Supreme Court to Review California Nuclear Ban

Uncharacteristic though it may seem, the Reagan Justice Department turned against a claim of state's rights in a recent case involving nuclear power and backed the claims of the bureaucracy in Washington. Its move has also put it on the same side as the nuclear power industry. The controversy has to do with who has priority in setting construction rules for nuclear power plants, and it is proving to be a significant worry for the nuclear industry.

On 21 June the Supreme Court accepted a petition put forward by the U.S. Solicitor General and two California utilities. Together they asked the Court to decide whether or not the states are getting uppity in their handling of nuclear safety matters. At issue is a California statute, the Warren-Alquist Act, amended in 1976, known also as the nuclear moratorium. It prohibits the construction of any new nuclear plants in the state until the federal government has established a program for disposing of high-level radioactive wastes. The law makes clear that to qualify, the federal disposal program must include an operational, permanent repository.

The Justice Department joined the case as an amicus curiae, siding with the two utilities, Southern California Edison Co. and Pacific Gas and Electric Co. Both companies sued the state of California and are now appealing the decision of the Ninth Circuit Court of Appeals, which found California's law to pose no Constitutional problems. The companies say the California moratorium contradicts the express will of Congress—that only the federal government should regulate nuclear plants.

According to the utilities, it will take at least 20 years to select and build a permanent waste repository. This means that the California law will prevent new plant construction for the rest of the century. Five states have adopted similar laws and other states may do the same. If the trend is allowed to continue, the industry says, it will end in the "Balkanized state regulation of present and future nuclear plants, which frustrates national energy policy objectives."

The legal complexities of the case have forced both sides to adopt somewhat artificial arguments. For example, the environmentalists say that the moratorium was not inspired by a desire to thwart the nuclear industry. The Natural Resources Defense Council has filed a brief in support of this position. Furthermore, the brief says, the law is not intended to protect the public against radiation hazards. Its sole purpose is to protect the economic interests of the utilities and ratepayers by *preventing* plant shutdowns.

The reasoning goes as follows. If new plants were built before a disposal site is ready, waste shipments would back up and clog the system. This would force plants to close, costing ratepayers and stockholders a lot of money. These costs can be avoided by banning construction until a waste repository opens.

The California law was written without any discussion of radiation hazards because the U.S. Atomic Energy Act of 1954 specifically denies the states any control over safety or licensing of power plants. The Nuclear Regulatory Commission has sole jurisdiction over these matters, leaving the states to control such peripheral matters as land use and electric rates. However, the utilities and the Justice Department say the wording of the California law is deceptive: it is an attempt to usurp federal licensing authority disguised as an innocuous rate regulation scheme. Because it usurps federal authority, it should be struck down.

This is an important issue. Does a state have the right to prevent the construction of a nuclear plant by imposing strict peripheral regulations? Or must a state always defer to Washington, never setting its own concerns above the federal government's?

A separate, narrower issue has to do with whether or not the case is "ripe for judicial review." The environmentalists say it is not. California has never used its law to stop the construction of a single plant, they point out. The nuclear industry is asking for an "advance advisory opinion," they say, something the Supreme Court should not provide.

The utilities argue that the very existence of the law inhibits power plant licensing. Because it will take so long to build a waste disposal site, the companies say that they will not be able to recoup the costs of any new plant in this century. Rate commissions forbid them from charging for the preliminary work that is needed to apply for a plant license. Therefore, while it is true that no project has been canceled by the state, the law effectively kills new plants at inception.

The Court has asked for briefs on these two issues but has not yet announced a date for the trial.

—Eliot Marshall

Hopes Are Flying High for U.N. Space Conference

"We want to demystify space" says Yash Pal, Secretary-General of the Second United Nations Conference on the Exploration and Peaceful Uses of Outer Space which opens in Vienna on 9 August.

High on the priority list, according to a draft of the conference report which has been put together by a preparatory committee, is the need to guarantee a continuous flow of information from space-based satellites. Many developing countries now rely heavily on these, particularly for weather forecasting, remote sensing, and navigational aids. "We take meteorological satellites for granted, for example, but there is no guarantee that any organization is going to go on paying for them," Pal said in Washington recently. The draft report, which already claims consensus on all but 15 of its 430 paragraphs, suggests that the United Nations sponsor feasibility studies of long-term mechanisms for maintaining such services.

The conference is also expected to endorse the report's recommendations that the United Nations and its specialized agencies provide increased support for training and fellowships in space-related fields.

Organizational and financial recommendations are modest. The report suggests a new Center for Outer Space at the United Nations, which would service the Committee on the Peaceful Uses of Outer Space (COPUOS) and might eventually operate a new space information service. The total cost of its recommendations, says Pal, should be no more than $2 million to $3 million.

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