

Quick March on Nuclear Licensing

Congress and the regulators begin to trim the review process adopted after Three Mile Island

The nuclear power industry waged a successful campaign this year to bring attention to its complaints about the federal government. Its message is that Washington has been sabotaging the industry with petty rules, holding up licenses, and scaring off investors. The industry's campaign has been so effective that Washington's bureaucracy jumped into action this spring, working overtime to process licenses and disprove the charges. The result is that the industry is winning essentially all that it asked for this year at the Nuclear Regulatory Commission (NRC), licenser of nuclear plants.

In the past 7 months the industry has won a string of victories in Washington that may abbreviate the licensing procedure and mold the NRC into a more accommodating bureaucracy. One such change, which is contained in NRC budget authorization bills now pending in the House and Senate (H.R. 4255 and S. 1207), would allow the NRC to grant "interim" operating licenses. Plants would be allowed to run first at 5 percent of capacity, then at full power after a safety check by the NRC staff, but before the completion of time-consuming public hearings. This legislation should pass without a hitch when Congress returns to work in the fall, congressional staffers say.

Robert Szalay, vice president of the Atomic Industrial Forum, said that the industry is satisfied with the way things are moving. "This year's legislation is pretty much what can be accomplished in the near term," he said. "Maybe toward the end of this year or early next year, some other things might be undertaken, such as one-stage licensing." The industry has tried to persuade the NRC to hold one public hearing on each license, not the two often required now. One must be held when a construction permit is being granted, and a second may be held if requested when construction is finished. Szalay said that the industry had hopes of persuading Congress to grant one-stage licensing to cover both construction and operation, when the accident at Three Mile Island occurred in March 1979 and spoiled the plan.

The legislation pending in Congress

would help the industry in several other ways. Some operating licenses have been delayed by the new requirement that federally approved emergency plans for warning and evacuating the public in case of a severe accident be in place before the plants go into operation. The House bill would allow the NRC to go ahead and grant operating licenses as long as there is "a state, local, or utility plan which provides reasonable assurance that public health and safety is not endangered by the facility." The legislation would also void a recent court ruling (*Sholly v. NRC*) which said that the NRC must hold a public hearing every time it proposes to amend the terms of a license already granted. This ruling created a great potential for delay, because a license must be amended every time a reactor is refueled. The issue arose last fall when Steven Sholly took the NRC to court because it held no public hearing but simply amended the license of the Three Mile Island plant to allow the release of radioactive krypton gas into the atmosphere. If the bill passes, the NRC will be able to amend licenses without a hearing, provided no "significant hazards" are involved. The NRC must define what a significant hazard is within 90 days of the bill's passage.

The most important nonlegislative change benefiting the industry is in the makeup of the NRC itself. President Reagan has already replaced two of the five commissioners who run the agency, and he will soon have an opportunity to appoint a third. The new members are the chairman, Nunzio Palladino, and Thomas Roberts, both considered friends of industry. Those who will stay on are John Ahearne, whose term expires in June 1983, and Victor Gilinsky, whose term expires in June 1984. The fifth, Peter Bradford, a blunt critic of the NRC and the industry, was scheduled to leave next June but has announced that he will leave before the end of January.

Szalay said Bradford's early retirement is good news. He totaled up the votes on the commission as follows: "You have close to a majority right now; you have Roberts and Palladino, and Ahearne a certain percentage of the time. Bradford and Gilinsky are the oth-

er two that sometimes vote with, and a lot of times against, the majority."

Bradford is returning to his home state, Maine, where he will serve in the governor's cabinet as an energy adviser and public advocate in utility commission hearings. With more than a trace of bitterness and suggesting that his departure will not make much difference, he said that the nuclear plant builders "already have an ideological majority on the commission." Reagan may replace him with "Bonzo the chimp to rubber-stamp nuclear power plants," Bradford said, but the President "can't change the economic problems" that plague the industry. Bradford claimed that utilities are choosing to build coal rather than nuclear plants right now because they are cheaper. "Operating licenses are not the problem," he insisted, adding the real problems are not within the NRC's power to control.

The NRC, in any case, is responding to the pressure to accelerate the licensing process, particularly to remove some of the precautionary steps added after the accident at Three Mile Island. For example, there was a time when the decisions of the Atomic Safety Licensing Board were effective immediately. After the accident in 1979, the NRC required all licensing decisions to go to the appeals board for 60 days, and after that to the commission itself for 20 days before a license could be issued. Now the automatic review by the appeals board has been dropped, and the commission must act on low-power (5 percent) licenses within 10 days and full power licenses within 30 days.

In March, the NRC reorganized its staff to concentrate more manpower in the license-reviewing division. Employees have been put on mandatory overtime schedules and some tasks have been set aside while the agency worked to get operating licenses approved for plants that were nearly finished.

In addition, the agency has adopted half a dozen procedural changes designed to speed up public hearings, and it has proposed as many more which have not yet been put into effect. The new rules set deadlines for filing motions, permit oral rather than written rulings in

some cases, and require intervenors to provide more factual evidence in support of their pleadings.

All of this, according to Szalay, is evidence that the NRC is making a "great effort to become more efficient." But he said he will not be convinced until he sees the NRC "put some force behind the management, the scheduling, and the staff resources." Asked to name a plant whose operation the NRC has delayed unnecessarily, Szalay could not come up with any examples. He said the worst of the backlog had been overcome and urged a reading of the "Bevill report," a curious document that the chairman of the House appropriations subcommittee on energy development, Representative Tom Bevill (D-Ala.), has required the NRC to publish every month since last November.

An effort in self-criticism, the report lists plants likely to be held up by NRC reviews. The July edition lists eight cases that will probably be delayed. Only one, a California project known as Diablo Canyon 1, is actually ready to run. The list is controversial because it is largely based on projections, some of which later turn out to be wrong. For example, a nuclear plant in North Carolina, called McGuire 2, was listed among

the delayed cases for several months. Then, when the NRC granted it an operating license, the owners revealed that they were not ready to turn on the power anyway. When the Bevill report first came out, it showed that the NRC was responsible for an industrywide delay of more than 90 months. Now the estimate has been reduced to about 30 months and may go lower.

There has been no strenuous resistance to the proposed legislative or procedural changes, although the critics of nuclear power have made their opposition known. According to a House staffer who helped write the NRC authorization bill, the environmentalists decided not to engage in a confrontation this year but to compromise.

Ellyn Weiss, legal counsel for the Union of Concerned Scientists and the Natural Resources Defense Council, said that only one of the many proposals being offered this fall is "horrid." It is a procedural change that would require intervenors before the NRC to state all their factual allegations at an early date, defend each charge thoroughly, add no additional facts during the hearing, and be liable to summary dismissal on the basis of the facts as filed. Weiss says, "This clearly has the potential to do

away with any meaningful public participation." The NRC made the proposal in June and has not decided whether or not to adopt it.

The long-term effects of accelerating the licensing process are unknown, of course. Szalay hopes that some changes will inspire investors and that "in perhaps a year or two" utilities will begin to order new nuclear reactors, something they are not doing at the moment.

Commissioner Gilinsky, speaking last June before the House subcommittee on environment, energy, and natural resources, warned that the industry may be doing itself a disservice. He said:

It is a mistake to put too much pressure on this agency to crank out licenses. The people here are human; they respond to such pressures. The fact is, as a result of the priorities shift, in some undefinable way there is less attention given to certain safety matters that perhaps ought to have more attention given to them. . . . It is probably a good thing to remember that one of the reasons we have had problems with some of the plants we are dealing with now is that they also went through the licensing system at a time when there was a lot of pressure to crank out licenses, when there were complaints of delays. . . .

Perhaps in a decade we will know who was correct.—ELIOT MARSHALL

Hayes Intends Modest Reforms at FDA

The new commissioner is under pressure to grant regulatory relief to food and drug firms

When officials of the Reagan Administration went searching for a director of the Food and Drug Administration (FDA), they had in mind someone familiar with the industry who could adroitly and diplomatically chart a path of modest deregulation. These qualities were found in Arthur Hayes, Jr., a clinical pharmacologist who had previously steered clear of political issues, but who finds his views in line with those of his employers.

"It's not that I have any revolutionary ideas like 'this is all wrong, and I'm going to redo it,'" the new FDA commissioner says. "But I really felt that with the change of Administrations there would be an opportunity to make some changes in health policy that I think are important." Hayes wants to shorten the time it takes to review and approve new drugs, cut back on the amount of infor-

mation the agency demands before a drug can be marketed, and possibly to eliminate FDA scrutiny of the early phase of clinical drug research, actions which he says will "encourage innovative research and stimulate the marketing of important new drugs."

Like most Reagan appointees, Hayes does not expect to be writing many new regulations. Any that are forced by unforeseen events will be channeled through Health and Human Services Secretary Richard Schweiker, Hayes announced shortly after his appointment. Before the saccharin imbroglio in 1977, FDA officials infrequently consulted with higher-ups in the department. But Schweiker, continuing a practice first begun under Joseph Califano, expects not only to be consulted but to have the right of final approval on FDA decisions. Hayes, citing his close personal relation-

ship with Schweiker, says he is happy with the arrangement. But it has the inevitable effect of tightening political control over a predominantly scientific institution.

Perhaps to calm some fears, Hayes has promised FDA employees that he will never allow the agency's scientific work to be compromised by political purpose. His credentials as a researcher amply support this pledge. Hayes is the immediate past president of the American Society for Clinical Pharmacology and Therapeutics, and directed the hypertension clinic at Hershey Medical Center in Hershey, Pennsylvania, for 8 years prior to his FDA appointment. There he conducted pioneering research into the effects of such drugs as lidocaine and digitalis on heartbeat and cardiac arrest. His research was recognized by the Pharmaceutical Manufacturers Asso-