directs that the NRC report to it monthly on its determinations under section 202 of the bill.

#### SABOTAGE AMENDMENT (SECTION 203)

##### SUMMARY

The bill amends section 236 of the Atomic Energy Act of 1954, as amended, by adding a new subsection b. that subjects to criminal penalties any person who intentionally and willfully causes or attempts to cause an interruption of the normal operation of any facility specified in subsection a. through the unauthorized use of, or tampering with, the machinery, components, or controls of such facility.

## DISCUSSION

This section is essentially the same as an amendment to the NRC Authorization Bill for fiscal year 1981 (S. 6358) offered by Senator Baker and accepted by the Senate on July 31, 1980. Because the fiscal year 1981 authorization bill was not enacted, the Committee agreed to include the provision in this bill.

Section 204 of the NRC Authorization Act for fiscal year 1980 (Public Law 96-295) amended the Atomic Energy Act of 1954 by adding a section 236 that imposed criminal penalties upon any person who intentionally and willfully causes or attempts to cause physical damage to nuclear facility. That section would become subsection a. of this provision.

The original section 236 did not cover a situation in which a person intentionally and willfully interrupts a power plant's operation by merely tampering with or improperly using, rather than physically damaging or destroying, the machinery, components or controls of the plant. Such acts could result in substantial replacement power costs to a utility and its customers, and may endanger the public health and safety. The need for this provision arose out of an incident at the Browns Ferry Plant in which a plant worker, with apparent intent, interrupted the normal operation of the nuclear reactor. Fortunately, the plant shut down automatically and safely. The provision seek to deter persons from engaging in similar acts in the future.

The Committee intends the phrase "unauthorized use" to mean use without permission of the licensee; the word "tampering" to mean altering for improper purposes or in an improper way; and the phrase "interruption of normal operation" to mean a cessation of actual production, utilization or storage operations which, if accomplished, will result in substantial economic harm or cost to the licensee. It does not intend, however, for this provision to apply to demonstrating, picketing or other concerted labor union activities that may have the effect of exerting economic pressure upon the licensee.

## EMERGENCY PLANNING (SECTION 302)

## SUMMARY

The bill reiterates the authority granted to the NRC under section 109 of the NRC Authorization Act for fiscal year 1980 (Public Law 96-295) authorizing the NRC, in the absence of an approved State or local emergency preparedness plan, to issue an operating license for a nuclear power plant if it determines that there exists a State, local, or utility emergency preparedness plan which provides reasonable assurance that public health and safety is not endangered by operation of the plant.

## DISCUSSION

This provision seeks to clarify a potential ambiguity in the NRC's emergency planning regulations (45 Fed. Reg. 55402, August 19, 1980) over whether the NRC, in the absence of an approved State or local emergency preparedness plan, will nevertheless issue an operating license for a power plant if it determines that there exists a State, local or utility emergency preparedness plan which provides reasonable

assurance that public health and safety will not be endangered by operation of the plant.

By requiring that the NRC regulations be interpreted in accordance with this section, the Committee seeks to underscore the intent of Congress, as evidenced by section 109 of Public Law 96-295, that the NRC, in the absence of an approved State or local emergency preparedness plan, issue an operating license for a nuclear plant if it determines that a State, local or utility emergency preparedness plan, or some integration of these plans, provides reasonable assurance that public health and safety is not endangered by operation of the plant.

#### NUCLEAR POWERPLANT LICENSING STUDY (SECTION 303)

##### SUMMARY

The bill directs the NRC to establish an independent, temporary Advisory Panel to conduct an evaluation of the nuclear powerplant licensing process, and to report to the NRC and the Congress on the results of that evaluation and recommendations for change, within six months. The evaluation is to include an assessment of the effectiveness, predictability, efficiency, and stability of the licensing process, the potential for delays in the licensing of nuclear powerplants, and the opportunities for public participation.

##### DISCUSSION

The Committee has long been interested in the NRC process for licensing nuclear powerplants, and has periodically reviewed the process to determine whether it functions in an efficient, effective manner, consistent with the NRC's responsibility to protect the public health and safety. In that regard, the Committee received testimony from nuclear industry, environmental, and NRC witnesses alike that the present nuclear powerplant licensing process is in need of reform.

This provision directs the NRC to establish an independent, temporary Advisory Panel to conduct an evaluation of the nuclear power plant licensing process. The Panel, which shall include representatives of the National Governors' Association, State agencies that regulate rates charged consumers for electricity, the nuclear power industry, and citizen or environmental organizations, is to begin its study within 60 days of enactment of this bill and shall report to the Commission and the Congress within 6 months after enactment. The Panel's report will include an assessment of the effectiveness, efficiency, predictability, and stability of the licensing process, the potential for delays in the licensing of nuclear power reactors, and the opportunities for public participation.

The Committee stresses that the Panel, in making its assessment, should be mindful of the Commission's primary statutory mandate to protect public health and safety.

The Committee seeks a basis for determining what administrative or legislative steps can be taken to reform the licensing process without compromising the NRC's statutory mandate to protect public health and safety or the right of the public to a meaningful opportunity

to participate in the licensing process. The Panel's inquiry shall extend, but is not limited, to consideration of (1) alternatives to the current two-step licensing process, (2) alternatives to the current adjudicatory process that will provide adequate public participation, and (3) areas in which the NRC can place greater reliance upon State determinations, such as need for power, alternative energy sources, siting, and environmental reviews.

### THREE MILE ISLAND WASTE AMENDMENT (SECTION 304)

#### SUMMARY

The bill requires the NRC to develop a Memorandum of Understanding with the Department of Energy, specifying interagency procedures concerning the removal and disposition of nuclear wastes resulting from cleanup of Unit 2 of the Three Mile Island nuclear plant.

#### DISCUSSION

There presently is no plan for disposing of the high-level waste resulting from cleanup of the damaged reactor at Three Mile Island. In March 1981, NRC issued a Final Programmatic Environmental Impact Statement discussing, among other things, the decontamination and disposal of radioactive wastes resulting from the Three Mile Island accident (NUREG-0683). The report states that if the damaged fuel and radioactive wastes from the reactor are not removed, the island would, in effect, become a permanent nuclear waste disposal site. The location, geology, and hydrology of Three Mile Island are among the factors that do not meet current criteria for a safe long-term waste disposal facility. Removing the damaged fuel and radioactive waste to suitable storage sites is the only reliable means for eliminating the risk of widespread uncontrolled contamination of the environment by the accident wastes.

NRC testified before the Committee that resolution of the Three Mile Island nuclear waste issue will be critical to site cleanup and consequently to the public and health and safety. In response to questions from the Committee, NRC also advised that removal of some amount of TMI's high-level waste for research and development purposes should provide valuable information for the safety of future nuclear reactors while providing a catalyst for eliminating the risk to public health and safety associated with the cleanup of TMI-2.

The NRC report further indicates that the only currently available facilities that can provide the special processing needed to treat the high-level waste from the TMI reactor are located at Department of Energy sites. The wastes either could be treated separately or could be commingled with government wastes presently stored at these sites. However, these facilities have not been made available for high-level Three Mile Island nuclear waste because the Department is apparently concerned that NRC's regulatory authority would be extended to the entire DOE facility. The DOE has acknowledged that only its facilities have the unique technical capabilities (both staff and equipment) to handle these wastes, and that nontechnical considerations have dictated their policies on this question to date. In

response to questions by the Nuclear Regulation Subcommittee, two NRC Commissioners recently indicated that inadequate progress is being made with DOE to resolve this problem. This amendment would require the NRC to develop a Memorandum of Understanding with the Department of Energy specifying interagency procedures for the removal and disposition of nuclear wastes resulting from cleanup of the TMI-2 plant. The Committee expects the Department to work cooperatively with the Commission in promptly resolving the present obstacles to removing and safely disposing of these wastes.

#### FAST BREEDER REACTOR SAFETY RESEARCH AND LICENSING REVIEW

##### SUMMARY

The bill authorizes \$20,400,000 in both fiscal years 1982 and 1983 for fast breeder reactor safety research. The bill also authorizes \$6,500,000 in both fiscal years 1982 and 1983 for licensing review work for a fast breeder reactor project.

##### DISCUSSION

The NRC's budget requests for fiscal years 1982 and 1983 did not include funds for this program. Some work currently being conducted in light-water reactor research is directly applicable to the fast breeder reactor program, but the \$20.4 million figure in this bill is in addition to those funds.

In its fiscal year 1982 report to Congress, the Advisory Committee on Reactor Safeguards recommended that "there be a viable NRC program in Fast Breeder Reactor safety research, unless the Congress judges that it is highly unlikely that the NRC will be involved in any Fast Breeder Reactor licensing efforts in the next few years."

The NRC now has the authority to license the Clinch River Breeder Reactor, if authorized to be built, or any other breeder reactors intended to demonstrate the commercial viability of breeder technology. The Committee expects and intends that any such reactors will be licensed by NRC. Therefore, it has earmarked these funds to assure that the NRC's license review process will not stand in the "critical path" toward operation of such a facility.

This research will prepare the NRC for reviewing and acting on applications for licenses to construct and operate a breeder reactor, and for subsequent regulation of the facility. Fast breeder reactors are sufficiently different from light-water reactors currently in use so that new regulations covering their construction and operation will be required. The Committee expects the Commission to use the funds earmarked for this purpose to move forward aggressively in establishing the necessary regulatory program and requirements in order that required licensing determinations can be made in a timely manner.

#### HIGH TEMPERATURE GAS-COOLED REACTOR (HTGR) RESEARCH AND PREAPPLICATION REVIEW

##### SUMMARY

The bill authorizes \$3,500,000 in fiscal year 1982 and \$4,500,000 in fiscal year 1983 for acceleration of efforts in HTGR research. The bill also authorizes \$1,000,000 in both fiscal years 1982 and 1983 to accelerate efforts in gas-cooled thermal reactor preapplication review.

## DISCUSSION

NRC's fiscal year 1982 budget request included \$2,000,000 for HTGR research, and contained no fund request for fiscal year 1983, pending an internal reevaluation of the program. The committee received testimony that HTGR technology may have some advantages over light-water cooled reactor technology. These advantages include their availability in localities where cooling water sources are limited, and their production of high-temperature steam for industrial applications. The testimony also indicated that HTGR technology may have safety advantages over light-water reactors, particularly in the available response times during loss-of-coolant accident situations.

The additional funding provided for this purpose should allow the Commission's regulatory program to keep pace with industry and government programs for the development of a large-scale HTGR plant.

## LOSS OF FLUID TEST FACILITY (LOFT) RESEARCH PROGRAM

## SUMMARY

The bill authorizes \$45,500,000 in both fiscal years 1982 and 1983 for the Loss of Fluid Test Facility Research program.

## DISCUSSION

LOFT is a special purpose reactor designed to study the consequences of loss-of-coolant accidents in certain types of commercial light water reactors that are caused by the rupture of a pipe in the primary reactor cooling system. As new research needs have been identified, as occurred following the Three Mile Island accident, the LOFT program has been expanded and redirected to encompass these new areas of safety evaluation.

In July 1980, the Advisory Committee on Reactor Safeguards recommended that the LOFT testing program be terminated at the end of fiscal year 1982. As a result of this recommendation, the Commission appointed a panel of experts, the LOFT Special Review Group, to review the LOFT program and to consider whether LOFT should be decommissioned in fiscal year 1982. Following a thorough review of the LOFT program and the NRC regulatory needs that LOFT has been designed to meet or that it might be used to meet, the LOFT Special Review Group concluded that a further series of tests, running through fiscal year 1983, should be performed with LOFT to meet NRC's current regulatory needs. In addition, the Review Group recommended possible scheduling of the needed testing program in a manner that would extend the LOFT facility availability to resolve problems that are now unforeseen.

After submission of the LOFT Special Review Group report, the Commission decided that the LOFT testing program should proceed during fiscal years 1982 and 1983, and that the LOFT facility should be maintained in a standby status for a period of two years beyond the completion of the testing program. The Commission also directed a modest reduction in the test series recommended by the LOFT Special Review Group.

The Nuclear Regulation Subcommittee, during its authorization hearings, reviewed the results of the LOFT Special Review Group, the recommendations of the Advisory Committee on Reactor Safeguards, and the decision of the Commission with respect to the future use of the LOFT facility. The Committee received testimony from the Director of the LOFT Special Review Group on the high quality of the work performed thus far by the LOFT program. In addition, the Commission testified that the LOFT facility represents a unique safety research capability not duplicated anywhere else in the world. The Commission also testified that the LOFT program has provided an invaluable piece of experimental verification of the safety of present nuclear power plants of this type and that continuation of the LOFT testing program in fiscal years 1982 and 1983 is necessary to receive full value from this facility. The NRC testified that the LOFT facility required substantial funding and time to develop, and that early termination of the program would be extremely short-sighted from the standpoint of reactor safety, and would diminish the effectiveness of the entire investment in the facility.

The Committee believes that the LOFT testing program, as defined by the LOFT Special Review Group, should be completed. Accordingly, the Committee has specified that funding sufficient for this purpose will be available in fiscal years 1982 and 1983 as part of this authorization.

## NUCLEAR DATA LINK

### SUMMARY

The bill authorizes \$5,013,000 in fiscal year 1982 and \$6,300,000 in fiscal year 1983 for the Nuclear Data Link System. The bill specifically provides, however, that the Commission shall spend not more than \$1,000,000 in fiscal years 1982 and 1983 until such time as the Commission has established a prototype system and, upon assessing the results of such prototype system, submitted a report to the Congress containing, among other things, a Commission recommendation on implementing a specific system for all operating nuclear power plants.

### DISCUSSION

Since the Three Mile Island Unit 2 accident, a number of steps have been taken by the NRC to upgrade its capability to respond to an incident at a nuclear power reactor. Several investigations of the TMI incident, including the report of the Subcommittee on Nuclear Regulation, pointed out the lack of timely and accurate information available to headquarters NRC emergency response personnel and, in particular, the serious shortcomings of an emergency communication system that relies upon people to determine and communicate critical plant data.

The NRC has focused its efforts to improve the emergency response of both the licensee and the NRC in 4 areas: (1) improving the system for display of critical plant data in the reactor control room, (2) improving the licensee's technical management of an emergency, (3) coordinating onsite and offsite activities, and (4) enhancing the

quality and quantity of technical plant data available to NRC headquarters personnel. The proposed Nuclear Data Link System is designed to enhance the NRC's capabilities in this latter area.

In November of 1979, the NRC requested Sandia National Laboratories to prepare a conceptual design study of a system for acquiring and transmitting a limited, but critical, set of data from each operating nuclear power reactor and for storing and displaying those data at NRC's headquarters operations center. A detailed study of the Nuclear Data Link System was submitted to the NRC by Sandia in May of 1980.

The Commission has since held numerous meetings and has testified before this committee on the proposed system. This bill authorizes the Commission to proceed with a prototype system to determine whether the concept is a workable one, the information needs of such a system, and the costs and benefits of alternative systems for satisfying such information needs. Although the bill authorizes full funding for the Nuclear Data Link System for fiscal years 1982 and 1983, the Commission is authorized to spend no more than \$1,000,000 until such time as it has established a prototype system, assessed the results, and submitted a report to the Congress.

The Committee is particularly interested in ensuring that NRC's role in the management of an emergency be carefully defined before a Nuclear Data Link System is implemented for all nuclear plants, and that such a system be designed to meet the information needs of that role. Accordingly, this bill directs the NRC, in its report to the Congress on the Nuclear Data Link System, to discuss the specific role or roles of the NRC Operations Center personnel in responding to nuclear power plant accidents. In addition, this report should include an assessment of the results of the prototype system, the information needs of NRC Operations Center personnel to carry out their responsibilities, the cost and benefits of alternative systems for satisfying such information needs, and a Commission recommendation on implementing a specific system for all operating nuclear power plants.

Upon submitting such report to the Congress, the balance of the funds authorized in this bill shall then become available to the NRC for implementation of the Nuclear Data Link System.

The success of a Nuclear Data Link system depends, in large part, upon whether the Commission has clearly defined the role it should play during an emergency at a licensed facility. The Committee agrees with the testimony presented by the Commission that the licensee should have primary responsibility for making decisions about its plant during an emergency. However, it also concurs with the Commission that "because of NRC's statutory responsibility with respect to the health and safety of the public, (the Commission) cannot rule out the possibility of directing the licensee to take an action or cease an activity which the licensee is taking in order to preserve the public health and safety." In addition, if the NRC's emergency role is carefully defined, the Committee does not believe that the availability of plant information will necessarily lead NRC to assume control of a facility. Giving the Commission less information during an accident is not preferable to giving it more information,



particularly if the Commission seeks to carry out its statutory authority to protect public health and safety and to keep the Congress "fully and currently informed."

Because of unresolved questions about the role the Commission should play during an emergency at a nuclear facility, the Committee decided to restrict the amount of funds available for establishing a nuclear data link system until the Commission has submitted a report to Congress which, among other things, discusses the specific role or roles of the NRC Operations Center personnel in responding to nuclear power plant accidents, the information needs of such personnel to carry out each such role, and the costs and benefits of alternative systems for satisfying such information needs.

Based on the Commission's testimony on this issue, the Committee supports the nuclear data link concept for several reasons. First, it will enable the NRC to monitor an accident from its Operations Center during the period (2 to 6 hours after notification of an accident) before the NRC Director of Site Operations arrives at the plant site. Second, it will enable a larger pool of experienced technicians to analyze data from a plant suffering an accident and to participate in discussions on appropriate measures to resolve the problems. Third, it will assist the Commission in fulfilling its responsibility to make recommendations on what, if any protective action, a state should take in response to an emergency at a nuclear facility. Fourth, because it can instantaneously transmit key plant parameters to the NRC Operations Center, it can reduce the interference with site operations and the transmission of potentially inaccurate data that can occur when the Commission must rely upon telephone communication of information from its on-site representative. Finally, it will enable the NRC to exercise its statutory responsibility in those rare cases when a licensee, faced with a choice between damaging expensive equipment or releasing radiation into the environment that could harm the public, may wish to take the latter course even though the former alternative is an equally effective response.

#### HEARINGS

The Committee, and its Subcommittee on Nuclear Regulations, held four hearings and heard from 26 witnesses to develop a public record for committee review and action on the bill.

On February 26, 1981, the Committee held an authorization hearing to review the NRC's fiscal years 1982 and 1983 proposed budget. A broad overview of the NRC's fiscal years 1982 and 1983 programs was presented by then-Chairman John F. Ahearne, and Commissioners Joseph M. Hendrie, Victor Gilinsky, and Peter A. Bradford. Supporting testimony for the record was supplied by: William J. Dircks, Executive Director for Operations; Harold R. Denton, Director, Office of Nuclear Reactor Regulation; Victor Stello, Jr., Director, Office of Inspection and Enforcement; John G. Davis, Director, Office of Nuclear Material Safety and Safeguards; Robert B. Minogue, Director, Office of Nuclear Regulatory Research; and Learned W. Barry, Controller.

On March 31, 1981, the subcommittee held another authorization hearing, focusing on delays in the NRC licensing process and the impact of the *Sholly v. NRC* judicial decision. Testifying on behalf

of the Commission on both topics were Chairman Joseph M. Hendrie, and Commissioners John F. Ahearne, Victor Gilinsky, and Peter A. Bradford. William S. Lee, President and Chief Operating Officer, Duke Power Company, accompanied by Michael Miller, Chairman, Atomic Industrial Forum Lawyers Committee; and Ellyn R. Weiss, General Counsel, Union of Concerned Scientists, testified on delays in the NRC licensing process. Robert Hager, Christie Institute; Jay E. Silberg, Shaw, Pittman, Potts & Trowbridge; and John J. Brown, International Union of Operating Engineers, testified on the impact of the *Sholly v. NRC* judicial decision.

A third authorization hearing was held on April 27, 1981, focusing on State and local radiological emergency response planning and Federal radiological emergency response preparedness. Chairman Joseph M. Hendrie, accompanied by Victor Stello, Jr., Director, Office of Inspection and Enforcement, and Brian K. Grimes, Director, Division of Emergency Preparedness, testified on behalf of the Commission on both topics. John McConnell, Acting Director of the Federal Emergency Management Agency, accompanied by John Dickey, Director, Radiological Emergency Preparedness Division, and George Jett, General Counsel, testified on behalf of FEMA on both topics. Testifying on the subject of federal radiological emergency response preparedness were: Joseph P. Hile, Acting Assistant Administrator for Regulatory Affairs, Food and Drug Administration; and Edward F. Tuerk, Acting Assistant Administrator for Air, Noise, and Radiation, Environmental Protection Agency.

Finally, on April 29, 1981, the subcommittee held an authorization hearing focusing on the NRC's research program. Chairman Joseph M. Hendrie and J. Carson Mark, Chairman, Advisory Committee on Reactor Safeguards, testified for the Commission. Accompanying Chairman Hendrie were Robert B. Minogue, Director, Office of Nuclear Regulatory Research, and Denwood Ross, Deputy Director, Office of Nuclear Regulatory Research.

#### COST OF LEGISLATION

Section 252. (a)(1) of the Legislative Reorganization Act of 1970 requires publication of the Committee's estimate of the costs of reported legislation, together with estimates prepared by any Federal agency. The estimate for fiscal year 1982 is \$495.7 million, 1 percent below the Commission's budget request of \$500.7 million. The estimate for fiscal year 1983 is \$530 million.

While it is contemplated that most programs will continue beyond fiscal year 1983, future funding levels depend upon decisions which have not yet been made. Following are estimates for projected NRC budget authority, based upon NRC information:

Fiscal years:	Estimate (millions)
1982.....	\$495.7
1983.....	530
1984.....	530
1985.....	530
1986.....	530

Section 403 of the Congressional Budget and Impoundment Control Act requires each bill to contain a statement of the cost of such bill prepared by the Congressional Budget Office. That report follows:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
Washington, D.C., May 15, 1981.

HON. ROBERT T. STAFFORD,  
Chairman, Committee on Environment and Public Works,  
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for a bill to authorize appropriations to the Nuclear Regulatory Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and section 305 of the Energy Reorganization Act of 1974, as amended, and for other purposes.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

ALICE M. RIVLIN, *Director.*

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

1. Bill number: Not yet assigned.
  2. Bill title: A bill to authorize appropriations to the Nuclear Regulatory Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and section 305 of the Energy Reorganization Act of 1974, as amended, and for other purposes.
  3. Bill status: As ordered reported by the Senate Committee on Environment and Public Works, May 13, 1981.
  4. Bill purpose: Title I of the bill authorizes two years of funding for the Nuclear Regulatory Commission's (NRC) research and regulatory activities. The total amount authorized for the NRC is \$495.7 million for fiscal year 1982 and \$530.0 million for fiscal year 1983; the President's request for these programs is \$500.7 million in fiscal year 1982, and \$530.0 million in fiscal year 1983. The fiscal year 1982 authorization contained in this bill represents an 11 percent increase over the 1981 appropriation of \$447.5 million. The fiscal year 1983 authorization of \$530.0 million contained in the bill is a 7 percent increase over the 1982 authorization level.
- Title II of the bill amends the licensing procedures of the Atomic Energy Act of 1954, and provides for a temporary advisory panel to advise the NRC on licensing matters. The members of the panel would serve without pay.

5. Cost estimate:

Authorization level:

Fiscal year:	<i>Millions</i>
1982.....	\$495.7
1983.....	530.0
1984.....	
1985.....	
1986.....	

Estimated outlays:

Fiscal year:	
1982.....	302.4
1983.....	459.6
1984.....	202.8
1985.....	60.9
1986.....	

Assuming appropriation of the authorized amount, total NRC outlays for fiscal year 1982, including funds from prior year appropriations, are estimated to be \$482.4 million.

The costs of this bill fall within budget function 270.

6. Basis of estimate: For the purposes of this estimate, it is assumed that all funds authorized will be appropriated by the start of each fiscal year. The estimated outlays are based on the historical spending patterns of NRC programs. This estimate assumes a spendout rate of 61 percent the first year, 27.5 percent the second year, and 11.5 percent the third year.

7. Estimate comparison: None.

8. Previous CBO estimate: On April 9, 1981, CBO prepared an estimate of H.R. 2330, as ordered reportedly by the House Committee on Interior and Insular Affairs, April 1, 1981, which provided a two-year authorization for the NRC. The House bill authorized \$485.9 million in fiscal year 1982 and \$513.1 million in fiscal year 1983, resulting in total outlays of \$999 million, \$26.7 million less than the Senate version. Total 1982 outlays resulting from the House bill would be \$476.2 million, \$6.2 million less than the Senate bill.

9. Estimate prepared by: Gary Kaitz.

10. Estimate approved by: James L. Bium, Assistant Director for Budget Analysis.

#### EVALUATION OF REGULATORY IMPACT

In compliance with section 11(b)(1) of rule XXVI of the Standing Rules of the Senate, the committee makes the following evaluation of the regulatory impact of the reported bill.

The bill has no impact on personal privacy of individuals.

The bill has no effect on paperwork, except to the extent that it will facilitate efficient proceedings by the agency and thereby reduce paperwork and delay.

There is no specific economic impact of this bill, although regulatory actions taken under the basic authority of the agency do have an economic impact by applying certain requirements and standards to such businesses as nuclear power plants, fuel production facilities and suppliers thereof.

Recordkeeping requirements are not changed from existing law.

#### ROLLCALL VOTES

Section 133 of the Legislative Reorganization Act of 1970 and the rules of the Committee on Environment and Public Works require that any roll call votes taken during consideration of this bill be announced in this report.

During Committee consideration of this bill, there were no roll call votes. The bill was ordered reported by voice vote.

#### CHANGES IN EXISTING LAW

In compliance with subsection (4) of the rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 42, UNITED STATES CODE--"PUBLIC  
HEALTH AND WELFARE"

CHAPTER 23. DEVELOPMENT AND CONTROL OF  
ATOMIC ENERGY

General Provisions

Judicial Review and Administrative Procedure

2242. **[Temporary] Interim Operating License.**—

a. In any proceeding upon an application for an operating license for a **[nuclear power reactor] utilization facility required to be licensed under section 103 or 104 b. of this Act**, in which a hearing is otherwise required pursuant to section 189 a., the applicant may petition the Commission for **[a temporary operating license authorizing operation of the facility] an interim operating license for such facility authorizing fuel loading, testing, and operation at a specified power level to be determined by the Commission, pending final action by the Commission on the application. The initial petition for an interim operating license for each such facility, and any interim operating license issued for such facility based upon the initial petition, shall be limited initially to power levels not to exceed 5 per centum of rated full thermal power. Following issuance by the Commission of the interim operating license for each such facility, the licensee may file petitions with the Commission to amend the license to allow facility operation in staged increases at specific power levels, to be determined by the Commission, exceeding 5 per centum of rated full thermal power. [Such petition] The initial petition for an interim operating license for each such facility may be filed at any time after the filing of: (1) the report of the Advisory Committee on Reactor Safeguards required by subsection 182 b.; (2) the final safety evaluation report [of] on the application by the [Commission's regulatory] Nuclear Regulatory Commission staff, [and] the [regulatory] Nuclear Regulator Commission staff final detailed statement on the environmental impact of the facility prepared pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (83 Stat. 853); [or, in the case of an application for operating license filed on or before September 9, 1971, if the regulatory staff's final detailed statement required under section 102(2)(C) is not completed, the Commission must satisfy the applicable requirements of the National Environmental Policy Act prior to issuing any temporary operating license under this section 192] and a State, local or utility emergency preparedness plan for the facility. [The petition] Petitions for the issuance of an interim operating license, or for an amendment to such a license allowing operation at a specific power level greater than that authorized in the initial interim operating license, shall be accompanied by an affidavit or affidavits setting forth the specific facts upon which the petitioner relies to justify issuance of the [temporary operating license] interim operating license or the amendment**

thereto. The Commission shall publish notice of each such petition in the Federal Register and in such trade, or news publications as the Commission deems appropriate to give reasonable notice to persons who might have a potential interest in the grant of such interim operating license or amendment thereto. Any [party to the proceeding] person may file affidavits in support of, or in opposition to, the petition within [14] 30 days after the [filing of such petition, or within such additional time not to exceed ten days as may be fixed by the Commission] publication of such notice in the Federal Register. [The Commission shall hold a hearing after ten days' notice and publication once in the Federal Register on any such petition and supporting material filed under this section and the decision of the Commission with respect to the issuance of a temporary operating license, following such hearing, shall be on the basis of findings on the matters specified in subsection b. of this section. The hearing required by this section and the decision of the Commission on the petition shall be conducted with expedited procedures as the Commission may by rule, regulation, or order deem appropriate for a full disclosure of material facts on all substantial issues raised in connection with the proposed temporary operating license.]

b. With respect to any petition filed pursuant to subsection a. of this section, the Commission [shall] may issue [a temporary] an interim operating license, or amend the license to authorize interim operation at each specific power level greater than that authorized in the initial interim operating license, as determined by the Commission, upon finding that:

(1) [the provisions of section 185 have been met with respect to the temporary operating license] in all respects other than the conduct or completion of any required hearing, the requirements of law are met;

(2) in accordance with such requirements, there is reasonable assurance that operation of the facility during the period of the [temporary] interim operating license in accordance with its terms and conditions will provide adequate protection [of the] to the public health and safety and the environment during the period of [the temporary operating license] interim operation; and

(3) [operation of the facility in accordance with the terms and conditions of the temporary operating license is essential toward insuring that the power generating capacity of a utility system or power pool is at, or is restored to, the levels required to assure the adequacy and reliability of the power supply, taking into consideration factors which include, but need not be limited to, alternative available sources of supply, historical reserve requirements for the systems involved to function reliably, the possible endangerment to the public health and safety in the event of power shortages, and data from appropriate Federal and State governmental bodies which have official responsibility to assure an adequate and reliable power supply] denial of such interim operating license will result in delay between the date on which construction of the facility is sufficiently completed, in the judgment of the Commission, to permit issuance of the interim operating license, and the date on which a final operating license for such facility would otherwise issue under this Act.

The [temporary] interim operating license shall become effective upon issuance and shall contain such terms and conditions as the Commission may deem necessary, including the duration of the license and any provision for the extension thereof [and the requirement that the licensee not retire or dismantle any of its existing generating capacity on the ground of the availability of the capacity from the facility which is operating under the temporary license]. Any [decision or other document] *fin* order authorizing the issuance of any [temporary] interim operating license pursuant to this section shall recite with specificity the reasons justifying the [issuance] findings under this subsection, and shall be transmitted upon such issuance to the Committees on Interior and Insular Affairs and Energy and Commerce of the House of Representatives and the Committee on Environment and Public Works of the Senate. The final order of the Commission with respect to the issuance of [a temporary] an interim operating license shall be subject to judicial review pursuant to the Act of December 29, 1950, as amended (ch. 1189, 64 Stat. 1129). *The requirements of section 189 a. of this Act with respect to the issuance or amendment of facility licenses shall not apply to the issuance or amendment of an interim operating license under this section.*

c. [The] Any hearing on the application for the final operating license for a facility otherwise required pursuant to section 189 a. shall be concluded as promptly as practicable. The Commission shall [vacate the temporary] suspend the interim operating license if it finds that the applicant is not prosecuting the application for the final operating license with due diligence. Issuance of [a temporary] an interim operating license [pursuant to] under subsection b. of this section shall be without prejudice to the [position] right of any party to [the proceeding in which] raise any issue in a hearing [is otherwise] required pursuant to section 189 a.; and failure to assert any ground for denial or limitation of [a temporary] an interim operating license shall not bar the assertion of such ground in connection with the issuance of a subsequent final operating license. *Any party to a hearing required pursuant to section 189 a. on the final operating license for a facility for which an interim operating license has been issued under subsection b., and any member of the Atomic Safety and Licensing Board conducting such hearing, shall promptly notify the Commission of any information made available as part of such hearing, that the terms and conditions of the interim operating license are not being met, or that such terms and conditions are not sufficient to comply with the provisions of paragraph (2) of subsection b.*

d. [The authority under this section shall expire on October 30, 1973.] *The Commission is authorized and directed to adopt such administrative remedies as the Commission deems appropriate to minimize the need for issuance of interim operating licenses pursuant to this section.*

e. *The authority under this section shall expire on December 31, 1983.*

#### 2239. Hearings and Judicial Review.—

a. In any proceeding under this Act, for the granting, suspending, revoking, or amending of any license or construction permit, or application to transfer control, and in any proceeding for the issuance

or modification of rules and regulations dealing with the activities of licensees, and in any proceeding for the payment of compensation, an award, or royalties under sections 153, 157, 186 c., or 188, the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding. The Commission shall hold a hearing after thirty days' notice and publication once in the Federal Register, on each application under section 103 or 104 b. for a construction permit for a facility, and on any application under section 104 c. for a construction permit for a testing facility. In cases where such a construction permit has been issued following the holding of such a hearing, the Commission may, in the absence of a request therefore by any person whose interest may be affected, issue an operating license or an amendment to a construction permit or an amendment to an operating license without a hearing, but upon thirty days' notice and publication once in the Federal Register of its intent to do so. The Commission may dispense with such thirty days' notice and publication with respect to any application for an amendment to a construction permit or an amendment to an operating license upon a determination by the Commission that the amendment involves no significant hazards consideration. *The Commission is authorized to issue and to make immediately effective an amendment to a license upon a determination by the Commission that the amendment involves no significant hazards consideration, notwithstanding the pendency before it of a request for a hearing from any person. In determining under this subsection whether an amendment involves no significant hazards consideration, the Commission shall consult with the State in which the facility is located. The authority under this subsection to issue and to make immediately effective an amendment to a license shall take effect upon the promulgation by the Commission of standards for determining whether an amendment to a license involves no significant hazards consideration.*

\* \* \* \* \*

#### 2284. Sabotage of Nuclear Facilities or Fuel.—

a. Any person who intentionally and willfully destroys or causes physical damage to, or who intentionally and willfully attempts to destroy or cause physical damage to—

(1) any production facility or utilization facility licensed under this Act,

(2) any nuclear waste storage facility licensed under this Act,

or

(3) any nuclear fuel for such a utilization facility, or any spent nuclear fuel from such a facility,

shall be fined not more than \$10,000 or imprisoned for not more than ten years, or both.

b. Any person who intentionally and willfully causes or attempts to cause an interruption of normal operation of any such facility through the unauthorized use of or tampering with the machinery, components or controls of any such facility, shall be fined not more than \$10,000 or imprisoned for not more than ten years, or both.



**Calendar No. 141**

97TH CONGRESS  
1ST SESSION

**S. 1207**

[Report No. 97-113]

To authorize appropriations to the Nuclear Regulatory Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and section 305 of the Energy Reorganization Act of 1974, as amended, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

MAY 15, 1981

Mr. SIMPSON, from the Committee on Environment and Public Works, reported, under authority of the order of the Senate of May 13 (legislative day, April 27), 1981, the following original bill; which was read twice and ordered to be placed on the calendar

---

**A BILL**

To authorize appropriations to the Nuclear Regulatory Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and section 305 of the Energy Reorganization Act of 1974, as amended, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

1 "d. The Commission is authorized and directed to adopt  
2 such administrative remedies as the Commission deems ap-  
3 propriate to minimize the need for issuance of interim operat-  
4 ing licenses pursuant to this section.

5 "e. The authority under this section shall expire on De-  
6 cember 31, 1983."

7 SEC. 202. Section 189 of the Atomic Energy Act of  
8 1954, as amended, is amended by adding the following at the  
9 end of subsection a. thereof: "The Commission is authorized  
10 to issue and to make immediately effective an amendment to  
11 a license upon a determination by the Commission that the  
12 amendment involves no significant hazards consideration,  
13 notwithstanding the pendency before it of a request for a  
14 hearing from any person. In determining under this subsec-  
15 tion whether an amendment involves no significant hazards  
16 consideration, the Commission shall consult with the State in  
17 which the facility is located. The authority under this subsec-  
18 tion to issue and to make immediately effective an amend-  
19 ment to a license shall take effect upon the promulgation by  
20 the Commission of standards for determining whether an  
21 amendment to a license involves no significant hazards  
22 consideration."

23 SEC. 203. Section 236 of the Atomic Energy Act of  
24 1954, as amended, is amended to read as follows:

1 "SEC. 236. SABOTAGE OF NUCLEAR FACILITIES OR  
2 FUEL.—

3 "a. Any person who intentionally and willfully destroys  
4 or causes physical damage to, or who intentionally and will-  
5 fully attempts to destroy or cause physical damage to—

6 "(1) any production facility or utilization facility  
7 licensed under this Act,

8 "(2) any nuclear waste storage facility licensed  
9 under this Act, or

10 "(3) any nuclear fuel for such a utilization facility,  
11 or any spent nuclear fuel from such a facility;

12 shall be fined not more than \$10,000 or imprisoned for not  
13 more than ten years, or both."

14 "b. Any person who intentionally and willfully causes or  
15 attempts to cause an interruption of normal operation of any  
16 such facility through the unauthorized use of or tampering  
17 with the machinery, components or controls of any such fa-  
18 cility, shall be fined not more than \$10,000 or imprisoned for  
19 not more than ten years, or both."

20 TITLE III—MISCELLANEOUS PROVISIONS

21 SEC. 301. For the purpose of implementing the amend-  
22 ment to section 189 a. of the Atomic Energy Act of 1954  
23 contained in section 202 of this Act, the Nuclear Regulatory  
24 Commission, within ninety days of enactment of this Act,  
25 shall promulgate regulations establishing standards for deter-

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1 mining whether an amendment to a license involves no sig-  
2 nificant hazards consideration, criteria for providing or dis-  
3 pensing with prior notice and public comment on such deter-  
4 minations, and procedures for consultation on such determi-  
5 nations with the State in which the facility is located.

6       SEC. 302. In the absence of a State or local emergency  
7 preparedness plan which has been approved by the Federal  
8 Emergency Management Agency, the Nuclear Regulatory  
9 Commission may issue an operating license for a utilization  
10 facility required to be licensed under section 103 or 104 b. of  
11 the Atomic Energy Act of 1954, if it determines that there  
12 exists a State, local, or utility plan which provides reasonable  
13 assurance that public health and safety is not endangered by  
14 operation of the facility concerned. The Commission's regula-  
15 tions shall be interpreted in accordance with this section.

16       SEC. 303. (a) The Nuclear Regulatory Commission is  
17 authorized and directed to establish an independent, tempo-  
18 rary Advisory Panel to evaluate the licensing process for nu-  
19 clear powerplants. The requirements of the Federal Advisory  
20 Committee Act (86 Stat. 770) shall not apply to the estab-  
21 lishment and operation of this Panel. Such Advisory Panel  
22 shall consist of members selected by the Commission: *Pro-*  
23 *vided*, That such members shall include, but shall not be lim-  
24 ited to, representatives of the National Governors' Associ-  
25 ation, State agencies that regulate rates charged consumers

## Calendar No. 141

97TH CONGRESS  
1ST SESSION**S. 1207**

[Report No. 97-113]

To authorize appropriations to the Nuclear Regulatory Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and section 305 of the Energy Reorganization Act of 1974, as amended, and for other purposes.

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**IN THE SENATE OF THE UNITED STATES**

MAY 15, 1981

Mr. SIMPSON, from the Committee on Environment and Public Works, reported, under authority of the order of the Senate of May 13 (legislative day, April 27), 1981, the following original bill; which was read twice and ordered to be placed on the calendar

---

**A BILL**

To authorize appropriations to the Nuclear Regulatory Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and section 305 of the Energy Reorganization Act of 1974, as amended, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled.*

1 ~~"d. The Commission is authorized and directed to adopt~~  
2 ~~such administrative remedies as the Commission deems ap-~~  
3 ~~propriate to minimize the need for issuance of interim operat-~~  
4 ~~ing licenses pursuant to this section.~~

5 "e. The authority under this section shall expire on De-  
6 cember 31, 1983."

7 SEC. 202. Section 189 of the Atomic Energy Act of  
8 1954, as amended, is amended by adding the following at the  
9 end of subsection a. thereof: "The Commission is authorized  
10 to issue and to make immediately effective an amendment to  
11 a license upon a determination by the Commission that the  
12 amendment involves no significant hazards consideration,  
13 notwithstanding the pendency before it of a request for a  
14 hearing from any person. In determining under this subsec-  
15 tion whether an amendment involves no significant hazards  
16 consideration, the Commission shall consult with the State in  
17 which the facility is located. The authority under this subsec-  
18 tion to issue and to make immediately effective an amend-  
19 ment to a license shall take effect upon the promulgation by  
20 the Commission of standards for determining whether an  
21 amendment to a license involves no significant hazards  
22 consideration."

23 SEC. 203. Section 236 of the Atomic Energy Act of  
24 1954, as amended, is amended to read as follows:

1 "SEC. 236. SABOTAGE OF NUCLEAR FACILITIES OR  
2 FUEL —

3 "a. Any person who intentionally and willfully destroys  
4 or causes physical damage to, or who intentionally and will-  
5 fully attempts to destroy or cause physical damage to—

6 "(1) any production facility or utilization facility  
7 licensed under this Act,

8 "(2) any nuclear waste storage facility licensed  
9 under this Act, or

10 "(3) any nuclear fuel for such a utilization facility,  
11 or any spent nuclear fuel from such a facility;

12 shall be fined not more than \$10,000 or imprisoned for not  
13 more than ten years, or both."

14 "b. Any person who intentionally and willfully causes or  
15 attempts to cause an interruption of normal operation of any  
16 such facility through the unauthorized use of or tampering  
17 with the machinery, components or controls of any such fa-  
18 cility, shall be fined not more than \$10,000 or imprisoned for  
19 not more than ten years, or both."

20 TITLE III—MISCELLANEOUS PROVISIONS

21 SEC. 301. For the purpose of implementing the amend-  
22 ment to section 189 a. of the Atomic Energy Act of 1954  
23 contained in section 202 of this Act, the Nuclear Regulatory  
24 Commission, within ninety days of enactment of this Act,  
25 shall promulgate regulations establishing standards for deter-

1 mining whether an amendment to a license involves no sig-  
2 nificant hazards consideration, criteria for providing or dis-  
3 pensing with prior notice and public comment on such deter-  
4 minations, and procedures for consultation on such determi-  
5 nations with the State in which the facility is located.

6       SEC. 302. In the absence of a State or local emergency  
7 preparedness plan which has been approved by the Federal  
8 Emergency Management Agency, the Nuclear Regulatory  
9 Commission may issue an operating license for a utilization  
10 facility required to be licensed under section 103 or 104 b. of  
11 the Atomic Energy Act of 1954, if it determines that there  
12 exists a State, local, or utility plan which provides reasonable  
13 assurance that public health and safety is not endangered by  
14 operation of the facility concerned. The Commission's regula-  
15 tions shall be interpreted in accordance with this section.

16       SEC. 303. (a) The Nuclear Regulatory Commission is  
17 authorized and directed to establish an independent, tempo-  
18 rary Advisory Panel to evaluate the licensing process for nu-  
19 clear powerplants. The requirements of the Federal Advisory  
20 Committee Act (86 Stat. 770) shall not apply to the estab-  
21 lishment and operation of this Panel. Such Advisory Panel  
22 shall consist of members selected by the Commission: *Pro-*  
23 *vided*, That such members shall include, but shall not be lim-  
24 ited to, representatives of the National Governors' Associ-  
25 ation, State agencies that regulate rates charged consumers



97TH CONGRESS  
1ST SESSION

# H. R. 4255

To authorize appropriations to the Nuclear Regulatory Commission, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 23, 1981

Mr. UDALL (for himself, Mr. LUJAN, Mr. DINGELL, and Mr. BROYHILL) introduced the following bill; which was referred to the Committee on Interior and Insular Affairs

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## A BILL

To authorize appropriations to the Nuclear Regulatory Commission, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. (a) There is hereby authorized to be appro-  
4 priated to the Nuclear Regulatory Commission in accordance  
5 with the provisions of section 261 of the Atomic Energy Act  
6 of 1954 (42 U.S.C. 2017) and section 305 of the Energy  
7 Reorganization Act of 1974 (42 U.S.C. 5875), for the fiscal  
8 years 1982 and 1983 to remain available until expended,

1        SEC. 11. (a) Of the amounts authorized to be appropri-  
2 ated under section 1 the Nuclear Regulatory Commission  
3 may use such sums as may be necessary to issue and make  
4 immediately effective amendments to a license for nuclear  
5 power reactors upon a determination by the Commission that  
6 the amendment involves no significant hazards consideration.  
7 Such an amendment may be issued and made immediately  
8 effective—

9            (1) in advance of the conduct and completion of  
10 any required hearing, and

11            (2) after notice to the State in which the facility is  
12 located.

13 The Commission shall consult with such State, when practi-  
14 cable, before issuance of the amendment: *Provided*, That  
15 such consultation shall not be construed to delay the effective  
16 date of any amendment issued as provided in this section. In  
17 all other respects the amendment shall meet the requirements  
18 of the Atomic Energy Act of 1954.

19        (b) The Commission shall periodically (but not less fre-  
20 quently than every thirty days) publish notice of amendments  
21 issued, or proposed to be issued, as provided in this section.  
22 Each such notice shall include all amendments issued, or pro-  
23 posed to be issued, since the date of publication of the last  
24 such periodic notice. The notice shall, with respect to each  
25 amendment or proposed amendment (1) identify the nuclear

1 power reactor concerned, and (2) provide a brief description  
2 of the amendment. Nothing in this subsection shall be con-  
3 strued to delay the effective date of any amendment issued as  
4 provided in this section.

5 (c) The Commission shall promulgate, within ninety  
6 days from the effective date of this Act, standards for deter-  
7 mining whether an amendment to a license involves no sig-  
8 nificant hazards consideration. Such standards shall be pro-  
9 mulgated in accordance with the provisions of section 553 of  
10 title 5 of the United States Code.

11 SEC. 12. (a) Of the amounts authorized to be appropri-  
12 ated under section 1, the Nuclear Regulatory Commission  
13 may use such sums as may be necessary to issue temporary  
14 operating licenses for nuclear power reactors as provided in  
15 section 192 of the Atomic Energy Act of 1954, except that  
16 such temporary operating licenses may be issued—

17 (1) in advance of the conduct or completion of any  
18 hearing required by section 192 or by section 189 of  
19 such Act, and

20 (2) without regard to subsection (d) of such sec-  
21 tion 192 and the finding required by subsection (b)(3)  
22 of that section.

23 All hearings conducted as provided in section 192 in connec-  
24 tion with the issuance of such a temporary operating license  
25 (or conducted in connection with any amendment of a tempo-

## Calendar No. 141

97<sup>TH</sup> CONGRESS }  
2<sup>ND</sup> Session }

SENATE

REPORT  
No. 27-113

### AUTHORIZING APPROPRIATIONS TO THE NUCLEAR REGULATORY COMMISSION

MAY 15, 1981.—Ordered to be printed

Filed under authority of the order of the Senate of MAY 15 (legislative day,  
APRIL 27), 1981

Mr. SIMPSON, from the Committee on Environment and Public Works,  
submitted the following

#### REPORT

[To accompany S. 1207]

The Committee on Environment and Public Works, reports an original bill (S. 1207) to authorize appropriations to the Nuclear Regulatory Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and section 305 of the Energy Reorganization Act of 1974, as amended, and for other purposes and recommends that the bill do pass.

#### GENERAL STATEMENT

The bill, as reported, authorizes \$485,700,000 for salaries and expenses of the Nuclear Regulatory Commission (NRC) for fiscal year 1982. The authorization is \$5 million below the Commission's request for \$500,700,000 for fiscal year 1982. The authorization included in the bill is an increase of \$43.4 million over the fiscal year 1981 funding level for the agency of \$452,300,000. The committee's recommendation will permit an increase of 96 permanent staff positions, from 3300 in fiscal year 1981 to 3396 in fiscal year 1982.

The bill also authorizes \$530,000,000 for salaries and expenses for the agency for fiscal year 1983. This is the amount requested by the NRC for fiscal year 1983.

The committee recognizes the high priority of the nuclear regulatory program, including the need to assure the protection of the public health and safety. The committee also recognizes the need to address the present nuclear power plant licensing backlog. However, the committee also determined that the NRC must bear at least some of



This provision should be read in conjunction with section 302 of the bill directing the NRC, within 90 days after enactment, to promulgate procedures establishing standards for determining whether an amendment to a license involves no significant hazards consideration, criteria for providing or dispensing with prior notice and public comment on such determination, and procedures for consultation on such determination with the State in which the facility is located. The authority granted the Commission under section 202 of the bill does not take effect until the Commission has promulgated the standards required by section 301 for determining whether a license amendment involves no significant hazards consideration.

The Committee recognizes that reasonable persons may differ on whether a license amendment involves a significant hazards consideration. Therefore, the Committee expects the Commission to develop and promulgate standards that, to the maximum extent practicable, draw a clear distinction between license amendments that involve a significant hazards consideration and those that involve no significant hazards consideration. The Committee anticipates, for example, that, consistent with prior practice, the Commission's standards would not permit a "no significant hazards consideration" determination for license amendments to permit reracking of spent fuel pools. Moreover, it expects that the Commission, to the extent practicable, will develop and promulgate standards that can be applied with ease and certainty. In addition, the determination of "no significant hazards consideration" should represent a judgment on the nature of the issues raised by the license amendment rather than a conclusion about the merits of those issues.

Recognizing that the rulemaking process often can take a significant period of time, the Committee encourages the Commission to begin preparing its proposed standards as soon as possible, even prior to enactment of this provision. In that regard, the Committee notes that the Commission has already issued for public comment rules including standards for determining whether an amendment involves no significant hazards consideration. The Committee believes that the Commission should be able to build upon this past effort, and it expects the Commission to act expeditiously in promulgating the required standards within the time specified in section 301.

The requirement in section 301 that the Commission promulgate criteria for providing or dispensing with prior notice and public comment on a proposed determination that a license amendment involves no significant hazards consideration reflects the intent of the Committee that, wherever practicable, the Commission should publish notice of, and provide for public comment on, such a proposed determination. The Commission has advised the Committee that in some cases the need to issue the proposed amendment will arise quickly, and failure to act on the amendment may result in the shut-down or derating of the plant. The Committee recognizes that the need to act promptly in such situations may foreclose the opportunity for prior public notice and comment. However, in all other cases, the Committee expects the Commission to exercise its authority in a manner that will provide for prior public notice and comment.

Section 301 of the bill also requires the Commission to promulgate procedures for consulting with a State in which the relevant facility

is based on a determination that an amendment to the facility license involves no significant hazards consideration. The requirement implements the directive in section 202 that the Commission, in determining whether an amendment involves no significant hazards consideration, shall consult with the situs State. The Committee expects that the procedures for State consultation will include the following elements:

1. The State would be notified of a licensee's request for an amendment;

2. The State would be advised of the NRC's evaluation of the amendment request;

3. The NRC's proposed determination on whether the license amendment involves no significant hazards consideration would be discussed with the State and the NRC's reasons for making that determination would be explained to the State;

4. The NRC would listen to and consider any comments provided by the State official designated to consult with the NRC; and

5. The NRC would make a good faith attempt to consult with the State prior to issuing the license amendment.

At the same time, however, the procedures for State consultation would not:

(1) Give the State a right to veto the proposed NRC determination;

(2) Give the State a right to a hearing on the NRC determination before the amendment becomes effective;

(3) Give the State the right to insist upon a postponement of the NRC determination or issuance of the amendment; or

(4) Alter present provisions of law that reserve to the NRC exclusive responsibility for setting and enforcing radiological health and safety requirements for nuclear power plants.

In requiring the NRC to exercise good faith in consulting with a state in determining whether a license amendment involves no significant hazards consideration, the Committee recognizes that a limited number of cases may arise when the NRC, despite its good faith efforts, cannot contact a responsible State official for purposes of prior consultation. Inability to consult with a responsible State official following good faith attempts should not prevent the NRC from making effective a license amendment involving no significant hazards consideration, if the NRC deems it necessary to avoid the shut-down of a power plant.

The Committee directs that the NRC report to it monthly on its determinations under section 202 of the bill.

#### SABOTAGE AMENDMENT (SECTION 203)

##### SUMMARY

The bill amends section 236 of the Atomic Energy Act of 1954, as amended, by adding a new subsection b. that subjects to criminal penalties any person who intentionally and willfully causes or attempts to cause an interruption of the normal operation of any facility specified in subsection a. through the unauthorized use of, or tampering with, the machinery, components, or controls of such facility.

This section is essentially the same as the section in the NRC Authorization Bill for fiscal year 1981 (Public Law 96-295) which was passed by the House of Representatives in fiscal year 1981 authorizing the NRC to include the provisions of section 204 of the NRC Act (Public Law 96-295) amended by adding a section 236 that reads:

Section 204 of the NRC Act (Public Law 96-295) amended by adding a section 236 that reads: who intentionally and willfully causes or attempts to cause damage to nuclear facility a. of this provision.

The original section 236, which was added to the NRC Act by Public Law 96-295, intentionally and willfully causes or attempts to cause damage to nuclear facility a. of this provision. The need for this section was demonstrated at Browns Ferry Plant in which the normal operation of the plant shut down automatically to deter persons from engaging in unauthorized activities.

The Committee intends to amend section 236 to mean altering for improvement the phrase "interruption of actual production, etc." accomplished, will result in a license. It does not intend to demonstrate, picketing, that may have the effect of a license.

#### EMERGENCY

The bill reiterates the provisions of section 109 of the NRC Authorization Act (Public Law 96-295) authorizing the NRC to require a nuclear power plant to have a local, or utility emergency preparedness plan. The bill also requires the NRC to provide assurance that public safety is protected during the operation of the plant.

This provision seeks to ensure that the NRC has authority over whether the NRC requires a nuclear power plant to have a local or utility emergency preparedness plan.

AUTHORIZING APPROPRIATIONS FOR THE NUCLEAR  
REGULATORY COMMISSION

JUNE 9, 1961.—Committed to the Committee of the Whole House on the State  
of the Union and ordered to be printed

Mr. DINGELL, from the Committee on Energy and Commerce,  
submitted the following

REPORT  
together with  
ADDITIONAL VIEWS

[To accompany H.R. 2330]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 2330) to authorize appropriations to the Nuclear Regulatory Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and section 305 of the Energy Reorganization Act of 1974 as amended, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment to the bill as amended by the Committee on Interior and Insular Affairs, which was referred to the Committee on Energy and Commerce is as follows:

Strike out all after the enacting clause and omit the part printed in italic and insert in lieu thereof the following:

TITLE I—AUTHORIZATION OF APPROPRIATIONS FOR FISCAL  
YEAR 1982

Section 1. (a) There is hereby authorized to be appropriated to the Nuclear Regulatory Commission in accordance with the provisions of section 261 of the Atomic Energy Act of 1954 (42 U.S.C. 2017) and section 305 of the Energy Reorganization Act of 1974 (42 U.S.C. 5875), for the fiscal years 1982 and 1983, to remain available until expended \$500,700,000 for fiscal year 1982 and \$530,000,000 for fiscal year 1983 to be allocated as follows:

(1) Not more than \$75,610,000 for fiscal year 1982 and \$75,280,000 for fiscal year 1983, may be used for "Nuclear Regulatory Regulations".



For the issuance of a temporary operating license. In order to issue a temporary license, the Commission must still make all the determinations regarding the issuance of a normal operating license required by law regarding the applicant's compliance with the requirements of law and the rules and regulations of the Commission, including that the issuance of any such temporary operating license provides reasonable assurance that there is adequate protection of the public health and safety and the environment. The committee amendment merely allows the Commission to make these findings prior to the initiation or completion of any hearing on the operating license application. Following the issuance of any temporary operating license, the Commission remains obligated to conduct the hearing required by section 192 and any hearing required by section 189 of the Atomic Energy Act. Moreover, if the Commission at any time following the issuance of a temporary operating license determines that the applicant is not prosecuting its operating license application with due diligence, it is given the authority in section 192 to revoke the temporary operating license. The authority to issue temporary operating licenses expires at the end of fiscal year 1983.

#### SECTION 7—SHOLLY AMENDMENTS TO EXISTING LICENSES

*Summary*—Section 7 of the bill authorizes the Commission to use such funds as may be necessary to issue and make immediately effective amendments to licenses prior to the conduct or completion of any hearing required by section 189 of the Atomic Energy Act and without providing the prior notice and publication in the Federal Register referred to in section 189 if it determines the amendment involves no significant hazards consideration.

*Discussion*—On November 19, 1980, the U.S. Court of Appeals for the District of Columbia Circuit, in *Sholly v. the Nuclear Regulatory Commission*, held that section 189(a) of the Atomic Energy Act required that the Commission, upon request, conduct a hearing on any amendment to a license, even if the Commission determines that the amendment involved no significant hazards consideration. Although under the existing provisions of section 189(a), the Commission is given the authority to dispense with the required prior notice and publication in the Federal Register whenever it determines that the amendment involves no significant hazards consideration, the court ruled that this did not relieve the Commission of the responsibility to, upon request, hold a hearing prior to issuing and making immediately effective any such amendment.

On March 11, 1981, the Commission submitted to the committee proposed legislation which would explicitly authorize the Commission to issue a license amendment which involves no significant hazards consideration prior to the holding or completion of any requested public hearing. This request was based upon the Commission's concern that the requirement that a hearing be held prior to the issuance and immediate effectiveness of an amendment involving no significant hazards consideration to a license could result in a delay in the operation of a reactor and impose unnecessary burdens on the Commission's staff which are not related to significant safety considerations. The Commission has stated that in some cases, the need to

issue amendments to licenses arises quickly, frequently in relation to fuel reloading, and failure to act promptly on the amendment may result in the shutdown, continued outage or closing of the facility.

The committee amendment provides the Commission with the authority to issue and make immediately effective amendments to licenses prior to the conduct or completion of any hearing required by section 109(a) when it determines that the amendment involves no significant hazards consideration. However, the authority of the Commission to do so is discretionary, and does not negate the requirement imposed by the Spolly decision that such a hearing, upon request, be subsequently held. Moreover, the committee's action is in light of the fact that the Commission has already issued for public comment rules including standards for determining whether an amendment involves no significant hazards considerations. The Commission also has a long line of case-by-case precedents under which it has established criteria for such determinations. The Commission's authority to act under this provision expires at the end of fiscal year 1983.

#### SECTION 8—LICENSING STUDY

*Summary*—Section 8 of the bill is an amendment offered by Mr. Moorhead which authorizes the Commission to use such funds as may be necessary to recommend to the Congress proposed legislation and regulations which, if taken together, would reduce, by one-half, the time for filing, review and issuance of construction permits, operating licenses and amendments for applications filed after October 1, 1981. The Commission is directed to submit these recommendations by December 31, 1981, in a report to the appropriate Committees of Congress which is to include a description of the impact of each proposal on: (i) the length of the licensing process; (ii) the adequacy of the safety assurance; (iii) judicial review; (iv) staff resources; and (v) public participation.

*Discussion*—The time consumed in licensing nuclear power reactors has lengthened over the last few years, and this committee, in the past, has repeatedly expressed its interest in determining the causes of this situation. This amendment is designed to establish a basis for considering what administrative and legislative changes can be taken to streamline the licensing process and to evaluate the effect of each such proposal on a variety of factors. This amendment does not direct the Commission to promulgate or issue for public comment any regulations, but to instead formulate an integrated package of regulatory and legislative changes which, if taken as a whole, would reduce the licensing process by one-half, consistent with the Commission's statutory function of protecting the public health and safety. The Commission and each member would, of course, be free to provide comments on each such proposal, and it is expected that the Commission would afford its staff an opportunity to comment on each proposal.

#### SECTION 9—THREE MILE ISLAND WASTE MEMORANDUM OF UNDERSTANDING

*Summary*—Section 9 of the bill directs the Commission to enter into a memorandum of understanding with the Department of

Energy specific materials results.

*Discussion*—The Commission's authority to respond to inquiries regarding the establishment of the disposal of radioactive waste at Three Mile Island is essential to the mission and the understanding is a serious matter at the site. A regulatory agency responsibility does not exist with any other agency already existing entered into the statutory requirement imposed on the organization. A generated high level

*Summary*—The Commission's authority, granted by the Commission's Fiscal Authority, authorized to be sue an operating where the Commission utility emergency assurance that the the operation of

*Discussion*—The Commission's authority to promulgate or issue for public comment any regulations, but to instead formulate an integrated package of regulatory and legislative changes which, if taken as a whole, would reduce the licensing process by one-half, consistent with the Commission's statutory function of protecting the public health and safety. The Commission and each member would, of course, be free to provide comments on each such proposal, and it is expected that the Commission would afford its staff an opportunity to comment on each proposal.

SECT

*Summary*

Section 11 of the bill directs the Commission to enter into a memorandum of understanding with the Department of Energy to expedite the safety role so as of 31, 1981.

## Calendar No. 141

97TH CONGRESS  
1ST SESSION**S. 1207**

[Report No. 97-113]

To authorize appropriations to the Nuclear Regulatory Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and section 305 of the Energy Reorganization Act of 1974, as amended, and for other purposes.

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**IN THE SENATE OF THE UNITED STATES**

MAY 15, 1981

Mr. SIMPSON, from the Committee on Environment and Public Works, reported, under authority of the order of the Senate of May 13 (legislative day, April 27), 1981, the following original bill; which was read twice and ordered to be placed on the calendar

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**A BILL**

To authorize appropriations to the Nuclear Regulatory Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and section 305 of the Energy Reorganization Act of 1974, as amended, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

1 TITLE I—AUTHORIZATION OF APPROPRIATIONS  
2 FOR FISCAL YEARS 1982 AND 1983

3 SEC. 101. (a) There is hereby authorized to be appropri-  
4 ated to the Nuclear Regulatory Commission in accordance  
5 with the provisions of section 261 of the Atomic Energy Act  
6 of 1954 (42 U.S.C. 2017) and section 305 of the Energy  
7 Reorganization Act of 1974 (42 U.S.C. 5875), for the fiscal  
8 years 1982 and 1983 to remain available until expended  
9 \$495,700,000 for fiscal year 1982 and \$530,000,000 for  
10 fiscal year 1983 to be allocated as follows:

11 (1) not more than \$75,610,000 for fiscal year  
12 1982 and \$78,280,000 for fiscal year 1983, may be  
13 used for "Nuclear Reactor Regulation," of which  
14 amount, \$6,500,000 is authorized each such fiscal year  
15 to be used for licensing review work for a fast breeder  
16 reactor plant project, and \$1,000,000 is authorized  
17 each such fiscal year to be used to accelerate the effort  
18 in gas-cooled thermal reactor preapplication review;

19 (2) not more than \$67,424,000 for fiscal year  
20 1982 and \$70,270,000 for fiscal year 1983, may be  
21 used for "Inspection and Enforcement," of which  
22 amount, \$5,013,000 for fiscal year 1982 and  
23 \$6,300,000 for fiscal year 1983 is authorized to be  
24 used for the Nuclear Data Link System: *Provided,*  
25 *however,* That not more than \$1,000,000, to establish

1 a prototype Nuclear Data Link System for the purpose  
2 of evaluating the costs and benefits of alternative sys-  
3 tems that could be used to acquire significant nuclear  
4 powerplant data, and to transmit and distribute these  
5 data to the Nuclear Regulatory Commission's Oper-  
6 ations Center personnel, shall be used in fiscal years  
7 1982 and 1983 until such time as the Commission sub-  
8 mits a report to the Congress assessing the results of  
9 the prototype Nuclear Data Link System and discuss-  
10 ing the specific role or roles of the Nuclear Regulatory  
11 Commission's Operations Center personnel in respond-  
12 ing to nuclear powerplant accidents, the information  
13 needs of such personnel to carry out each such role,  
14 the costs and benefits of alternative systems for satisfy-  
15 ing such information needs, and a Commission recom-  
16 mendation on implementing a specific system for all  
17 operating nuclear power plants;

18 (3) not more than \$46,257,000 for fiscal year  
19 1982 and \$48,020,000 for fiscal year 1983, may be  
20 used for "Nuclear Material Safety and Safeguards";

21 (4) not more than \$245,670,000 for fiscal year  
22 1982 and \$270,170,000 for fiscal year 1983, may be  
23 used for "Nuclear Regulatory Research"; of which  
24 amount, \$20,400,000 is authorized each such fiscal  
25 year to be used for fast breeder reactor safety research,

1       \$3,500,000 for fiscal year 1982 and \$4,500,000 for  
2       fiscal year 1983 is authorized to be used to accelerate  
3       the effort in gas-cooled thermal reactor safety research,  
4       and \$45,500,000 is authorized each such fiscal year to  
5       be used for the Loss of Fluid Test Facility research  
6       program;

7             (5) not more than \$19,095,000 for fiscal year  
8       1982 and \$20,610,000 for fiscal year 1983, may be  
9       used for "Program Technical Support";

10            (6) not more than \$41,644,000 for fiscal year  
11       1982 and \$42,650,000 for fiscal year 1983, may be  
12       used for "Program Direction and Administration".

13       (b) The Commission may use not more than 1 per  
14       centum of the amounts authorized to be appropriated under  
15       paragraph (4) of subsection (a) to exercise its authority under  
16       section 31 a. of the Atomic Energy Act of 1954, as amended,  
17       to enter into grants and cooperative agreements with univer-  
18       sities pursuant to that section. Grants made by the Commis-  
19       sion shall be made in accordance with the Federal Grants  
20       and Cooperative Agreements Act of 1977 and other applica-  
21       ble law.

22       (c) No amount appropriated to the Nuclear Regulatory  
23       Commission pursuant to subsection (a) may be used for any  
24       purpose in excess of the amount expressly authorized to be  
25       appropriated therefore by paragraphs (1) through (6) of such

1 subsection if such excess amount is greater than \$500,000,  
2 nor may the amount available from any appropriation for any  
3 purpose specified in such paragraphs be reduced by more  
4 than \$500,000 unless—

5 (1) a period of thirty calendar days (not including  
6 any day in which either House of Congress is not in  
7 session because of an adjournment of more than three  
8 calendar days to a day certain or an adjournment sine  
9 die) has passed after the receipt by the Committee on  
10 Energy and Commerce and the Committee on Interior  
11 and Insular Affairs of the House of Representatives  
12 and the Committee on Environment and Public Works  
13 of the Senate of notice given by the Commission con-  
14 taining a full and complete statement of the action pro-  
15 posed to be taken and the facts and circumstances  
16 relied upon in support of such proposed action, or

17 (2) each such committee has, before the expiration  
18 of such period, transmitted to the Commission a writ-  
19 ten notification that there is no objection to the pro-  
20 posed action.

21 SEC. 102. Moneys received by the Commission for the  
22 cooperative nuclear research program and the material  
23 access authorization program may be retained and used for  
24 salaries and expenses associated with those programs, not-  
25 withstanding the provisions of section 3617 of the Revised

1 Statutes (31 U.S.C. 484), and shall remain available until  
2 expended.

3       SEC. 103. From appropriations to the Nuclear Regula-  
4 tory Commission under section 101(a), the Commission may  
5 transfer to other agencies of the Government sums for sala-  
6 ries and expenses for the performance by such agencies of  
7 activities for which such appropriations of the Commission  
8 were made. The sums so transferred may be merged with the  
9 appropriation of the agency to which the sums transferred.

10       SEC. 104. Notwithstanding any other provision of this  
11 Act, no authority to make payments hereunder shall be effec-  
12 tive except to such extent or in such amounts as are provided  
13 in advance in appropriation Acts.

14       TITLE II—AMENDMENTS TO THE ATOMIC  
15                                   ENERGY ACT OF 1954

16       SEC. 201. Section 192 of the Atomic Energy Act of  
17 1954, as amended, is amended to read as follows:

18       “SEC. 192. INTERIM OPERATING LICENSE.—

19       “a. In any proceeding upon an application for an operat-  
20 ing license for a utilization facility required to be licensed  
21 under section 103 or 104 b. of this Act, in which a hearing is  
22 otherwise required pursuant to section 189 a., the applicant  
23 may petition the Commission for an interim operating license  
24 for such facility authorizing fuel loading, testing, and oper-  
25 ation at a specific power level to be determined by the Com-



1 mission, pending final action by the Commission on the appli-  
2 cation. The initial petition for an interim operating license for  
3 each such facility, and any interim operating license issued  
4 for such facility based upon the initial petition, shall be lim-  
5 ited initially to power levels not to exceed 5 per centum of  
6 rated full thermal power. Following issuance by the Commis-  
7 sion of the interim operating license for each such facility, the  
8 licensee may file petitions with the Commission to amend the  
9 license to allow facility operation in staged increases at spe-  
10 cific power levels, to be determined by the Commission, ex-  
11 ceeding 5 per centum of rated full thermal power. The initial  
12 petition for an interim operating license for each such facility  
13 may be filed at any time after the filing of: (1) the report of  
14 the Advisory Committee on Reactor Safeguards required by  
15 subsection 182 b.; (2) the final safety evaluation report on the  
16 application by the Nuclear Regulatory Commission staff; (3)  
17 the Nuclear Regulatory Commission staff's final detailed  
18 statement on the environmental impact of the facility pre-  
19 pared pursuant to section 102(2)(C) of the National Environ-  
20 mental Policy Act of 1969 (83 Stat. 853); and (4) a State,  
21 local, or utility emergency preparedness plan for the facility.  
22 Petitions for the issuance of an interim operating license, or  
23 for an amendment to such a license allowing operation at a  
24 specific power level greater than that authorized in the initial  
25 interim operating license, shall be accompanied by an affida-

1 vit or affidavits setting forth the specific facts upon which the  
2 petitioner relies to justify issuance of the interim operating  
3 license or the amendment thereto. The Commission shall  
4 publish notice of each such petition in the Federal Register  
5 and in such trade or news publications as the Commission  
6 deems appropriate to give reasonable notice to persons who  
7 might have a potential interest in the grant of such interim  
8 operating license or amendment thereto. Any person may file  
9 affidavits in support of, or in opposition to, the petition within  
10 thirty days after the publication of such notice in the Federal  
11 Register.

12       “b. With respect to any petition filed pursuant to sub-  
13 section a. of this section, the Commission may issue an inter-  
14 im operating license, or amend the license to authorize inter-  
15 im operation at each specific power level greater than that  
16 authorized in the initial interim operating license, as deter-  
17 mined by the Commission, upon finding that—

18               “(1) in all respects other than the conduct or com-  
19 pletion of any required hearing, the requirements of  
20 law are met;

21               “(2) in accordance with such requirements, there  
22 is reasonable assurance that operation of the facility  
23 during the period of the interim operating license in ac-  
24 cordance with its terms and conditions will provide  
25 adequate protection to the public health and safety and

1 the environment during the period of interim operation;  
2 and

3 "(3) denial of such interim operating license will  
4 result in delay between the date on which construction  
5 of the facility is sufficiently completed, in the judgment  
6 of the Commission, to permit issuance of the interim  
7 operating license, and the date on which a final operat-  
8 ing license for such facility would otherwise issue  
9 under this Act.

10 The interim operating license shall become effective upon is-  
11 suance and shall contain such terms and conditions as the  
12 Commission may deem necessary, including the duration of  
13 the license and any provision for the extension thereof. Any  
14 final order authorizing the issuance of any interim operating  
15 license pursuant to this section shall recite with specificity  
16 the reasons justifying the findings under this subsection, and  
17 shall be transmitted upon such issuance to the Committees on  
18 Interior and Insular Affairs and Energy and Commerce of  
19 the House of Representatives and the Committee on Envi-  
20 ronment and Public Works of the Senate. The final order of  
21 the Commission with respect to the issuance of an interim  
22 operating license shall be subject to judicial review pursuant  
23 to the Act of December 29, 1950, as amended (ch. 1189, 64  
24 Stat. 1129)." The requirements of section 189 a. of this Act  
25 with respect to the issuance or amendment of facility licenses

1 shall not apply to the issuance or amendment of an interim  
2 operating license under this section.

3       “c. Any hearing on the application for the final operat-  
4 ing license for a facility required pursuant to section 189 a.  
5 shall be concluded as promptly as practicable. The Commis-  
6 sion shall suspend the interim operating license if it finds that  
7 the applicant is not prosecuting the application for the final  
8 operating license with due diligence. Issuance of an interim  
9 operating license under subsection b. of this section shall be  
10 without prejudice to the right of any party to raise any issue  
11 in a hearing required pursuant to section 189 a.; and failure  
12 to assert any ground for denial or limitation of an interim  
13 operating license shall not bar the assertion of such ground in  
14 connection with the issuance of a subsequent final operating  
15 license. Any party to a hearing required pursuant to section  
16 189 a. on the final operating license for a facility for which  
17 an interim operating license has been issued under subsection  
18 b., and any member of the Atomic Safety and Licensing  
19 Board conducting such hearing, shall promptly notify the  
20 Commission of any information made available as part of  
21 such hearing, that the terms and conditions of the interim  
22 operating license are not being met, or that such terms and  
23 conditions are not sufficient to comply with the provisions of  
24 paragraph (2) of subsection b.

1 "d. The Commission is authorized and directed to adopt  
2 such administrative remedies as the Commission deems ap-  
3 propriate to minimize the need for issuance of interim operat-  
4 ing licenses pursuant to this section.

5 "e. The authority under this section shall expire on De-  
6 cember 31, 1983."

7 SEC. 202. Section 189 of the Atomic Energy Act of  
8 1954, as amended, is amended by adding the following at the  
9 end of subsection a. thereof: "The Commission is authorized  
10 to issue and to make immediately effective an amendment to  
11 a license upon a determination by the Commission that the  
12 amendment involves no significant hazards consideration,  
13 notwithstanding the pendency before it of a request for a  
14 hearing from any person. In determining under this subsec-  
15 tion whether an amendment involves no significant hazards  
16 consideration, the Commission shall consult with the State in  
17 which the facility is located. The authority under this subsec-  
18 tion to issue and to make immediately effective an amend-  
19 ment to a license shall take effect upon the promulgation by  
20 the Commission of standards for determining whether an  
21 amendment to a license involves no significant hazards  
22 consideration."

23 SEC. 203. Section 236 of the Atomic Energy Act of  
24 1954, as amended, is amended to read as follows:

1       "SEC. 236. SABOTAGE OF NUCLEAR FACILITIES OR  
2 FUEL.—

3       "a. Any person who intentionally and willfully destroys  
4 or causes physical damage to, or who intentionally and will-  
5 fully attempts to destroy or cause physical damage to—

6               "(1) any production facility or utilization facility  
7 licensed under this Act,

8               "(2) any nuclear waste storage facility licensed  
9 under this Act, or

10              "(3) any nuclear fuel for such a utilization facility,  
11 or any spent nuclear fuel from such a facility;

12 shall be fined not more than \$10,000 or imprisoned for not  
13 more than ten years, or both."

14       "b. Any person who intentionally and willfully causes or  
15 attempts to cause an interruption of normal operation of any  
16 such facility through the unauthorized use of or tampering  
17 with the machinery, components or controls of any such fa-  
18 cility, shall be fined not more than \$10,000 or imprisoned for  
19 not more than ten years, or both."

20              **TITLE III—MISCELLANEOUS PROVISIONS**

21       **SEC. 301.** For the purpose of implementing the amend-  
22 ment to section 189 a. of the Atomic Energy Act of 1954  
23 contained in section 202 of this Act, the Nuclear Regulatory  
24 Commission, within ninety days of enactment of this Act,  
25 shall promulgate regulations establishing standards for deter-

1 mining whether an amendment to a license involves no sig-  
2 nificant hazards consideration, criteria for providing or dis-  
3 pensing with prior notice and public comment on such deter-  
4 minations, and procedures for consultation on such determi-  
5 nations with the State in which the facility is located.

6       SEC. 302. In the absence of a State or local emergency  
7 preparedness plan which has been approved by the Federal  
8 Emergency Management Agency, the Nuclear Regulatory  
9 Commission may issue an operating license for a utilization  
10 facility required to be licensed under section 103 or 104 b. of  
11 the Atomic Energy Act of 1954, if it determines that there  
12 exists a State, local, or utility plan which provides reasonable  
13 assurance that public health and safety is not endangered by  
14 operation of the facility concerned. The Commission's regula-  
15 tions shall be interpreted in accordance with this section.

16       SEC. 303. (a) The Nuclear Regulatory Commission is  
17 authorized and directed to establish an independent, tempo-  
18 rary Advisory Panel to evaluate the licensing process for nu-  
19 clear powerplants. The requirements of the Federal Advisory  
20 Committee Act (86 Stat. 770) shall not apply to the estab-  
21 lishment and operation of this Panel. Such Advisory Panel  
22 shall consist of members selected by the Commission: *Pro-*  
23 *vided*, That such members shall include, but shall not be lim-  
24 ited to, representatives of the National Governors' Associ-  
25 ation, State agencies that regulate rates charged consumers

1 for the use of electric energy, representatives of the nuclear  
2 power industry, and representatives from the general public  
3 who represent citizen or environmental organizations. Mem-  
4 bers of the Advisory Panel shall serve without pay. While  
5 away from their homes or regular places of business in the  
6 performance of services for the Advisory Panel, members of  
7 the Panel shall be allowed travel expenses, including per  
8 diem in lieu of subsistence, in the same manner as persons  
9 employed intermittently in Government service are allowed  
10 expenses under section 5703 of title 5 of the United States  
11 Code.

12 (b) The Advisory Panel established under subsection (a)  
13 shall evaluate (1) the effectiveness of the nuclear powerplant  
14 licensing process in assuring that the requirements of the  
15 Atomic Energy Act of 1954 and the National Environmental  
16 Policy Act of 1969 are met in the licensing of nuclear power-  
17 plants; (2) the efficiency of the nuclear powerplant licensing  
18 process and the potential for delays in the licensing of nuclear  
19 powerplants, including the extent to which there exists un-  
20 necessary duplication of effort in the licensing of nuclear  
21 powerplants; (3) the extent to which there exists stability and  
22 predictability in the licensing process for nuclear power-  
23 plants; and (4) the opportunities for public participation in the  
24 nuclear powerplant licensing process.



1 (c) The Advisory Panel established under subsection (a)  
2 shall begin its study within sixty days after enactment of this  
3 Act, and shall prepare a final report on its evaluation, includ-  
4 ing an assessment of deficiencies in the present nuclear  
5 powerplant licensing process and recommendations for any  
6 needed administrative or legislative changes to the process,  
7 within one hundred eighty days after enactment of this Act.  
8 Such report shall be submitted to the Commission and to the  
9 Committee on Interior and Insular Affairs and the Commit-  
10 tee on Energy and Commerce of the House of Representa-  
11 tives, and to the Committee on Environment and Public  
12 Works of the Senate. Within thirty days of the submission of  
13 the report of the Advisory Panel, the Commission shall pro-  
14 vide its views on the findings, conclusions and recommenda-  
15 tions of the report to the above named committees.

16 SEC. 304. The Nuclear Regulatory Commission is au-  
17 thorized and directed to enter promptly into a memorandum  
18 of understanding with the Department of Energy specifying  
19 interagency procedures concerning the removal and disposi-  
20 tion of radioactive materials resulting from the cleanup of  
21 Unit 2 of the Three Mile Island nuclear powerplant the re-  
22 moval and disposition of which have not been approved prior  
23 to the enactment of this Act.

Calendar No. 141

97TH CONGRESS  
1ST SESSION

**S. 1207**

[Report No. 97-113]

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**A BILL**

To authorize appropriations to the Nuclear Regulatory Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and section 305 of the Energy Reorganization Act of 1974, as amended, and for other purposes.

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MAY 15, 1981

Read twice and ordered to be placed on the calendar.

AA61-2 POR

97TH CONGRESS }  
1st Session }

HOUSE OF REPRESENTATIVES

{ REPT. 97-22  
{ Part 1

NUCLEAR REGULATORY COMMISSION  
AUTHORIZATIONS

APRIL 10, 1981.—Ordered to be printed

Mr. UDALL, from the Committee on Interior and Insular Affairs,  
submitted the following

REPORT

[To accompany H.R. 2330]

[Including cost estimate of the Congressional Budget Office]

The Committee on Interior and Insular Affairs, to whom was referred the bill (H.R. 2330) to authorize appropriations to the Nuclear Regulatory Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and section 305 of the Energy Reorganization Act of 1974, as amended, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. (a) There is hereby authorized to be appropriated to the Nuclear Regulatory Commission in accordance with the provisions of section 261 of the Atomic Energy Act of 1954 (42 U.S.C. 2017) and section 305 of the Energy Reorganization Act of 1974 (42 U.S.C. 5875), for the fiscal years 1982 and 1983 to remain available until expended, \$485,873,000 for fiscal year 1982 and \$513,100,000 for fiscal year 1983 to be allocated as follows:

(1) Not more than \$74,997,800 for fiscal year 1982 and \$76,714,400 for fiscal year 1983, may be used for "Nuclear Reactor Regulation", of which an amount not to exceed \$1,000,000 is authorized each said fiscal year to be used to accelerate the effort in gas-cooled thermal reactor preapplication review.

(2) Not more than \$61,513,400 for fiscal year 1982 and \$62,564,600 for fiscal year 1983, may be used for "Inspection and Enforcement".

(3) Not more than \$17,591,000 for fiscal year 1982 and \$17,630,200 for fiscal year 1983, may be used for "Standards Development".

(4) Not more than \$45,766,000 for fiscal year 1982 and \$47,059,600 for fiscal year 1983, may be used for "Nuclear Material Safety and Safeguards".

(5) Not more than \$227,391,200 for fiscal year 1982 and \$247,136,400 for fiscal year 1983, may be used for "Nuclear Regulatory Research", of which an amount not to exceed \$3,500,000 for fiscal year 1982 and \$4,500,000 for fiscal year 1983 is authorized to be used to accelerate the effort in gas-cooled thermal reactor safety research.

(6) Not more than \$18,757,200 for fiscal year 1982 and \$20,197,800 for fiscal year 1983, may be used for "Program Technical Support".

(7) Not more than \$40,846,400 for fiscal year 1982 and \$41,797,000 for fiscal year 1983, may be used for "Program Direction and Administration".

(b) The Commission may use not more than 1 percent of the amounts authorized to be appropriated under paragraph (5) of subsection (a) to exercise its authority under section 31 a. of the Atomic Energy Act of 1954 to enter into grants and cooperative agreements with universities pursuant to that section. Grants made by the Commission shall be made in accordance with the Federal Grants and Cooperative Agreements Act of 1977 and other applicable law.

(c) (1) Not more than \$500,000 of the amount appropriated for a fiscal year to the Nuclear Regulatory Commission under any paragraph of subsection (a) for purposes of the program specified in that paragraph may be used by the Commission in that fiscal year for purposes of a program referred to in any other paragraph of subsection (a), and the amount available from appropriations for a fiscal year for purposes of any program specified in any paragraph of subsection (a) may not be reduced for that fiscal year by more than \$500,000.

(2) The limitations on reprogramming contained in paragraph (1) shall not apply where the Commission submits to the Committee on Interior and Insular Affairs and the Committee on Energy and Commerce of the United States House of Representatives and to the Committee on Environment and Public Works of United States Senate a notification containing a full and complete statement of the action proposed to be taken and the facts and circumstances relied on in support of such proposed action, and if—

(A) each such committee, before the expiration of a 30-day period, transmits to the Commission a written notification that the Committee does not object to the proposed action; or

(B) a 30-day period passes during which no such committee transmits to the Commission a written notification that the committee disapproves of the proposed action.

The 30-day period referred to in this paragraph shall commence upon the receipt by each such committee of the notice referred to in the preceding sentence. In computing such period there shall not be taken into account any day in which either House of Congress is not in session because of an adjournment of more than 3 calendar days to a day certain or an adjournment sine die. Each committee referred to in this paragraph may approve or disapprove a proposal of the Commission under this paragraph in such manner as such committee deems appropriate.

Sec. 2. Moneys received by the Commission for the cooperative nuclear research programs may be retained and used for salaries and expenses associated with those programs, notwithstanding the provisions of section 3617 of the Revised Statutes (31 U.S.C. 484), and shall remain available until expended.

Sec. 3. During the fiscal years 1982 and 1983, transfers of sums from salaries and expenses of the Nuclear Regulatory Commission may be made to other agencies of the United States Government for the performance of work for which the appropriation is made, and in such cases the sums so transferred may be merged with the appropriation so transferred.

Sec. 4. Notwithstanding any other provision of this Act, no authority to make payments hereunder shall be effective except to the extent or in such amounts as are provided in advance in appropriation Acts.

Sec. 5. (a) Except as provided in subsection (b), of the amounts authorized to be appropriated under this Act for the fiscal years 1982 and 1983, not more than \$200,000 may be used by the Nuclear Regulatory Commission for the acquisition (by purchase, lease, or otherwise) and installation of equipment to be used for the "small test prototype nuclear data link" program or for any other program for the collection and transmission to the Commission of data from licensed nuclear reactors during abnormal conditions at such reactors.

(b) (1) The limitation contained in subsection (a) shall not apply to equipment for which the Commission prepares and submits to Congress a specific acquisition and installation proposal unless either House of Congress rejects such proposal within 60 calendar days of such submission.

(2) A proposal may be submitted to the Congress under paragraph (1) only after the Commission has conducted a full and complete study and analysis of the issues involved and prepared a detailed report setting forth the results of such study and analysis. Such proposal shall be accompanied by such report and

by a concise statement, based on the report, setting forth the reasons and justification for the proposal.

(3) The study and analysis referred to in paragraph (2) shall include, at a minimum, an examination of—

(A) the appropriate role of the Commission during abnormal conditions at a nuclear reactor licensed by the Commission;

(B) the information which should be available to the Commission to enable the Commission to fulfill such role and to carry out other related functions;

(C) various alternative means of assuring that such information is available to the Commission in a timely manner; and

(D) any changes in existing Commission authority necessary to enhance the Commission response to abnormal conditions at a nuclear reactor licensed by the Commission.

The study shall include a cost-benefit analysis of each alternative examined under subparagraph (C).

SEC. 6. Of the amounts authorized to be appropriated by this Act for the fiscal year 1982, not more than \$30,000,000 may be used to continue tests at the Loss-of-Fluid Test Facility.

SEC. 7. (a) Of the amounts authorized to be appropriated pursuant to paragraph (7) of subsection 1(a), such sums as may be necessary shall be available for interim consolidation of Nuclear Regulatory Commission headquarters staff offices in the District of Columbia and, to the extent necessary, in Bethesda, Maryland.

(b) No amount authorized to be appropriated under this Act may be used, in connection with the interim consolidation of Nuclear Regulatory Commission offices, to relocate the offices of members of the Commission outside of the District of Columbia.

SEC. 8. (a) No part of the funds authorized to be appropriated under this Act may be used to provide assistance to the General Public Utilities Corporation for purposes of the decontamination, clean-up, repair, or rehabilitation of facilities at Three Mile Island Unit 2.

(b) The prohibition contained in subsection (a) shall not relate to the responsibilities of the Nuclear Regulatory Commission for monitoring or inspection of the decontamination, clean-up, repair, or rehabilitation activities at Three Mile Island and such prohibition shall not apply to the use of funds by the Nuclear Regulatory Commission to carry out regulatory functions of the Commission under the Atomic Energy Act of 1954 with respect to the facilities at Three Mile Island.

#### PURPOSE

The Primary purpose of H.R. 2330 is to authorize appropriations to the Nuclear Regulatory Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and section 305 of the Energy Reorganization Act of 1974, as amended. Toward this end, H.R. 2330 authorizes a total appropriation of \$485,873,000 for NRC's salaries and expenses during fiscal year 1982, and it authorizes a total appropriation of \$513,100,000 for the agency's salaries and expenses during fiscal year 1983.

Inasmuch as the authorization levels requested for the NRC by the Reagan Administration are identical to those sought by the Carter Administration for the 1982 and 1983 fiscal years, the Committee's version of H.R. 2330 is equally responsive to the recommendations of both Administrations.

The Committee has kept H.R. 2330 free of nuclear policy provisions that are not germane to an authorization bill. The Subcommittee on Energy and the Environment will carry out oversight and legislative activities on a broad variety of national nuclear policy issues throughout the 97th Congress, and the Committee believes this to be a more

appropriate context within which to consider amendments to the Atomic Energy Act of 1954, and the Energy Reorganization Act of 1974 and other nuclear policy reforms.

#### SUMMARY OF H.R. 2330

The Committee amendment to H.R. 2330 authorizes appropriations for the Nuclear Regulatory Commission for both fiscal year 1982 and fiscal year 1983. The bill, as reported by the Committee, specifies a total authorization for each of the two fiscal years, and also disaggregates the total authorization for each year into seven discrete line items corresponding to the agency's major program areas.

The Committee amendment to H.R. 2330 provides a procedure for congressional review and prior approval of any NRC proposed action to reprogram authorized amounts in excess of \$500,000.

The Committee amendment places restrictions on the amounts and uses of funds available to the Commission for the Nuclear Data Link program. The amendment also limits the availability of funds during FY 1982 for the continuation of tests at the Loss-of-Fluid Test facility.

Funds are specifically authorized for the purpose of bringing about the interim consolidation of NRC headquarters staff in the District of Columbia and, to the extent necessary, in Bethesda, Maryland. No funds are authorized, however, by the Committee amendment for the purpose of moving the offices of the Commissioners outside the District of Columbia.

The Committee amendment explicitly prohibits the use of any funds authorized by H.R. 2330 for the actual decontamination, clean-up, repair, or rehabilitation of Three Mile Island Unit 2.

#### BACKGROUND, COMMITTEE RECOMMENDATION, AND VOTE

On February 23, 1981, the Nuclear Regulatory Commission forwarded to the Committee proposed legislation authorizing appropriations for the Commission for fiscal year 1982 and 1983. Thereafter, on March 4, 1981, Chairman Morris K. Udall introduced the proposal, and the bill (H.R. 2330) was referred to the Committee on Interior and Insular Affairs.

The proposed bill was the subject of hearings before the Subcommittee on Energy and the Environment on February 24 and February 27, 1981. The Subcommittee met in open session on March 9, 1981 for the purpose of marking up H.R. 2330 and voted favorably to report the bill to the Committee with a substitute text.

On March 26, 1981, the Committee on Interior and Insular Affairs met in open session and considered the Subcommittee on Energy and the Environment's substitute. The Committee met again in open session on April 1, 1981 and considered an additional amendment, after which the Committee, by voice vote, ordered the bill reported to the House with a Committee amendment.

## AUTHORIZATION REQUEST

The Nuclear Regulatory Commission authorization request for fiscal years 1982 and 1983, as submitted to the Committee on February 23, 1981, called for the authorization of \$500,700,000 for fiscal year 1982, and \$530,000,000 for fiscal year 1983, for salaries and expenses.

The Committee on Interior and Insular Affairs has recommended a total authorization for the NRC of \$485,873,000 for fiscal year 1982 and \$513,100,000 for fiscal year 1983. The total amount approved by the Committee is approximately three percent less than the total authorization requested by the Commission for fiscal year 1982, and approximately 3.3 percent less than the agency requested for fiscal year 1983; amounting to a \$14,827,000 reduction for fiscal year 1982 and a \$16,900,000 reduction for fiscal year 1983.

The following table summarizes the NRC's request for budget authority along with the Interior Committee recommendations.

AUTHORIZATION REQUEST					
Program	NRC request	Subcommittee recommendation	Change <sup>1</sup>	Committee amendment	Change <sup>2</sup>
FISCAL YEAR 1982					
Nuclear reactor regulation	\$75,610,000	\$71,829,500	-\$3,780,500	\$74,097,800	-\$1,512,200
Inspection and enforcement	67,680,000	64,296,000	-3,384,000	61,513,400	-6,167,600
Standards development	17,950,000	17,052,200	-897,800	17,591,000	-359,000
Nuclear material safety and safeguards	46,700,000	44,355,000	-2,345,000	45,766,000	-934,000
Nuclear regulatory research	231,940,000	229,343,000	-11,597,000	227,301,200	-4,638,800
Program technical support	19,140,000	18,183,000	-957,000	18,757,200	-382,800
Program direction and administration	41,680,000	39,596,000	-2,084,000	40,846,400	-833,600
Total	500,700,000	475,665,000	-25,035,000	485,873,000	-14,827,000
FISCAL YEAR 1983					
Nuclear reactor regulation	78,280,000	74,366,000	-3,914,000	76,714,400	-1,565,600
Inspection and enforcement	70,270,000	65,756,500	-4,513,500	62,564,500	-7,705,500
Standards development	17,990,000	17,090,500	-899,500	17,637,200	-352,800
Nuclear material safety and safeguards	48,020,000	45,619,000	-2,401,000	47,053,600	-966,400
Nuclear regulatory research	252,180,000	239,571,000	-12,609,000	247,136,400	-5,043,600
Program technical support	20,610,000	19,579,500	-1,030,500	20,197,800	-412,200
Program direction and administration	42,650,000	40,517,500	-2,132,500	41,797,000	-853,000
Total	530,000,000	503,530,000	-26,530,000	513,100,000	-16,900,000

<sup>1</sup> The "change" is from the NRC request.

<sup>2</sup> \$1,000,000 of this amount is designated to be used for gas-cooled thermal reactor preapplication review.

<sup>3</sup> This authorization level reflects a 2 percent cut, and deletion of \$4,813,000 requested for the nuclear data link program.

<sup>4</sup> The NRC is authorized to use up to 1 percent of this amount to make research grants to universities; also, \$3,500,000 is designated to be used for gas-cooled thermal reactor safety research.

<sup>5</sup> Of this amount, such sums as are necessary are available for the interim consolidation of NRC buildings and staff.

<sup>6</sup> \$1,000,000 is designated for HTGR preapplication review.

<sup>7</sup> This level reflects a 2 percent cut, and the deletion of \$6,300,000 requested for the nuclear data link program.

<sup>8</sup> \$4,500,000 is designated for HTGR safety research.

Note: 1983 figures are in 1982 dollars; inflation is excluded.

## TWO-YEAR AUTHORIZATION

The Committee amendment to the NRC authorization bill (H.R. 2330) includes, for the first time, an authorization of appropriations for each of the next fiscal years (i.e. fiscal year 1982 and fiscal year 1983). For each of these two fiscal years, the Committee amend-

ment authorizes a total appropriation for NRC's salaries and expenses, and disaggregates the total amount into seven discrete line-items corresponding with the agency's major program areas.

Section 1(a) of the Committee amendment authorizes the following appropriations for the NRC during FY 1982 and FY 1983:

	Fiscal year--	
	1982	1983
Nuclear reactor regulation.....	\$74,097,800	\$76,714,400
Inspection and enforcement.....	61,513,400	62,564,600
Standards development.....	17,591,000	17,630,700
Nuclear materials safety and safeguards.....	45,766,000	47,059,600
Nuclear regulatory research.....	227,301,200	247,131,400
Program technical support.....	18,757,200	20,197,800
Program direction.....	40,846,400	41,797,000
Total, NRC.....	485,873,000	513,100,000

### Background

In a February 8, 1980 letter to the Commission, Chairman Morris K. Udall expressed the Committee's interest in considering as a single legislative initiative the authorization of appropriations for NRC for the ensuing two fiscal years. The letter also requested the Commission to submit for the Committee's review a specific line-item authorization for both fiscal year 1981 and fiscal year 1982.

In response to Chairman Udall's letter, the Commission submitted to the Subcommittee at the March 7, 1980 authorization hearing an "Addendum to fiscal year 1981 Budget Statement" that expressed the Commission's support of the Committee's decision to consider a two-year authorizing cycle. The addendum also suggested line-item authorization amounts for the NRC offices for fiscal year 1982 that were characterized by the Commission as "extremely tentative" and "not much more than extrapolations from fiscal year 1981." The addendum noted that the fiscal year 1982 estimates "had not been subjected to the great amount of Commission scrutiny given to the fiscal year 1981 figures."

NRC Chairman Ahearne told the Subcommittee at the March 7, 1980 hearing that if the Commission set out at the beginning of its internal budget review process to develop a two-year request, then a more detailed and justifiable 2-year budget proposal could be presented to the Committee for consideration in the 1st Session of the 97th Congress.

Subsequently, the Committee approved an amendment to the fiscal year 1981 NRC authorization bill (Section 105 of H.R. 6298) that instructed the Commission to prepare a two-year authorization request with specific line-items for submission to the Congress in January 1981. Although the fiscal year 1981 NRC authorization bill has not been enacted, the Commission adhered to the Committee's amendment and prepared a 2-year request for fiscal year 1982 and fiscal year 1983.

In a December 14, 1980 letter to the Commission, Chairman Morris K. Udall (together with Congressman Don Clausen, Senator Alan K. Simpson and Senator Gary Hart) expressed the intent of the House Interior and Insular Affairs Committee and the Senate Environment and Public Works Committee to consider a 2-year authorization bill



for fiscal year 1982 and fiscal year 1983. The letter requested the Commission to submit a single bill requesting funds for fiscal year 1982 and fiscal year 1983.

*The NRC Request for Fiscal Year 1982 and Fiscal Year 1983*

The Commission's prepared statement presented to the Subcommittee during the February 24, 1981 hearing noted that this was the first year in which the Commission went through a similar development and review process for the outyear (fiscal 1983) as for the budget year (fiscal year 1982) submission. The Commission's testimony before the Subcommittee described the following authorization development and review process:

This process included detailed office submissions for both fiscal years based on the guidance provided in the PPPG. All of the office submissions were subjected to successive reviews by the Office of the Controller, the Budget Review Group headed by the Deputy Director for Operations, the EDO and the Commission prior to submission to the Office of Management and Budget. At each review step, the office directors were encouraged to discuss their requirements and to advise the reviewers of any impacts that proposed changes to their fiscal year 1982 budget request might have on fiscal year 1983. Through the EDO level, equal attention was given to both the budget year and the outyear estimates.

During the Subcommittee's February 24, 1981 hearing, the Commission testified that the Administration has approved a fiscal year 1983 planning estimate for NRC of \$530 million. According to the Commission testimony, OMB did not provide any program guidance for fiscal year 1983, however, as they did not consider the \$530 million to be a budget approval.

The Committee is aware that in a March 19, 1981 letter to the Commission, OMB reaffirmed its approval of the \$530 million planning estimate for the NRC in fiscal year 1983, and offered the following guidance to the agency:

(y)ou should recognize in your planning that the President is committed to substantial new reductions in outlays for 1982 through 1986 \* \* \* This means that many agencies will have to plan on further program reductions beginning in 1983 which will bring budget authority and outlays substantially below the numbers shown.

In a March 6, 1981 letter to the Committee, the Commission offered the following observations based upon the agency's initial effort to develop and review a 2-year authorization request:

One advantage is that there is greater emphasis on future planning. This provides for a better look at outyear impacts on budget year decisions. A 2-year authorization could provide more stability, since Congressional guidance would be provided for a longer period. Another advantage is the potential for fewer authorization hearings. \* \* \* On balance, the Commission supports a 2-year authorization.

*Committee Comments*

The Committee believes that sufficient information has been included in the hearing record to justify the authorization of appropriations for the NRC for both fiscal year 1982 and fiscal year 1983. The Committee has recommended a 2-year authorization for the NRC with full understanding that there will always be greater uncertainty with regard to the funding requirements of the second year of the 2-year cycle vis-a-vis the first year of the cycle. With this in mind, the Committee amendment provides a reprogramming procedure that will enable the NRC and the Congress to work together to reallocate authorized funds in the event that circumstances change during the authorization period. In addition, the option is always available to the Commission to request a supplemental authorization of appropriations; and the Congress can amend the authorizing legislation. The Committee intends to hold oversight hearings early in the 2nd Session of the 97th Congress to review the extent to which funds are authorized at the appropriate level for the Commission during fiscal year 1983.

The Committee believes that inherent in the 2-year authorization for the NRC is the potential for significant reduction in the congressional legislative workload without impairment to the ability of Congress to exercise effectively its jurisdiction over the Nuclear Regulatory Commission and the regulation of the commercial nuclear industry. Also, the Committee believes that the Committee amendment will promote more coherent fiscal planning and program and policy continuity at the NRC.

## NRC DOCUMENT CONTROL SYSTEM

The Committee is concerned by serious problems associated with NRC's procurement and management of a contract with the TERA Corporation to provide the Commission with an automated Document Control System.

In a September 19, 1980 letter to the Comptroller General, Chairman Morris K. Udall requested that the General Accounting Office undertake an inquiry into circumstances surrounding the Commission's computerized technical information and document control system. In carrying out its investigation of this matter, the GAO was asked to determine whether the document control system serves the NRC staff's needs, whether the system is cost effective, whether filing and retrieval costs are comparable to or less than those that might pertain to competitive systems, and whether contracts pertaining to this system have been let in strict accordance with established procedures. The final GAO report, which is scheduled to be completed by the end of April 1981, will help guide the Committee in its continuing oversight of the NRC budget.

According to the Commission's testimony before the Subcommittee on February 24, 1981, the current annual cost of the TERA contract is \$11 million. The Commission also informed the Subcommittee that a total of \$23 million will have been expended on the contract by June 1981, thus making the TERA contract "the largest single non-research contract let by the NRC."

The Committee is aware that the Commission is now policing itself with regard to the management and alleged improprieties associated with the TERA contract. The Committee commends the Commission for undertaking two separate investigations of this matter (one through the Office of Management and Program Analysis, and another through the Office of Inspector and Auditor), and appreciates the candor in the Commission's statement to the Subcommittee on February 24, 1981 that:

The conclusion of our own studies indicates that the (Document Control) system is poorly defined and is too costly. Furthermore, we are investigating whether abuses have occurred in the expenditure of funds under this (TERA) contract.

It is also the Committee's view, however, that the NRC was remiss in allowing the design, procurement and installation of the Document Control System to evolve, from a concept that was insufficiently analyzed at its inception, with so little direct guidance and management from the Commission.

The Committee expects the Commission to make every effort to keep the Committee fully and currently informed with regard to the continued development, cost, and use of the NRC's Document Control System.

#### NRC BUILDING CONSOLIDATION

The Committee continues to be very concerned by the serious problem confronting the NRC as a result of being housed in ten different buildings in five different locations in Washington, D.C. and suburban Maryland.

The Committee agrees with the Commission's own unanimous conclusion that the scattered physical locations of the NRC staff has a significant adverse effect on the agency's operations. Problems associated with NRC's current building situation have been documented by both the President's Commission on the Accident at Three Mile Island (the Kemeny Commission) and the NRC's Special Inquiry Group, and the reports of both groups have called for urgent action to consolidate the agency. In addition, the Nuclear Safety Oversight Committee, in its September 26, 1980 letter to President Carter, has stressed the importance of quickly achieving NRC consolidation.

While the Committee looks forward to the day when the Commission and its headquarters staff can be moved into a single building, it is our understanding that such a move will not be possible for at least several years. If this is the case, we strongly support as an interim step the relocation of half the agency to the Matomic Building (1717 H St. NW, Washington, D.C.), and half to a single building in Bethesda, Maryland. It is the Committee's understanding that a plan to achieve this interim consolidation was developed last year by OMB. The Committee has been informed that the Commission regards this OMB plan as "the acceptable short-term solution identified to date;" the Committee is in agreement with the Commission on this point. The Committee urges OMB to expeditiously implement the existing OMB proposal for the interim consolidation of NRC.

The Committee amendment authorizes the Commission to use such sums as may be necessary for interim consolidation of NRC offices in

the District of Columbia and, to the extent necessary, in Bethesda, Maryland. The Committee amendment also prohibits the use of any authorized funds to relocate the offices of the Commissioners outside the District of Columbia. The Committee amendment applies only to interim consolidation of the NRC, and does not foreclose from further consideration any proposal for the long-term solution to the agency's building situation.

#### TWO-PERCENT BUDGET CUT

As it did last year, the Committee recommends that in each funding category the NRC authorization be reduced 2 percent below the level specified in the Commission's proposed budget for fiscal year 1982 and fiscal year 1983. The Committee's approval of a 2 percent across-the-board budget cut was predicated on the belief that Federal spending must be reduced and that the NRC must share the burden. The Committee believes there is ample room for the Commission to improve the efficiency of its operations and that the reduced level of funding will not impair the ability of the NRC to fulfill its important mission of regulating the commercial nuclear industry.

#### GAS-COOLED REACTORS

Once again, as in every year since the Committee assumed legislative responsibility for nuclear regulation, the Committee has explicitly authorized the use of funds for regulatory activities related to gas-cooled thermal reactors (HTGR's).

The Committee amendment specifically designates that from the amounts authorized for the Office of Nuclear Reactor Regulation \$1,000,000 is available during fiscal year 1982, and another \$1,000,000 is available during fiscal year 1983, for the purpose of accelerating the effort in gas-cooled thermal reactor preapplication review. The Committee believes that this authorization level would enable the NRC to perform pre-application review activities such as the following:

- The early review of safety issues (e.g. core seismic criteria, graphite criteria and performance models) and specific topics for establishing licensing ground-rules (e.g. general design criteria, applicability of regulatory guides, and methods for selecting design basic accidents).

- Review applicability of NRC proposed siting policy task force recommendations (NUREG-06125) to the HTGR.

- Review the AIPA study for HTGR's (equivalent to WASH-1400 for LWR's). The study provides the overall risk assessment of the HTGR and recommends areas of further HTGR safety research.

The Committee amendment also provides that from amounts authorized for the Office of Nuclear Regulatory Research, \$3.5 million during fiscal year 1982 and \$4.5 million during fiscal year 1983 are to be used for gas-cooled thermal reactor safety research. The Committee believes that this funding level will allow the NRC to carry out activities such as the following:

- Further graphite corrosion studies—methodology development and materials modeling tests.

High temperature nickel alloy materials studies for application to reactor internal components, thermal barrier and ducts—material property tests for strength, fatigue and creep, carburization, wear and adhesion.

Verification of data base and performance of HTGR fuel.

Further fission product transport experiments with HTGR fuel at increased temperature levels to eliminate uncertainties in release rate, attenuation in graphite, plate-out, and lift-off assumptions.

Experiments to verify assumptions used in site dose calculations from core heat-up accidents—core material transport tests, concrete tests for heat capacity, off-gassing and spalling rates.

Studies of chemical compound formations and retention of released iodine in the PCRV and containment during core heat-up.

Structural studies to verify assumptions of containment failure modes and leak rates.

Verification of HTGR safety analysis computer programs.

The Committee continues to believe that, in comparison with light water reactors, gas-cooled reactors are potentially advantageous with respect to safety, uranium requirements, and cooling water needs. The potential benefits of HTGRs vis-a-vis light water reactors was eluded to in a February 10, 1981 letter from the Advisory Committee on Reactor Safeguards (ACRS) to the NRC. The ACRS letter, which deals with the subject of "Application of NRC Action Plan to Fort St. Vrain Nuclear Generating Station," includes the following comments:

In addition to the major differences in HTGR and LWR technology, there are significant differences in response times required to deal with both operating transients and postulated accidents. There are also differences in fission product inventories in the coolant and in potential radiological releases.

\* \* \* (W)e believe that the public safety is not being served by treatment of Fort St. Vrain as if it were an LWR. Nor do we believe that the best interest of the public is served by the failure to profit from the TMI-2 experience as it bears on the special characteristics of an HTGR.

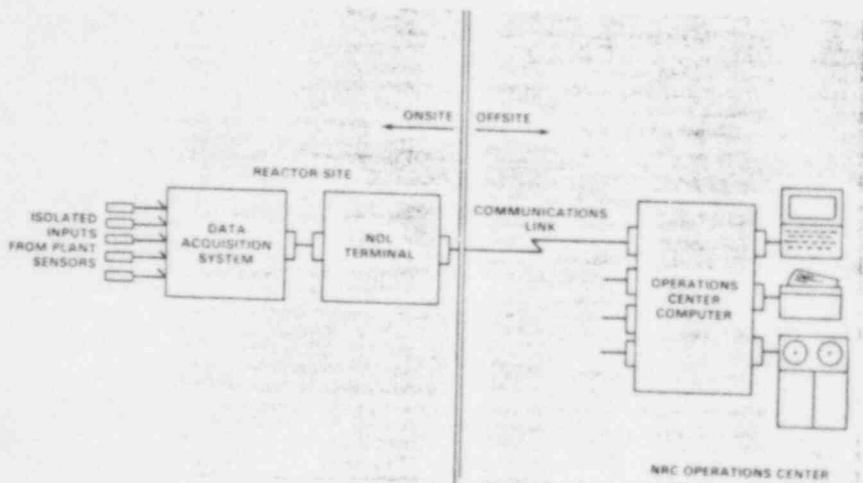
#### NUCLEAR DATA LINK

The Commission's budget request included \$5.013 million for fiscal year 1982 and \$6.3 million for fiscal year 1983 for a Nuclear Data Link (NDL). The Commission's 1980 Annual Report contains the following description of the NDL:

The Nuclear Data Link (NDL) would be a data transmission system designed to send a specified set of variables from the plant to the NRC Operations Center in Bethesda, Md. Its purpose is to provide management personnel at

NRC headquarters with timely, reliable and accurate plant systems, meteorological and radiological information. When an incident occurs, the NRC must be prepared to provide advice and support to the nuclear facility operator, off-site State and local authorities and other Federal officials. NRC management must be able to make independent assessments of the actions taken by the licensee and off-site authorities to protect the public health and safety. In addition, the NRC is responsible for keeping Federal, State and local officials and the general public informed about the technical and radiological aspects of the incident and subsequent emergency response activities. The NDL data also would help NRC headquarters personnel provide timely support to regional NRC personnel at the plant site.

In all emergency situations, the NRC's major role will be to monitor the situation and advise protective actions, but will not extend to any manipulation of nuclear facility controls. However, in extreme cases, the NRC may direct that certain operations be performed at the nuclear facility. Any such direction would come from the NRC Director of Site Operations after his arrival at the site and from NRC headquarters prior to that time.



The proposed Nuclear Data Link (NDL) system consists of a data acquisition system and an NDL terminal (both located onsite), and an Operations Center system at NRC headquarters. The NDL would process and transmit certain reactor process variables and radiological and site meteorological data from each operating nuclear power plant to the NRC Operations Center. The Center's subsystem would include a general-purpose com-

puter capable of receiving data from any plant, and which may be used to maintain a file of current data from each reactor site. Video data terminals, printers, magnetic memory storage, and miscellaneous peripherals (including displays of numerical and graphic representations of data) would comprise the balance of the equipment at the NRC Operations Center.

The NDL has been criticized on several grounds, particularly, with regard to the temptation it would create for NRC staff to direct that " \* \* \* certain operations be performed at the nuclear facility." Dr. Carson Mark, Chairman of the Advisory Committee on Reactor Safeguards testified that the NDL " \* \* \* is an expensive thing which will

have a chance to work once in a while, but the NRC staff will I fear, make it so fancy that one will wish we didn't have it. It is not clear what they will do with it, and I certainly do not want them to be running things up in Bethesda if we can avoid that."

Commissioner Gilinsky wrote in answer to a question as to his view concerning the purpose of the Data Link:

Commissioner Gilinsky's response to Question 3(a):

If NRC Headquarters is to have a remote link with reactor control room displays, which NRC will then monitor, this must be arranged in such a way that the responsibility of a licensee for plant safety will not be diminished. I am concerned that the relationship between the NRC and the licensee will be affected by the existence of such a data link in ways that could be harmful during an accident or even during normal operations. I do not think this point has been given sufficient thought.

John H. Garrity, Director of Nuclear Engineering and Licensing, Maine Yankee Atomic Power Company, wrote to Chairman Udall stating that:

The nuclear data link would at best prompt the Bethesda staff to ask many questions that, to be answered, would divert the attention of the utility staff from dealing with an accident, and at worst might tempt the staff to pressure the utility staff to take measures the utility would not agree are most prudent based on their own on-the-scene impressions of reactor plant conditions. Clearly, the cost of the NDL, both to the taxpayers and the utility customers is not justified.

Former ACRS Chairman Milton Plesset testified that the data link itself could detract from plant safety as a consequence of the necessity to connect the data link to the devices which sensed plant parameters. Dr. Plesset was referring the problem of spurious electrical signals being fed from the data link apparatus into the plant controls. Dr. Plesset stated:

I would like to add another point. We had an ACRS Fellow explore this in detail and he was very negative about the whole idea.

There is another feature of it that has not been touched on aside from trying to run the plant from Bethesda, and that is going into all these power plants and tapping off all the sensors they have in there which could be a destructive thing and could really make the plant less safe.

I think, personally, it is a bad idea whose time should not come.

Chairman Udall stated to the Commissioners the following assessment of the NDL:

The magnitude of this program suggests that the Commission envisions a direct role in reactor operating decisions during accidents. With regard to the proposed Nuclear Data Link and assumptions underlying it, I find it a questionable

premise that NRC staff in Bethesda, Maryland, will be better equipped to respond to conditions at a remote reactor than are the people at the site. It seems more likely that those who live with the plant and will develop an understanding of its idiosyncracies, an understanding that is unlikely to be acquired by NRC staff. If it is indeed the case that you believe your own staff will have a better understanding than a utility's onsite personnel of what to do during an accident to bring a reactor under control, I would question the suitability of that utility to operate a nuclear power plant in the first place. I believe further commitments to this program should not be made until we have had an opportunity to examine it and, if necessary, to hold hearings on your proposal.

In the course of its consideration of the NRC's budget request the Committee did not receive adequate information in response to the kinds of criticisms noted above. In particular, the Commission did not provide a clear statement of its position with regard to the following: the Commission's information needs during an accident; the Commission's responsibility to monitor, and, if necessary, direct reactor operations during an accident; the manner in which NDL information would be used during normal operations; and a justification as to why the proposed system is the minimum necessary for the Commission to fulfill its responsibilities.

The lack of adequate Commission response to the criticism leveled at the NDL reinforced the Committee's belief that the Commission's information requirements can be satisfied with a system much less elaborate than that implied in the Commission's budget request. Accordingly, the Committee voted to restrict NDL funding to a total of \$200,000 in fiscal year 1982 and fiscal year 1983, unless the Commission submits to the Congress a proposal for a higher level of expenditure and neither House rejects such proposal. A Commission proposal for a greater expenditure could be submitted to the Congress only after the Commission had conducted a study of the NDL issues and prepared a report on its study. Any such proposal is to be accompanied by a statement of the reasons and justification for the proposal. The study must include, at a minimum, an examination of:

(A) the appropriate role of the Commission during abnormal conditions at a nuclear reactor licensed by the Commission;

(B) the information which should be available to the Commission to enable the Commission to fulfill such role and to carry out other related functions;

(C) various alternative means of assuring that such information is available to the Commission in a timely manner; and

(D) any changes in existing Commission authority necessary to enhance the Commission response to abnormal conditions at a nuclear reactor licensed by the Commission.

In addition to limiting Commission expenditures on the NDL, the Committee reduced the Commission's fiscal year 1982 and 1983 authorizations by \$4.813 and \$6.3 million respectively, the amounts requested for the NDL in each of these years.



## LOSS-OF-FLUID TEST FACILITY

The Committee received ambiguous information with regard to the Commission's request for support of the Loss-of-Fluid Test Facility (LOFT) at the Idaho Nuclear Engineering Laboratory.

In its January, 1981 document containing its Budget Request for fiscal year 1982, the Commission requested \$44 million for LOFT for fiscal year 1982 and stated, that "During preparation of the fiscal year 1983 budget, the Commission will determine whether LOFT testing can be concluded at the end of the fiscal year 1982 with the tests described above (in the preceding) discussion." In testimony presented on February 24, 1981 to the Subcommittee on Energy and the Environment Chairman Ahearne stated:

With respect to LOFT, the current program is based on the assumption of continued experimental operation through fiscal year 1983. At the request of the Commission, a special review group has evaluated the proposed experiments and funding for LOFT beyond fiscal year 1982. The Commission is considering their recommendations now, along with those of the Advisory Committee on Reactor Safeguards.

The foregoing statement implied that as of February 24 the Commission had not decided whether LOFT should be funded beyond fiscal year 1982. On March 6, 1981, in response to written questions from the Committee, the Commission stated:

The Commission has unanimously approved an option regarding the LOFT program which would result in termination of operations about the middle of fiscal year 1983.

Since the Commission did not hold a meeting on LOFT between the Commission's February 24 testimony and the March 6 response, questions arise as to when the Commission made the decision referred to in its March 6 letter. The March 6 statement appears to have been based on a Commission discussion held on February 13, 1981 at the end of which NRC staff were requested by the Chairman to formulate a statement expressing the consensus reached during the meeting. The March 6 statement seems to be the staff's response to the Chairman's request. It remains unclear, however, why the Chairman did not express the Commission's February 13 consensus during the course of his testimony on February 24. The Committee has also taken note of the report of the Advisory Committee on Reactor Safeguards: Review and Evaluation of the Nuclear Regulatory Commission Safety Research Program for Fiscal Year 1982. With regard to the LOFT, the ACRS stated:

We believe that LOFT can conclude its NRC mission with funding for tests terminated by the end of fiscal year 1982. This time period allows for an orderly completion of some tests of interest to the NRC. Since the facility will be entering its final phase, many ancillary programs which have been added over the years can be eliminated. Costs can thereby be reduced so that the few remaining tests of concern can be performed within a budget of \$30.0 million.

The ACRS then stated:

We recommend therefore that the NRC test program in LOFT be terminated by the end of fiscal year 1982, and that the budget for fiscal year 1982 not exceed \$30.0 million. This budget will, in our opinion, allow an orderly termination of the program and will at the same time make possible completion of the significant tests under consideration.

The Committee adopted the ACRS recommendation for fiscal year 1982, authorizing that no more than \$30 million be expended for LOFT tests in that fiscal year. The Committee did not make any statement with regard to LOFT expenditures in fiscal year 1983.

The basis for the Committee's action was, in part, the ACRS conclusion that the most significant LOFT Tests could be completed in Fiscal Year 1982 with an expenditure of not more than \$30 million. The Committee's action was also based in part on the unexplained contradictions among the Commission's statement on LOFT and on the failures of the Commission to provide detailed information concerning the proposed experiments and the manner in which the LOFT funds would be used. Of particular concern, is whether LOFT funds are being used for purposes which are either only peripherally related, or unrelated to the LOFT experiments. The Committee's silence on the question of LOFT expenditures in fiscal year 1983 does not mean that the Committee has agreed that LOFT tests should be continued beyond fiscal year 1982; the Committee's silence means, rather, the Members are willing to consider the need for further experiments. Prior to any approval of the conduct of tests beyond those which could be completed with \$3 million authorized for fiscal year 1982, the Committee will want to analyze in detail the manner in which LOFT funds have been used in the past and the manner in which it is proposed that they be used in the future.

The Committee will therefore request the NRC to supply answers to specific questions concerning the regulatory requirement for proposed LOFT tests, the staffing requirement for LOFT testing schedule, and a detailed cost analysis of costs for both direct NRC staff and contract support services. After the Committee staff has had an opportunity to review the data submitted, the Committee will hold a hearing on the current and future need for LOFT tests, the proposed test matrix, and, if further tests appear desirable, the possibility of continuing LOFT under other arrangements, such as a user consortium with funding support from users such as DOE, EPRI, and the utility industry.

The findings of the hearing will be the basis for future Committee recommendations regarding mothballing LOFT, for decommissioning it in fiscal year 1983 or for continuing it at a different level of the effort than has been proposed to date.

#### ACRS REPORT TO CONGRESS

The Committee takes this opportunity to express its appreciation to the Advisory Committee on Reactor Safeguards for its thorough and objective view of NRC's safety research program. The Com-

mittee has found the ACRS report to Congress on the fiscal year 1982 NRC safety research program (NUREG-0751) to be a useful tool in assisting the Committee to fulfill its legislative responsibility to authorize the Commission's budget.

The Committee also appreciates the candid and forthright testimony presented by representatives of the ACRS during the Subcommittee hearing on February 24, 1981.

#### OFFICE OF NUCLEAR REACTOR REGULATION

##### *NRC Request*

The NRC has requested a total fiscal year 1982 authorization of \$75,610,000, and a fiscal year 1983 authorization of \$78,280,000 for salaries and expenses of the Office of Nuclear Reactor Regulation (NRR).

A comparative summary of NRR's estimated budget requirements by function for fiscal years 1980, 1981, 1982, and 1983 appears in the table below.

SUMMARY OF NUCLEAR REACTOR REGULATION ESTIMATES, BY FUNCTION

[Dollar amounts in thousands, fiscal years]

	Actual 1980	Estimate 1981	Estimate 1982	Estimate 1983
Salaries and benefits.....	\$24,823	\$29,320	\$30,420	\$31,200
Program support.....	28,491	33,978	31,335	32,330
Administrative support.....	10,654	10,792	12,297	13,122
Travel.....	1,189	1,230	1,558	1,628
<b>Total.....</b>	<b>65,157</b>	<b>75,320</b>	<b>75,610</b>	<b>78,280</b>
Personnel.....	628	684	681	

<sup>1</sup> Excludes inflation; these are 1982 equivalent dollars.

<sup>2</sup> Includes \$1,730,000 for fiscal year 1981 pay raise supplemental.

The NRR personnel requirements and program support funding requirements (primarily contractual support with DOE laboratories and private contractors), have been allocated to major programmatic functions as shown below. (Figures for 1983 were not made available by the Commission).

	Actual fiscal year 1980		Estimate fiscal year 1981		Estimate fiscal year 1982	
	Dollars	People	Dollars	People	Dollars	People
Operating reactors.....	8,686	203	9,992	241	6,915	242
Operator licensing.....	300	12	170	24	3,920	37
Case work.....	10,599	132	14,150	198	10,200	157
Safety technology.....	7,100	186	8,193	124	9,200	148
TMI cleanup.....	1,806	10	1,473	21	1,100	21
Management direction and support.....	0	85	0	76	0	76
<b>Total.....</b>	<b>28,491</b>	<b>628</b>	<b>33,978</b>	<b>684</b>	<b>31,335</b>	<b>681</b>

The Commission testified before the Energy and Environment Subcommittee that its request involves changes primarily in operator licensing, case work and safety technology, in order to integrate the lessons of the Three Mile Island accident into the regulatory process. The decrease in the operating reactor funding request from 1981 to

1982 reflects the Commission's expectation that licensing actions addressing the short-term lessons learned from the TMI accident will near completion in 1981, leaving more Commission time for casework.

#### Committee Action

The Committee recommended a total authorization for the Office of Nuclear Reactor Regulation of \$74,097,800 during fiscal year 1982 and \$76,714,400 during fiscal year 1983. Each of these amounts approved by the Committee are two percent less than the comparable authorization levels requested by the NRC. In addition, for each fiscal year, the Committee specified that \$1,000,000 of the amounts authorized for NRR are available to accelerate the effort in gas-cooled thermal reactor pre-application review.

### OFFICE OF INSPECTION AND ENFORCEMENT

#### NRC Request

The NRC has requested a total authorization of \$67,680,000 for fiscal year 1982 and \$70,270,000 for fiscal year 1983 for the salaries and expenses of the Office of Inspection and Enforcement (I&E).

A comparative summary of I&E's estimated budget requirements by function for fiscal years 1980, 1981, 1982, and 1983 appears in the table below.

SUMMARY OF INSPECTION AND ENFORCEMENT ESTIMATES, BY FUNCTION

(Dollar amounts in thousands, fiscal years)

	1980 actual	1981 estimate	1982 estimate	1983 estimate <sup>1</sup>
Salaries and benefits.....	128,374	136,030	138,120	139,450
Program support.....	7,682	9,256	12,391	10,795
Administrative support.....	6,900	8,063	9,566	10,563
Travel.....	3,565	4,520	6,097	6,492
Equipment.....	1,165	1,831	1,506	2,970
Total obligations.....	47,686	59,700	67,680	70,270
Personnel.....	(868)	(976)	(1,006)	

<sup>1</sup> Inflation excluded.

<sup>2</sup> Includes \$2,200,000 for fiscal year 1981 pay raise supplemental.

The I&E personnel requirements and program support funding requirements (primarily contractual support with DOE laboratories and private contractors) have been allocated to major program elements as shown below. (1983 figures were not made available by the Commission.)

	Actual fiscal year 1980		Estimate fiscal year 1981		Estimate fiscal year 1982	
	Dollars	People	Dollars	People	Dollars	People
Reactor engineering and construction program.....	729	174	395	180	1,010	192
Reactor operations program.....	366	773	415	287	275	296
Radiological safety program.....	2,811	199	1,808	203	2,594	206
Safeguards program.....	995	90	1,166	92	1,102	92
Enforcement, investigations and special programs.....	2,781	86	5,207	134	6,985	140
Management direction and support.....	0	73	175	80	425	80
Total.....	7,682	868	9,256	976	12,391	1,006

The requested increase is primarily to cover increased personnel expenses due to expansion of the Resident Inspector Program. The Commission also requested increased funding for an independent measurements program (which consists of verification of license activities by contractor laboratories) in order to include environmental testing of safety-related equipment.

The NRC also requested a large increase in amount of funding authorized for the Nuclear Data Link program. In response to a Committee request for a detailed explanation of intended NRC use of funds requested for the Nuclear Data Link during fiscal year 1982 and fiscal year 1983, NRC provided the following information to the Committee by memorandum on March 12, 1981:

*Office of Inspection and Enforcement, fiscal year 1982 NDL program and funding*

	<i>Thousands</i>
Technical integrator.....	\$750
Provides assistance in technical planning. Provides any necessary coordination and liaison with program components. Apprises NRC of program progress and problems. Provides overall system definition and functional requirements. Develops and provides NRC licensee interface requirements. Develops specifications for various system components. Assists in defining and then maintains the overall program implementation plan. Develops the operational test and evaluation plan.	
Detailed system design and implementation.....	2,000
Conversion of overall functional requirements established by technical integrator into hardware and software specifications.	
NRC operations center hardware architecture specification and user interface.....	400
Definition of hardware and software requirements necessary to display digital data to NRC emergency response team members. Development of formatting techniques. Develop means for distributing the data within the operations center.	
Telecommunications network.....	100
Explore telecommunications network alternatives from the operations center to each reactor.	
Standard software and hardware.....	1,763
Procurement of computer terminals, CRT terminals, printers, and other peripherals.	
Total .....	5,013

OFFICE OF INSPECTION AND ENFORCEMENT, FISCAL YEAR 1983 NDL PROGRAM FUNDING

The fiscal year 1983 funding request consists of \$37,000K in Program Support and \$2,000K in Technical Equipment. A more detailed breakdown has not been determined.

*Committee Action*

The Committee recommends a total authorization for the Office of Inspection and Enforcement of \$61,513,400 during fiscal year 1982 and \$62,564,600 during fiscal year 1983. The funding levels approved by the Committee for I&E reflect two separate reductions for each fiscal year: first, the NRC request for each year was reduced by two percent; second, \$4,813,000 of the funds requested for the Nuclear Data Link program during fiscal year 1982 were deleted, and the total NDL request for fiscal year 1983 (\$6.3 million) was deleted.

A more detailed discussion of the Committee's views on the Nuclear Data Link program is contained in a separate section of this report.

## OFFICE OF STANDARDS DEVELOPMENT

*NRC Request*

The NRC's budget request for the Office of Standards Development for fiscal year 1982 is \$17,950,000 and \$17,990,000 for fiscal year 1983. This funding level represents an increase in 1982 of \$1,800,000 from that requested for fiscal year 1981.

A comparative summary of the Office of Standards Development's estimated budget requirements by function for fiscal years 1980, 1981, 1982 and 1983 appears in the following table.

SUMMARY OF STANDARDS DEVELOPMENT ESTIMATES, BY FUNCTION

[Dollar amounts in thousands, fiscal years]

	1980 actual	1981 estimate	1982 estimate	1983 estimate <sup>1</sup>
Salaries and benefits.....	\$5,508	\$6,670	\$8,890	17,000
Program support.....	5,823	7,603	8,310	8,075
Administrative support.....	2,016	2,457	2,415	2,565
Travel.....	216	240	335	350
Equipment.....	0	0	0	0
<b>Total obligations.....</b>	<b>13,563</b>	<b>16,970</b>	<b>17,950</b>	<b>17,990</b>
Personnel.....	<sup>2</sup> (148)	(161)	(157)	

<sup>1</sup> Excludes inflation.<sup>2</sup> Includes \$320,000 for fiscal year 1981 pay raise supplemental.<sup>3</sup> Includes 5 full-time permanent positions actually filled by 8 part-time employees in an experimental part-time employment program with SD that was authorized by OMB.

The Office of Standards Development personnel and program support funding requirements (primarily contractual support with DOE laboratories and private contractors) have been allocated to major programmatic functions as shown below. (A breakdown of the 1983 budget request was not made available by the Commission).

	Actual fiscal year 1980		Estimate fiscal year 1981		Estimate fiscal year 1982	
	Dollars	Peop <sup>3</sup>	Dollars	People	Dollars	People
Reactor engineering standards.....	387	45	870	54	650	53
Fuel cycle and material engineering standards.....	1,265	26	1,242	23	1,260	22
Siting standards.....	543	12	833	12	1,050	12
Waste management standards.....	749	21	890	28	1,120	28
Safeguards standards.....	2,147	13	1,905	13	1,945	12
Radiation protection standards.....	732	19	1,863	19	2,285	18
Management direction and support.....	0	12	0	12	0	12
<b>Total.....</b>	<b>5,823</b>	<b>148</b>	<b>7,603</b>	<b>161</b>	<b>8,310</b>	<b>157</b>

The Commission requested an increase from that amount requested in 1981, primarily to apply lessons learned from the TMI accident to regulations concerning systems designed for, and performance during, degraded and melted core conditions. Regulations covering waste management standards, demographic criteria in siting standards, radiation protection and safeguards standards will be developed by the Commission in fiscal years 1982 and 1983.

### Committee Action

The Committee recommends a total authorization for the Office of Standards Development of \$17,591,000 for fiscal year 1982, and \$17,630,200 for fiscal year 1983. The funding levels approved by the Committee are two percent below the authorization request submitted by NRC.

### OFFICE OF NUCLEAR MATERIALS SAFETY AND SAFEGUARDS

#### NRC Request

The NRC has requested that \$46,700,000 be authorized for fiscal year 1982, and that \$48,020,000 be authorized for fiscal year 1983, for the salaries and expenses of the Office of Nuclear Materials Safety and Safeguards (NMSS).

A comparative summary of the NMSS estimated budget requirements for fiscal years 1980, 1981, 1982, and 1983 are presented in the following table.

SUMMARY OF NUCLEAR MATERIALS SAFETY AND SAFEGUARDS, BY FUNCTION

(Dollar amount in thousands, fiscal years)

	actual 1980	1981 estimate	1982 estimate	1983 estimate <sup>1</sup>
Salaries and benefits.....	\$9,521	\$11,910	\$13,050	\$13,600
Program support.....	13,190	17,095	24,040	24,440
Administrative support.....	5,293	9,155	9,075	9,420
Travel.....	403	560	535	560
Equipment.....	0	0	0	0
Total obligations.....	28,407	38,720	46,700	48,020
Personnel.....	(264)	(239)	(329)	

<sup>1</sup> Excludes inflation.

<sup>2</sup> Includes \$400,000 for fiscal year 1981 pay raise supplemental.

The NMSS personnel requirements and program support funding requirements (primarily contractual support with DOE laboratories and private contractors), have been allocated to major programmatic functions as shown below. (Figures for 1983 were not made available.)

	Actual fiscal year 1980		Estimate fiscal year 1981		Estimate fiscal year 1982	
	Dollars	People	Dollars	People	Dollars	People
Fuel cycle and material safety.....	2,471	66	4,250	102	4,330	105
Safeguards.....	1,801	94	2,510	102	2,735	94
Waste management.....	8,768	70	10,235	106	16,875	111
Management direction and support.....	150	14	190	19	100	19
Total.....	13,190	264	17,095	329	24,040	329

The substantial increase requested by the NRC was targeted primarily for radioisotopes licensing, high-level waste management, and low-level waste management. The Commission plans to process approximately 4,100 applications for licenses to possess, use, transfer,

and dispose of radioactive material, while reducing the turnaround time for processing those applications. Plans have also been made to publish regulations and an environmental impact statement covering shallow land burial of low-level waste, and to prepare for the review of a DOE license application for a high-level waste repository.

#### Committee Action

The Committee recommends a total authorization for the Office of Nuclear Materials Safety and Safeguards of \$45,766,000 during fiscal year 1982, and \$47,059,600 during fiscal year 1983. The funding level approved by the Committee represents a two percent reduction in the level of authorization requested by the NRC for NMSS.

#### OFFICE OF NUCLEAR REGULATORY RESEARCH

##### NRC Request

The NRC has requested an authorization of \$231,940,000 for fiscal year 1982 and \$252,180,000 for fiscal year 1983 for salaries and expenses of the Office of Nuclear Regulatory Research (RES).

A comparative summary of the RES estimated budget requirements by function for fiscal years 1980, 1981, 1982, and 1983 are presented in the following table.

SUMMARY OF NUCLEAR REGULATORY RESEARCH ESTIMATES, BY FUNCTION

(Dollar amounts in thousands, fiscal year)

	1980 actual	1981 estimate	1982 estimate	1983 estimate <sup>1</sup>
Salaries and benefits.....	16,625	17,595	17,840	18,170
Program support.....	173,296	196,953	213,200	231,080
Administrative support.....	2,377	2,545	2,925	3,170
Travel.....	379	580	575	670
Equipment.....	7,696	3,477	7,400	9,280
Total obligations.....	190,368	216,150	231,940	252,180
Personnel.....	(154)	(164)	(170)	

<sup>1</sup> Excludes inflation.

<sup>2</sup> Includes 1400,000 for fiscal year 1981 pay raise supplemental.

The RES personnel and program support funding requirements have been allocated to major programmatic functions as shown below. (A breakdown of the budget request for fiscal year 1983 was not provided by the Commission.)

Program elements	Actual fiscal year 1980		Estimate fiscal year 1980		Estimate year fiscal 1982	
	Dollars	People	Dollars	People	Dollars	People
LOCA and transient.....	65,949	25	61,917	26	51,000	24
LOFT.....	47,300	7	47,400	7	44,000	7
Plant operational safety.....	17,601	24	29,624	26	37,000	27
Severe accident phen. and mitigation.....	17,313	13	19,789	15	20,200	16
Siting and environmental.....	9,756	13	12,014	13	14,400	13
Waste management.....	6,059	17	11,700	14	21,500	16
Safeguards and fuel cycle safety.....	7,028	12	8,500	13	10,200	13
Systems and reliability analysis.....	7,250	24	11,000	26	14,900	28
Program direction and support.....	0	24	0	24	0	26
Total.....	173,296	154	196,953	164	213,200	170



Comprising about forty-six percent of all NRC funding requests, the research budget will be devoted primarily to studying small loss-of-coolant accidents and transients, and waste management methodology. No funds were requested for continuation of the fast breeder safety research program. In a March 19, 1981 letter to the Commission from the Office of Management and Budget, however, the Reagan Administration provided the following direction to NRC on regulatory research related to breeder reactors:

The fiscal year 1982 Department of Energy Budget has funds for research on the breeder reactor. Any funds necessary for NRC work on advanced reactor concepts should be provided out of the present fiscal year 1982 base.

#### *Committee Action*

The Committee recommends a total authorization for the Office of Nuclear Regulatory Research of \$227,301,200 during fiscal year 1982 and \$247,136,400 during fiscal year 1983. The funding level for RES approved by the Committee represents a two percent reduction below the amount requested by NRC.

The Committee also limited to \$30,000,000 those funds authorized during fiscal year 1982 for the purpose of conducting tests at the LOFT (Loss-of-Fluid Test) facility. A more detailed discussion of the Committee's views on LOFT is contained in a separate section of this report.

#### PROGRAM TECHNICAL SUPPORT

##### *NRC Request*

The NRC has requested \$19,140,000 for fiscal year 1982, and \$20,610,000 for fiscal year 1983, for Program Technical Support (PTS). The NRC's estimates for the Program Technical Support budget requirements by function for fiscal years 1982 and 1983 are shown in the following comparison with similar requirements for fiscal years 1980 and 1981.

SUMMARY OF PROGRAM TECHNICAL SUPPORT ESTIMATES, BY FUNCTION

(Dollar amounts in thousands, fiscal years)

	1980 actual	1981 estimate	1982 estimate	1983 estimate <sup>1</sup>
Salaries and benefits.....	\$9,803	\$10,889	\$11,280	\$11,856
Program support.....	2,231	2,786	2,467	2,623
Administrative support.....	3,856	4,590	4,711	4,907
Travel.....	738	1,135	1,186	1,230
Equipment.....	20	0	0	0
Total program costs.....	16,658	19,400	19,140	20,610
Personnel.....	(263)	(267)	(278)	

<sup>1</sup> Excludes inflation.

<sup>2</sup> Includes \$410,000 for fiscal year 1981 pay raise supplemental.

The Commission's testimony before the Subcommittee on February 24, 1981 included the following statement with regard to the authorization and personnel increases requested for Program Technical Support:

Of the 11 positions shown for Program Technical Support, eight are for the Office for Analysis and Evaluation of Operational Data. This increase will allow the Office to deal more effectively with the operational data now being systematically collected and analyzed from operating reactors and to provide adequate dissemination of recommendations for action to other NRC offices and the nuclear industry. The other three positions requested in this budget category are for the ACRS to provide increased capability to do independent analysis of reactor safety issues.

#### *Committee Action*

The Committee recommends a total authorization for NRC's Program Technical Support of \$18,757,200 during fiscal year 1982, and \$20,197,800 during fiscal year 1983. The authorization for PTS approved by the Committee is two percent below the amount requested by the agency.

Notwithstanding the two percent reduction in the amount of funds authorized for PTS, the Committee supports the Commission's proposal to increase the staff and other resources available for the Office for Analysis and Evaluation of Operational Data, and for the Advisory Committee on Reactor Safeguards.

#### PROGRAM DIRECTION AND ADMINISTRATION

#### *NRC Request*

The NRC has requested an authorization of \$41,680,000 for fiscal year 1982 and \$42,650,000 for fiscal year 1983 for Program Direction and Administration (PDA). A comparative summary of the PDA estimated budget requirements by function for fiscal years 1980, 1981, 1982 and 1983 appears in the table below.

SUMMARY OF PROGRAM DIRECTION AND ADMINISTRATION, BY FUNCTION  
(Dollar amounts in thousands, fiscal years)

	1980 actual	1981 estimate	1982 estimate	1983 estimate <sup>1</sup>
Salaries and benefits.....	\$22,159	\$25,425	\$25,898	\$26,400
Program support.....	1,535	2,092	1,962	1,967
Administrative support.....	9,962	11,858	12,350	12,958
Travel.....	606	700	1,470	1,330
Total program costs.....	34,262	40,075	41,680	42,650
Personnel.....	(716)	(755)	(775)	

<sup>1</sup> Excludes inflation.

<sup>2</sup> Includes \$1,130,000 for fiscal year 1981 pay raise supplemental.

The Commission's testimony before the Subcommittee on February 24, 1981 included the following statement with regard to the funds requested during fiscal year 1982 and fiscal year 1983 for Program Direction and Administration:

The increase in this category \* \* \* consists essentially of three items: (of which one is) rental of space (\$1.0M) in the Matomic Building, where rent is higher than in Bethesda, for interim agency consolidation in that building \* \* \*

The Commission, in its February 24, 1981 testimony, also requested that the Congress provide authorization of funds for the following:

We also need to improve our communication with the public, for example, to explain what the NRC is, how a nuclear plant works, and what our public notices mean.

#### *Committee Action*

The Committee recommends a total authorization for NRC's Program Direction and Administration functions of \$40,846,400 during fiscal year 1982, and \$41,797,000 during fiscal year 1983. The funding level approved by the Committee for PDA reduces the agency's budget request for these purposes by the equivalent of two percent.

The Committee explicitly authorizes the use of PDA funds for the purpose of interim consolidation of NRC headquarters staff within the District of Columbia, and to the extent necessary in Bethesda, Maryland. The Committee recommendation prohibits the use of funds authorized by H.R. 2330 however, for the purpose of moving the offices of the Commissioners outside the District of Columbia.

The Committee reserves judgment on the advisability of the Commission's proposal to use authorized funds to "explain what the NRC is, (and) how a nuclear plant works," until the Commission has provided additional justification as to the usefulness of this proposed activity. On this matter, the Commission response on March 6, 1981 to written questions from the Committee included the following comments from Commissioner Victor Gilinsky and Commissioner Peter Bradford.

Commissioner Gilinsky stated:

I am inclined to keep any educational or public affairs program to a minimum. I would prefer to have the public form its impression on us on the basis of our regulatory decisions made in the open and on our performance in supervising the nuclear industry.

Commissioner Peter Bradford expressed the following view:

(T)elling the public how a nuclear power plant works is low priority in light of our other regulatory duties.

#### BUDGET ACT COMPLIANCE, COST ESTIMATES AND INFLATIONARY IMPACT

In accordance with rule XIII, clause 7(a) of the Rules of the House of Representatives, the Committee has made an estimate of the budget authority which would be required to carry out the provisions of H.R. 2330 for the fiscal year beginning October 1, 1981 and for the fiscal year beginning October 1, 1982.

In accordance with Committee cost estimates, the bill authorizes \$485,873,000 for fiscal year 1982, and \$513,100,000 for fiscal year 1983. Although these amounts are a significant budget component, they are less than the total amounts included in the Nuclear Regulatory Commission's budget request (by approximately three percent in fiscal year 1982, and approximately 3.3 percent in fiscal year 1983). Consequently, the Committee recommendation should not adversely affect the overall budget projections for the ensuing two fiscal years.

The Nuclear Regulatory Commission has provided the Committee with the following legislative program projections for fiscal years 1980 through 1986.

U.S. NUCLEAR REGULATORY COMMISSION, FISCAL YEAR 1982 BUDGET ESTIMATES

[Dollar amounts in thousands, except whole dollars in narrative material; fiscal years]

	Legislative program projections						
	1980 Actual	1981 estimate	1982 estimate	1983 estimate	1984 estimate	1985 estimate	1986 estimate
NRC total:							
Budget authority.....	1400	1454	1501	1530	1550	1550	1550
Budget outlays.....	378	437	484	498	528	528	528

<sup>1</sup> Budget authority includes \$6,820,000 for the proposed pay raise supplemental. Budget outlays associated with this supplemental total \$6,680,000.

In accordance with rule XI, clause 2(1)(4) of the Rules of the House of Representatives, the committee has determined that the legislation will have no significant inflationary impact on prices or costs in the national economy.

The cost estimate of the Congressional Budget Office is as follows:

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

1. Bill number: H.R. 2330.
2. Bill title: A bill to authorize appropriations to the Nuclear Regulatory Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and section 305 of the Energy Reorganization Act of 1974, as amended, and for other purposes.
3. Bill status: As ordered reported by the House Committee on Interior and Insular Affairs, April 1, 1981.
4. Bill purpose: This bill authorizes two years of funding for the Nuclear Regulatory Commission's (NRC) research and regulatory activities. The total amount authorized by this bill for the NRC is \$485.9 million for fiscal year 1982 and \$513.1 million for fiscal year 1983; the President's revised March request for these programs is \$500.7 million in fiscal year 1982, and \$530.0 million in fiscal year 1983.

The fiscal year 1982 authorization contained in this bill represents a 9 percent increase over the fiscal year 1981 appropriation of \$447.5 million. The largest increases are for inspection and enforcement (up 18.3 percent to \$61.5 million) and nuclear material safety and safeguards (up 20.5 percent to \$45.8 million). Four programs show modest increases: standards development is up 9 percent to \$17.6 million, nuclear regulatory research is up 6 percent to \$227.3 million, program technical support is up 2 percent to \$18.8 million, and program direction and administration is up 11.2 percent to \$140.8 million. One program, nuclear reactor regulation, is down 4 percent to \$74.1 million.

The fiscal year 1983 authorization of \$513.1 million contained in the bill is a 6 percent increase over the 1982 authorization level. The bill provides moderate increases for six of the seven program categories.

Authorizations include \$76.4 million for nuclear reactor regulation (a 3 percent increase), \$62.6 million for inspection and enforcement (a 2 percent increase), \$47.1 million for nuclear material safety and safeguards (up 3 percent), \$247.1 million for nuclear regulatory research (up 9 percent), \$20.2 million for program technical support (up 7 percent), and \$41.8 million for program direction and administration (a 3 percent increase). The authorized funding level for standards development remains unchanged at the 1982 level of \$17.6 million.

The bill also prohibits the use of NRC money to fund cleanup activities at Three Mile Island.

5. Cost estimate:

Authorization level:		<i>Millions</i>
Fiscal year:		
1982	-----	\$485.9
1983	-----	513.1
1984	-----	
1985	-----	
1986	-----	
Estimated outlays:		
Fiscal year:		
1982	-----	296.4
1983	-----	446.6
1984	-----	197.0
1985	-----	50.0
1986	-----	

Assuming appropriation of the authorized amount, total NRC outlays for fiscal year 1982, including funds from prior year appropriations, are estimated to be \$476.2 million.

The costs of this bill fall within budget function 270.

6. Basis of estimate: For the purposes of this estimate, it is assumed that the bill will be enacted by July 1981, and that all funds authorized will be appropriated by the start of each fiscal year. The estimated outlays are based on the historical spending patterns of NRC programs. This estimate assumes a spendout rate of 61 percent the first year, 27.5 percent the second year, and 11.5 percent the third year.

7. Estimate comparison: None.
8. Previous CBO estimate: None.
9. Estimate prepared by: Gary Kaitz.
10. Estimate approved by:

JAMES L. BLUM,

*Assistant Director for Budget Analysis.*

OVERSIGHT STATEMENT

During the 96th Congress, the Interior and Insular Affairs Committee conducted an active oversight or regulation of the domestic nuclear energy industry and the operations of the Nuclear Regulatory Commission. The Committee undertook several different kinds of activities exercising its oversight responsibilities, including: over-

sight hearings, field hearings, meetings not relating to specific legislation, field inspections of nuclear facilities; and, preparation of analytical reports. A chronological listing of the Committee's oversight and legislative activities related to nuclear regulation during the 96th Congress appears below:

MEETINGS HELD BY THE SUBCOMMITTEE ON ENERGY AND THE ENVIRONMENT

*February 22, 1979.*—Hearing; H.R. 2608 (Nuclear Regulatory Commission Authorization for Fiscal Year 1980).

*February 26, 1979.*—Hearing; oversight; Risk Assessment Review.

*March 2, 1979.*—Hearing; H.R. 2608 (Nuclear Regulatory Commission Authorization for Fiscal Year 1980).

*March 19, 1979.*—Hearing; oversight; Nuclear Plant Shutdowns.

*March 29, 1979.*—Briefing; Accident at Three Mile Island Nuclear Power Generating Station.

*April 26, 1979.*—Markup; H.R. 2608 (Nuclear Regulatory Commission Authorization for Fiscal Year 1980).

*May 1, 1979.*—Markup; H.R. 2608 (Nuclear Regulatory Commission Authorization for Fiscal Year 1980).

*May 9, 1979.*—Meeting; subcommittee task force; Accident at Three Mile Island.

*May 10, 1979.*—Meeting; subcommittee task force; Accident at Three Mile Island.

*May 11, 1979.*—Meeting; subcommittee task force; Accident at Three Mile Island.

*May 15, 1979.*—Meeting; subcommittee task force; Accident at Three Mile Island.

*May 21, 1979.*—Hearing; oversight; Accident at Three Mile Island.

*May 24, 1979.*—Hearing; oversight; Accident at Three Mile Island.

*June 4, 1979.*—Hearing; oversight; Nuclear Regulation.

*June 5, 1979.*—Hearing; oversight; Nuclear Regulation.

*June 11, 1979.*—Hearing; oversight; Security in the Domestic Nuclear Industry.

*June 14, 1979.*—Hearing; oversight; Security in the Domestic Nuclear Industry.

*June 28, 1979.*—Hearing; oversight; Nuclear Waste Facility Siting.

*July 9, 1980.*—Hearing; oversight; Price-Anderson Act and Nuclear Liability.

*July 12, 1979.*—Hearing; oversight; Nuclear Economics.

*July 16, 1979.*—Hearing; oversight; National and Regional Power Needs.

*July 19, 1979.*—Hearing; oversight; Nuclear Regulatory Commission Agreement States Program.

*July 26, 1979.*—Hearing; oversight; Nuclear Nonproliferation.

*August 22, 1979.*—Field Hearing; Southwest Power Needs; Tucson, Ariz.

*September 11, 1979.*—Hearing; oversight; Nuclear Economics.

*September 21, 1979.*—Hearing; oversight; Industry's Response to TMI Accident.

*September 25, 1979.*—Hearing; oversight; Industry's Response to TMI Accident.

- October 16, 1979.*—Markup: Nuclear Policy Review.
- October 18, 1979.*—Markup: Nuclear Policy Review.
- October 22, 1979.*—Hearing; oversight; Accident at Uranium Mill Tailings Holding Pond Dam at Church Rock, N. Mex.
- October 31, 1979.*—Joint Hearing; With Senate Subcommittee on Nuclear Regulation; oversight; Report of President's Commission on Accident at Three Mile Island.
- December 18, 1979.*—Field hearing; oversight; Nuclear Waste Disposal at the Idaho National Engineering Laboratory, Idaho Falls, Idaho.
- March 7, 1980.*—Hearing; H.R. 6628 (Nuclear Regulatory Commission for Fiscal Year 1981).
- March 13, 1980.*—Hearing; H.R. 6390 (Atomic Energy Act Amendments of 1980).
- March 14, 1980.*—Hearing; H.R. 6390 (Atomic Energy Act Amendments of 1980).
- March 18, 1980.*—Hearing; H.R. 6390 (Atomic Energy Act Amendments of 1980).
- April 15, 1980.*—Markup; H.R. 6628 (Nuclear Regulatory Commission for Fiscal year 1981).
- May 12, 1981.*—Hearing; H.R. 6390 (Atomic Energy Act Amendments of 1980).
- May 22, 1979.*—Hearing; oversight; Three Mile Island Cleanup and Rehabilitation.
- May 27, 1980.*—Field hearing; oversight; Nuclear Siting and Licensing process (Limerick Atomic Power Station), Newtown, Pa.
- June 4, 1980.*—Markup; H.R. 6390 (Atomic Energy Act Amendments of 1980).
- June 12, 1980.*—Markup; H.R. 6390 (Atomic Energy Act Amendments of 1980).
- June 26, 1980.*—Markup; H.R. 6390 (Atomic Energy Act Amendments of 1980).
- July 29, 1980.*—Markup; H.R. 7418 (Nuclear Waste Policy).
- July 31, 1980.*—Markup; H.R. 6390 (Atomic Energy Act Amendments of 1980).
- August 19, 1980.*—Markup; H.R. 6390 (Atomic Energy Act Amendments of 1980).
- September 24, 1980.*—Markup; H.R. 8179 (Modification of Price-Anderson Act).
- October 1, 1980.*—Markup; H.R. 8179 (Modification of Price-Anderson Act).

#### *Field Trips and Inspections*

##### *Committee*

*May 7, 1979.*—Inspection of Three Mile Unit 2 Nuclear Generating Station, Harrisburg, Pa.

##### *Staff*

*February 14 and 16, 1980.*—Atomic Industrial Forum meeting on nuclear regulatory reform, New York, N.Y.

*June 1 and 2, 1980.*—National Governors Association meeting on Management of Low-Level Nuclear Waste, Phoenix, Ariz.

*June 14 and 15, 1980.*—Nuclear Regulatory Commission workshop on emergency planning, New York, N.Y.

During the 97th Congress, the Committee intends to continue to give high priority to fulfilling its congressional responsibility to oversee matters related to the regulation of commercial nuclear power, and the activities of the Nuclear Regulatory Commission. Among the issues that the Committee intends to oversee during fiscal year 1982 and fiscal year 1983 are: management of nuclear wastes; the need to reform of the Price-Anderson Act; the functioning of the nuclear regulatory process; the adequacy of emergency planning around commercial nuclear power plants; development of remote siting regulations for nuclear facilities; and, clean-up and financial issues related to the accident at Three Mile Island.

H.R. 2330, NUCLEAR REGULATORY COMMISSION FISCAL YEAR 1982 AND YEAR 1983 AUTHORIZATION

*Section-by-Section Analysis of the Committee Amendment*

*Section 1.*

Section 1 authorizes appropriations for the Nuclear Regulatory Commission in accordance with the provisions of section 261 of the Atomic Energy Act of 1954, as amended, and section 305 of the Energy Reorganization Act of 1974, as amended.

Subsection (a) authorizes a total appropriation of \$485,873,000 for the Nuclear Regulatory Commission in fiscal year 1982, and \$513,100,000 in fiscal year 1983. It allocates parts of the total Commission authorization to the following seven line items:

(1) Not more than \$74,097,800 for fiscal year 1982 and \$76,714,000 for fiscal year 1983 for the Office of Nuclear Reactor Regulation, of which an amount not to exceed \$1,000,000 is authorized each said fiscal year to be used to accelerate the effort in gas-cooled thermal reactor preapplication review;

(2) Not more than \$61,513,000 for fiscal year 1982 and \$62,564,600 for fiscal year 1983 for the Office of Inspection and Enforcement;

(3) Not more than \$17,591,000 for fiscal year 1982 and \$17,630,000 for fiscal year 1983 for the Office of Standards Development;

(4) Not more than \$45,766,000 for fiscal year 1982 and \$47,059,600 for fiscal year 1983 for the Office of Nuclear Material Safety and Safeguards;

(5) Not more than \$227,301,200 for fiscal year 1982 and \$247,136,400 for fiscal year 1983 for the Office of Nuclear Regulatory Research, of which an amount not to exceed \$3,500,000 for fiscal year 1982 and \$4,500,000 for fiscal year 1983 is authorized to be used to accelerate the effort in gas-cooled thermal reactor safety research;

(6) Not more than \$18,757,200 for fiscal year 1982 and \$20,197,800 for fiscal year 1983 for Program Technical Support;

(7) Not more than \$40,846,400 for fiscal year 1982 and \$41,797,000 for fiscal year 1983 for Program Direction and Administration.

Subsection (b) authorizes the Commission to use up to 1 percent of the amounts authorized for the Office of Nuclear Regulatory Research (paragraph (5) of subsection 1(a)) for the purpose of making re-



search grants and other research arrangements with universities. Subsection (b) cites section 31(a) of the Atomic Energy Act of 1954, as amended, as the basis for the Commission's authority to make such grants.

Subsection (c) provides the Commission with the authority to reallocate authorized funds among the programs in paragraphs (1) through (7) of subsection (a), provided that the following conditions are met:

(1) Not more than \$500,000 of the amount appropriated under any paragraph of subsection (a) can be reallocated to another paragraph until the proposed reallocation has been approved or not disapproved by both the Committee on Interior and Insular Affairs and the Committee on Energy and Commerce of the House of Representatives, and the Committee on Environment and Public Works of the Senate (the authorizing committees).

(2) A proposed reallocation in excess of \$500,000 must be submitted by the Commission to the three authorizing committees in the form of a "full and complete statement" of the action proposed to be taken and the facts and circumstances relied upon to not object to the proposed action.

(3) A proposed reallocation in excess of \$500,000 can go forward before the expiration of a 30-day period (following submission of the Commission's "full and complete statement" to the authorizing committees) if each authorizing committee transmits to the Commission a written notification that the Committee does not object to the proposed action.

(4) A proposed reallocation in excess of \$500,000 can go forward after the expiration of a 30-day period (following submission by the Commission of the "full and complete statement" to the authorizing committees) provided no such committee transmits to the Commission a written statement disapproving the proposed action.

(5) Each authorizing committee can approve or disapprove a proposed action by the Commission to reallocate an amount in excess of \$500,000 in such manner as such committee deems appropriate.

#### *Section 2*

Section 2 provides authorization for monies received by the Commission for cooperative nuclear safety research programs to be used as salaries and expenses associated with these programs and for them to remain available until expended notwithstanding the provisions of Section 3617 of the Revised Statutes (31 U.S.C. 484).

#### *Section 3*

Section 3 provides authorization during fiscal year 1982 and fiscal year 1983 for the transfer of amounts from the Commission's salaries and expenses appropriated to other agencies of the government for the performance of work for which the Commission's appropriation is made.

#### *Section 4*

Section 4 makes clear that the amounts authorized for fiscal year 1982 and fiscal year 1983 may only be spent when appropriated in advance.

### *Section 5*

Section 5 places restrictions on the amount and use of monies available during fiscal year 1982 and fiscal year 1983 for the Nuclear Data Link program.

Subsection (a) provides that not more than \$200,000 is available under this Act for the acquisition and installation of equipment to be used for the "small test prototype nuclear data link" program proposed by the Commission. This restriction on the availability of authorized funds also applies to any other program for the collection and transmission to the commission of data from licensed nuclear reactors during abnormal conditions at such reactors.

Subsection (b) provides a procedure for the Commission and the Congress that can lead to the lifting of the restrictions imposed by subsection (a). Under this procedure, the Commission must submit a proposal to the Congress, whereupon either House of Congress could reject the proposal during a 60-day period following such submission. If neither House rejects the Commission proposal then upon conclusion of the 60-day period, the Commission may initiate its proposed action. The Commission may initiate its proposed action before the expiration of said 60-day period, only if both Houses explicitly approve such proposed action.

Paragraph (2) of subsection (b) specifies actions the Commission must take prior to submitting a proposal to the Congress. Under this paragraph, the Commission must conduct a full and complete study and analysis of the issues involved, and prepare a detailed report on the results of such study and analysis. The paragraph also requires that any Commission proposal submitted to the Congress under this section must be accompanied by such report, and a "concise statement" (based upon such report) setting forth the reasons and justification for the proposal.

Paragraph (3) of subsection (b) sets forth minimum requirements for the issue that must be addressed in carrying out the study and analysis referred to in paragraph (2).

### *Section 6*

Section 6 imposes restrictions on the amounts and use of funds authorized to be appropriated for the Loss-of-Fluid-Test facility (LOFT). Section 6 specifies that not more than \$30,000,000 may be used "to continue tests" at the LOFT facility.

### *Section 7*

Section 7 specifies that of the amount authorized by this Act for "program Direction and Administration" (Section 1(a)(7)) such sums as may be necessary are available for the interim consolidation of NRC headquarters staff offices in the District of Columbia and, to the extent necessary, in Bethesda, Maryland.

Subsection (b) makes clear, however, that no amount authorized to be appropriated under this Act is available for the purpose of relocating the offices of the Commission outside of Washington, D.C.

### *Section 8*

Section 8 explicitly prohibits the use of any funds authorized by this Act for the purpose of decontamination, clean-up, repair, or rehabilitation of Unit 2 of the Three Mile Island nuclear power

station. Subsection (b) makes clear, that the limitation on spending under this Section does not restrict the use of funds available for NRC to carry out its regulatory responsibilities relative to the Three Mile Island facility. Section 8 does not in any way limit the availability of funds authorized by this Act to fulfill its regulatory responsibilities under the Atomic Energy Act of 1954.

AGENCY REPORT

The recommendations of the Nuclear Regulatory Commission, dated February 23, 1981, and the Commission's recommendations dated April 3, 1981 follow:

U.S. NUCLEAR REGULATORY COMMISSION,  
Washington, D.C., February 23, 1981.

HON. MORRIS K. UDALL,  
*Chairman, Subcommittee on Energy and the Environment, Committee on Interior and Insular Affairs, U.S. House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: In compliance with your joint letter of December 14, 1980 requesting submission of a budget proposal for both fiscal year 1982 and fiscal year 1983 attached is draft authorizing legislation to support the budget request.

Although not giving approval to the fiscal year 1983 request, OMB did approve a fiscal year 1983 planning estimate for NRC in the amount of \$530 million. Accordingly, the program estimates for fiscal year 1983 should be recognized as approved planning targets and not budget requests.

Sincerely,

CARLTON KAMMERER,  
*Director, Office of Congressional Affairs.*

Enclosure.

NUCLEAR REGULATORY COMMISSION PROPOSED BILL FOR AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEAR 1982 AND FISCAL YEAR 1983

A BILL To authorize appropriations to the Nuclear Regulatory Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and section 305 of the Energy Reorganization Act of 1974, as amended, and for other purposes

*Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,*

TITLE I—AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEARS 1982 AND 1983

SEC. 101. (a) There is hereby authorized to be appropriated to the Nuclear Regulatory Commission in accordance with the provisions of section 261 of the Atomic Energy Act of 1954 (42 U.S.C. 2017) and section 305 of the Energy Reorganization Act of 1974 (42 U.S.C. 5875), for the fiscal years 1982 and 1983 to remain available until expended \$500,700,000 for fiscal year 1982 and \$530,000,000 for fiscal year 1983 to be allocated as follows:

(1) not more than \$75,610,000 for fiscal year 1982 and \$78,280,000 for fiscal year 1983, may be used for "Nuclear Reactor Regulation";

(2) not more than \$67,680,000 for fiscal year 1982 and \$70,270,000 for fiscal year 1983, may be used for "Inspection and Enforcement";

(3) not more than \$17,950,000 for fiscal year 1982 and \$17,990,000 for fiscal year 1983, may be used for "Standards Development";

(4) not more than \$46,700,000 for fiscal year 1982 and \$48,020,000 for fiscal year 1983, may be used for "Nuclear Material Safety and Safeguards";

(5) not more than \$231,940,000 for fiscal year 1982 and \$252,180,000 for fiscal year 1983, may be used for "Nuclear Regulatory Research";

(6) not more than \$19,140,000 for fiscal year 1982 and \$20,610,000 for fiscal year 1983, may be used for "Program Technical Support";

(7) not more than \$41,680,000 for fiscal year 1982 and \$42,650,000 for fiscal year 1983, may be used for "Program Direction and Administration."

Sec. 101. (b) the Commission may use not more than one per centum of the amounts authorized to be appropriated under paragraph (5) of subsection (a) to exercise its authority under section 31A. of the Atomic Energy Act of 1954, as amended, to enter into grants and cooperative agreements with universities pursuant to that section. Grants made by the Commission shall be made in accordance with the Federal Grants and Cooperatives Agreements Act of 1977 and other applicable law.

Sec. 101. (c) No amount appropriated to the Nuclear Regulatory Commission pursuant to subsection (a) may be used for any purpose in excess of the amount expressly authorized to be appropriated therefore by paragraphs (1) through (7) of such subsection if such excess amount is greater than \$500,000, nor may the amount available from any appropriation for any purpose specified in such paragraphs be reduced by more than \$500,000, unless—

(1) a period of 30 calendar days (not including any day in which either House of Congress is not in session because of an adjournment of more than 3 calendar days to a day certain or an adjournment sine die) has passed after the receipt by the Committee on Interstate and Foreign Commerce and the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Environment and Public Works of the Senate of notice given by the Commission containing a full and complete statement of the action proposed to be taken and the facts and circumstances relied upon in support of such proposed action, or

(2) each such Committee has, before the expiration of such period, transmitted to the Commission a written notification that there is no objection to the proposed action.

Sec. 102. Moneys received by the Commission for the cooperative nuclear research programs may be retained and used for salaries and expenses associated with those programs, notwithstanding the provi-

sions of section 3617 of the Revised Statutes (31 U.S.C. 484), and shall remain available until expended.

SEC. 103. From appropriations to the Nuclear Regulatory Commission under Section 101 (a), the Commission may transfer to other agencies of the Government sums for salaries and expenses for the performance by such agencies of activities for which such appropriations of the Commission were made. The sums so transferred may be merged with the appropriation of the agency to which the sums transferred.

SEC. 104. Notwithstanding any other provision of this Act, no authority to make payments hereunder shall be effective except to such extent or in such amounts as are provided in advance in appropriation Acts.

U.S. NUCLEAR REGULATORY COMMISSION,  
Washington, D.C., April 3, 1981.

HON. MORRIS K. UDALL,

*Chairman, Subcommittee on Energy and the Environment, Committee on Interior and Insular Affairs, U.S. House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: In accordance with the provisions of Section 201 of the Atomic Energy Act of 1954, as amended (42 USC 2017) and Section 305 of the Energy Reorganization Act of 1974, as amended (42 USC 5875), we are submitting proposed legislation which would authorize appropriations for fiscal year 1982 and fiscal year 1983.

The proposed legislation requests authorization for "Salaries and Expenses" of \$500,700,000 for fiscal year 1982 and of \$530,000,000 for fiscal year 1983. The primary factors influencing the NRC budget request are (1) the high priority on our reactor license application review efforts to minimize the time a completed reactor awaits licensing; (2) implementation of the Agency's TMI Action Plan; (3) a re-oriented research program in response to the recommendations of the various studies arising out of the TMI-2 accident; (4) increased inspection and enforcement activities resulting from the increase in the number of operating reactors; and (5) greater inspection emphasis and increased effort to resolve the issues of nuclear waste. Our budget request is discussed in more detail in the section-by-section analysis which accompanies the attached bill and in the NRC's more detailed budget justification transmitted separately.

The Office of Management and Budget has advised that the enactment of this legislative proposal would be in accord with the program of the President.

Sincerely,

JOSEPH M. HENDRIE.

Enclosure.

NUCLEAR REGULATORY COMMISSION PROPOSED BILL FOR AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEAR 1982 AND FISCAL YEAR 1983

A BILL To authorize appropriations to the Nuclear Regulatory Commission in accordance with section 201 of the Atomic Energy Act of 1954, as amended, and section 305 of the Energy Reorganization Act of 1974, as amended, and for other purposes.

*Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,*

TITLE I—AUTHORIZATION OF APPROPRIATIONS FOR  
FISCAL YEARS 1982 AND 1983

SEC. 101. (a) There is hereby authorized to be appropriated to the Nuclear Regulatory Commission in accordance with the provisions of section 261 of the Atomic Energy Act of 1954 (42 U.S.C. 2017) and section 305 of the Energy Reorganization Act of 1974 (42 U.S.C. 5875), for the fiscal years 1982 and 1983 to remain available until expended \$500,700,000 for fiscal year 1982 and \$530,000,000 for fiscal year 1983 to be allocated as follows:

(1) not more than \$75,610,000 for fiscal year 1982 and \$78,280,000 for fiscal year 1983, may be used for "Nuclear Reactor Regulation;"

(2) not more than \$67,680,000 for fiscal year 1982 and \$70,270,000 for fiscal year 1983, may be used for "Inspection and Enforcement;"

(3) not more than \$17,950,000 for fiscal year 1982 and \$17,990,000 for fiscal year 1983, may be used for "Standards Development;"

(4) not more than \$46,700,000 for fiscal year 1982 and \$48,020,000 for fiscal year 1983, may be used for "Nuclear Material Safety and Safeguards;"

(5) not more than \$231,940,000 for fiscal year 1982 and \$252,180,000 for fiscal year 1983, may be used for "Nuclear Regulatory Research;"

(6) not more than \$79,140,000 for fiscal year 1982 and \$20,610,000 for fiscal year 1983, may be used for "Program Technical Support;"

(7) not more than \$41,680,000 for fiscal year 1982 and \$42,650,000 for fiscal year 1983, may be used for "Program Direction and Administration."

SEC. 101. (b) The Commission may use not more than one per centum of the amounts authorized to be appropriated under paragraph (5) of subsection (a) to exercise its authority under section 31.a. of the Atomic Energy Act of 1954, as amended, to enter into grants and cooperative agreements with universities pursuant to that section. Grants made by the Commission shall be made in accordance with the Federal Grants and Cooperative Agreements Act of 1977 and other applicable law.

SEC. 101. (c) No amount appropriated to the Nuclear Regulatory Commission pursuant to subsection (a) may be used for any purpose in excess of the amount expressly authorized to be appropriated therefore by paragraphs (1) through (7) of such subsection if such excess amount is greater than \$500,000, nor may the amount available from any appropriation for any purpose specified in such paragraphs be reduced by more than \$500,000, unless—

(1) a period of 30 calendar days (not including any day in which either House of Congress is not in session because of an

adjournment of more than 3 calendar days to a day certain or an adjournment sine die) has passed after the receipt by the Committee on Interstate and Foreign Commerce and the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Environment and Public Works of the Senate of notice given by the Commission containing a full and complete statement of the action proposed to be taken and the facts and circumstances relied upon in support of such proposed action, or

(2) each such Committee has, before the expiration of such period, transmitted to the Commission a written notification that there is no objection to the proposed action.

SEC. 102. Moneys received by the Commission for the cooperative nuclear research program and the material access authorization program may be retained and used for salaries and expenses associated with those programs, notwithstanding the provisions of section 3617 of the Revised Statutes (31 U.S.C. 484), and shall remain available until expended.

SEC. 103. From appropriations to the Nuclear Regulatory Commission under Section 101(a), the Commission may transfer to other agencies of the Government sums for salaries and expenses for the performance by such agencies of activities for which such appropriations of the Commission were made. The sums so transferred may be merged with the appropriation of the agency to which the sums transferred.

SEC. 104. Notwithstanding any other provision of this Act, no authority to make payments hereunder shall be effective except to such extent or in such amounts as are provided in advance in appropriation Acts.

#### COMMENTS FROM OTHER COMMITTEES

On March 30, 1981, a letter from Chairman Zablocki to Chairman Udall notified the Committee that the Committee on Foreign Affairs had completed a review of the proposed NRC budget for fiscal years 1982 and 1983. The letter from Chairman Zablocki expressed the following views of the Committee on Foreign Affairs:

\* \* \* (in conducting our budget review) we have paid particular attention to activities within both the Office of International Programs and the Office of Nuclear Materials Safety and Safeguards, both of which have major responsibilities under the Nuclear Non-Proliferation Act of 1978 to upgrade international safeguards, strengthen the export and import licensing process, and explore further international cooperation in the area of nuclear health and safety.

The Committee supports the requested funding levels contained in H.R. 2330 for these offices which represent a small but extremely important fraction of the NRC's total licensing and safety responsibilities.

The complete text of Chairman Zablocki's March 31, 1981 letter is printed below.

CONGRESS OF THE UNITED STATES,  
COMMITTEE ON FOREIGN AFFAIRS,  
HOUSE OF REPRESENTATIVES,  
Washington, D.C., March 30, 1981.

HON. MORRIS K. UDALL,  
*Chairman, Committee on Interior and Insular Affairs,  
House of Representatives,  
Washington, D.C.*

DEAR MR. CHAIRMAN: The Committee on Foreign Affairs has completed its review of the proposed Nuclear Regulatory Commission budget for fiscal years 1982 and 1983. As in the past, we have paid particular attention to activities within both the Office of International Programs and the Office of Nuclear Material Safety and Safeguards, both of which have major responsibilities under the Nuclear Non-Proliferation Act of 1978 to upgrade international safeguards, strengthen the export and import licensing process, and explore further international cooperation in the area of nuclear health and safety.

The Committee supports the requested funding levels contained in H.R. 2330 for these offices which represent a small but extremely important fraction of the NRC's total licensing and safety responsibilities. The Committee will have no need, therefore, to seek a sequential referral on this legislation. This would be done, of course, without prejudice to the Foreign Affairs Committee's jurisdiction in this area.

I am pleased that it may once again be possible for our two committees to work in concert on the NRC authorization bill.

The Foreign Affairs Committee respectfully requests that this letter be included in your report on H.R. 2330.

Sincerely,

CLEM, *Chairman.*

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1 we ought not to do that unless we are involved in a genuine  
2 emergency and there is a real need to do it.

3 Senator Simpson. I do not think that is going to happen  
4 with the mission, statutory mission of the Nuclear Regulatory  
5 Commission. I do not see how that can possibly be, but it  
6 might be a bone of contention.

7 Thank you very much. I appreciate your being here and  
8 your courtesy and kindness in waiting while I did pass my  
9 vote on that issue. Thank you very much, and thank you very  
10 much, Mr. Faden.

11 Ms. Weiss. Thank you, Senator.

12 Senator Simpson. Now we will go to the panel of  
13 Jay Silberg with Shaw Pittman, Potts and Trowbridge, Robert  
14 Hager of the Christic Institute, and Jay Turner, President  
15 of the International Union of Operating Engineers with  
16 regard to the Sholly Decision.

17 I believe staff counsel advised you each have ten  
18 minutes and then we will proceed with the questions. Thank you  
19 so much.

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1 #09 STATEMENTS OF JAY E. SILBERG, SHAW PITTMAN, POTTS AND  
 2 TROWBRIDGE; ROBERT HAGER, CHRISTIC INSTITUTE; AND  
 3 JAY C. TURNER, PRESIDENT, INTERNATIONAL UNION  
 4 OF OPERATING ENGINEERS

5 Mr. Silberg. Mr. Chairman, good afternoon.

6 I am Jay Silberg, a partner in the Washington law  
 7 firm of Shaw, Pittman, Potts and Trowbridge.

8 Before I address the Sholly case, I just would point  
 9 out I am counsel for the applicant in the Susquehanna  
 10 proceeding and you have correctly described the situation  
 11 in that case. Not only are we litigating the issue of whether  
 12 the plant is needed, the need for power standpoint, we are also  
 13 litigating, over our strong objection, contentions on whether  
 14 conservation of energy should be substituted for an already  
 15 completed power plant, whether it is solar energy and other  
 16 alternatives should be substituted for an already completed  
 17 power plant. We have tried to use such techniques as  
 18 summary disposition.

19 I filed our first summary disposition motion in August  
 20 of last year and am still waiting for the Licensing Board  
 21 in that case to rule on that issue.

22 It is a problem. I commend to you the testimony that  
 23 you have heard. It is a very significant problem. We are  
 24 looking at an 11-month delay between the estimated date of  
 25 completion and the NRC's projected date on which their

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1 agree with the NRC that this is the proper reading of  
2 Sholly. If that is the case, the second sentence is not  
3 needed.

4 Thank you for the opportunity to testify before you  
5 today.

6 I will be happy to answer any of your questions.

7 Senator Simpson. Thank you very much.

8 I appreciate your recognition of the time problem.

9 Now, the next witness, please, Mr. Hager.

10 Mr. Hager. My name is Robert Hager. I was an attorney  
11 in Washington, D. C., and I represented, along with my  
12 partner, Dan Sheehan, People Against Nuclear Energy, which  
13 is a citizens group around Middletown, Pennsylvania, and  
14 Mr. Steve Sholly and Mr. Don Hossler, who started the Sholly  
15 case, which came to be known as the Sholly case.

16 The case was brought by the People Against Nuclear  
17 Energy, but the case came to be called the Sholly Case.

18 The Court didn't address the issues presented in the  
19 Sholly Case itself, which was the issue whether notice was  
20 required since Messrs. Sholly and Hossler felt the orders which  
21 were issued by the NRC did indeed involve significant  
22 hazards considerations. They contested that in the Sholly  
23 Case itself.

24 The Court never deemed it necessary to refer that issue  
25 so they never did decide whether or not there were significant

1 highly-talented scientists were dismissed because they  
2 didn't respond to recovery in time and now their views  
3 will not be available to NRC.

4           What will happen if the legislation which the NRC  
5 has requested is enacted is that one more hurdle to  
6 participation in hearings will be presented to the public.  
7 When they request a hearing they will first have to prove  
8 that their issue does involve a significant health and  
9 safety hazard. They may have to go up to a court to establish  
10 this and it will be one more set of rules, more lawyers  
11 and less scientists.

12           Senator Simpson. Thank you.

13           Mr. Hager. Thank you very much.

14           Senator Simpson. I appreciate your time.

15           Now Mr. Turner, Jay Turner, please.

16           Mr. Brown. Mr. Chairman, my name is John J. Brown.  
17 I am the Legislative Director from the Operating Engineers  
18 and my apologies from President Turner who was called out  
19 of town this morning to the West Coast.

20           Senator Simpson. Let the record reflect that in each  
21 case where we have referred to the witness.

22           Mr. Brown. And my compliments, Senator. I have  
23 been in Washington a number of years, but that is the  
24 most effective means of silence I have seen in quite some  
25 time.

1 Senator Simpson. Oh, this. I don't know where that  
2 came from. It sits here permanently. I think our good  
3 chairman used it on his new committee.

4 Mr. Brown. Mr. Chairman and members of the committee on  
5 Nuclear Regulation, my name is J. C. Turner, General  
6 President for the International Union of Operating  
7 Engineers. I am appearing here today on behalf of the offi-  
8 cers and memers of the Operating Engineers Union. In  
9 addition, the views I will express at this hearing are endorsed  
10 by seveal other labor organizations:

11 The International Brotherhood of Electrical Workers,  
12 AFL-CIO

13 The International Union of Electrical, Radio and  
14 Machine Workers, AFL-CIO

15 The Laborers' International Union of North America,  
16 AFL-CIO

17 The Building and Construction Trades Department, AFL-CIO  
18 representing 4 million construction workers.

19 On behalf of those organizations, I am here today  
20 to speak in favor of the proposed amendment to Section 189  
21 of the Atomic Energy Act of 1954. The purpose of this  
22 amendment reflects what we believe to be the original intent  
23 of Congress that nuclear license amendments may be made  
24 effective without prior hearing.

25 Let me make it clear at the outset that safety for

1 hazards consideration amendments. And I think those  
2 regulations which were called to the attention of the Congress  
3 in 1967 specifically are the reason why the Commission was  
4 not asked for prior hearings on no significant hazards  
5 consideration amendments. Their position has been very  
6 clear.

7 Mr. Hager. That simply isn't true.

8 Senator Simpson. Was the last time you two were  
9 together at the council table?

10 Mr. Hager. No, I have never met Mr. Silberg before,  
11 but the brief of the firm didn't make that point. They  
12 find any regulation of such a nature.

13 Senator Simpson. Are you aware of any instances in  
14 which a hearing was requested and convened, ultimately  
15 resulting in reversal by the NRC of its original position?

16 Mr. Hager. None at all.

17 Mr. Silverson. I don't.

18 Senator Simpson. Do you know anything about what  
19 standards the NRC used in the past to determine why license  
20 amendments involve no significant hazards consideration?

21 Mr. Hager. The NRC recently proposed a rule earlier  
22 this year but they set out a series of standards and they  
23 claim that these are standards which they had applied in  
24 the past. So the presumption there is these would reflect  
25 standards which applied. However, the standards were

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1 of little help in solving this case. There is nothing in  
2 the standards which would determine whether under the  
3 circumstances of the Sholly case itself the action taken  
4 would be considered to present a significant hazards  
5 consideration or not. So they weren't detailed enough  
6 standards to apply to the one case which has ever arisen.

7 Senator Simpson. So we really don't know whether  
8 the NRC standard for determining which license amendments  
9 involve no significant hazards consideration has been  
10 satisfactory or not, or whether it is overly broad or  
11 overly narrow.

12 Mr. Hager. They have been unsatisfactory in the one  
13 case they were called upon to solve the issue.

14 Senator Simpson. At the time of the Sholly decision  
15 the NRC had circulated for public comment a proposed  
16 standard for determining which license amendments involve  
17 no significant hazards consideration.

18 Briefly that amendment provided that is the license  
19 amendment, one would not involve this significant increase  
20 and the probability or consequences of an accident previously  
21 evaluated; two, would not create the possibility of an  
22 accident of a type different from any evaluated previously;  
23 and three, would not involve a significant reduction  
24 in the margin of safety, then that amendment involves no  
25 significant hazards consideration.

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What are your views with respect to the adequacy of that proposed standard?

3 Mr. Hager. My reaction -- I haven't articulated detailed  
4 comments but my reaction is they are very abstract  
5 statements, and that they do not help much more than the  
6 phrase itself, significant hazards consideration. They  
7 are too abstract to be helpful to solve any concrete cases.

8 Mr. Silberg. Mr. Chairman, procedurally are you  
9 addressing these questions to both of us?

10 Senator Simpson. Well, I assumed our good friend,  
11 Mr. Brown, didn't want to get into this thicket, but any  
12 time anyone of you may respond on issues that you are aware  
13 of personally.

14 Mr. Brown. Mr. Chairman, it is out in the plant where  
15 you have to face reality maybe I would involve myself  
16 at that stage of the game, but between two lawyers I  
17 would be a pretty foolish boy. My mother didn't raise a  
18 foolish boy.

19 Mr. Silberg. I think someone talked before about the  
20 necessity for common sense. I think we have just seen the  
21 best application so far of that principle.

22 Senator Simpson. A heavy portion of it, yes.

23 Mr. Silberg. I would like to correct a statement  
24 that Mr. Hager said when he said we never mentioned any of  
25 the Commission regulations in our brief. I have our brief.

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1 right here and not only did we mention it on page 24  
2 and 25, but we also included in Appendix A complete texts  
3 of the Commission's regulations as they exist today, 10-CFR-  
4 5058, which I can read.

5 Senator Simpson. No citations, please.

6 Mr. Silberg. And a similar regulation dated 1962.

7 Senator Simpson. Is that not correct, we have already  
8 accepted that into the record?

9 Mr. Silberg. Oh, no, this is a prior brief we had not  
10 talked about.

11 As to the standards which the Commission has used,  
12 those are laid out in my prepared statement on page 5,  
13 and they are generally of necessity because the types of  
14 amendment which need to be considered range over the  
15 entire gamut of nuclear power operation.

16 If you try to get very specific tests you will find  
17 either that they are unworkable because they don't  
18 cover everything, or that they are so specific as to become  
19 voluminous, one just can't function with them.

20 So the kinds of reasonably general but certainly  
21 more specific than the statutory language tests that the  
22 Commission has laid out we think do provide an adequate basis  
23 for the Commission to make that determination, and in fact they  
24 have served that purpose for many years.

25 Senator Simpson. Thank you.

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1           So I thank you for your testimony. I think I will  
2 be sure that the record stays open, that we will have the  
3 subcommittee recess until Tuesday, March 31 at 10:00 a.m.,  
4 when we will hear from the Nuclear Regulatory Commission  
5 on these issues, these two issues.

6           I thank every one of you very much. You look like  
7 very able advocates of your position and that is a  
8 pleasure to see, as a fellow lawyer, and you, Mr. Brown,  
9 a very able proponent of your position on behalf of the  
10 Union.

11           So thank you very much and I appreciate your courtesy  
12 in a long day.

13           Thank you.

14           The hearing is concluded.

15           (Whereupon, at 5:50 p.m., the subcommittee was  
16 recessed to reconvene at 10:00 a.m., Tuesday, March 31, 1981.)  
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