

## 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 shut-downs.

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.

Not that the conference will be free of controversy. At the technical end, Pal wants the conference to address the increased crowding of communications channels. In one paragraph which failed to receive the full endorsement of the preparatory committee, the report suggests that developed countries should consider shifting their satellite communications systems to a different frequency band, such as 11 to 14 gigahertz, leaving the currently used 4- to 6-gigahertz band primarily for use by developing countries. At present, flux density limitations resulting from overcrowding in the current band make large terminals necessary; reducing these limitations would facilitate the use of low-cost terminals in rural areas. The change would, however, create substantial costs for the developed nations.

More political controversy seems likely to focus on whether the report should refer to the military uses of space. The topic is not on the formal agenda. However, according to Pal, between 70 and 80 percent of the countries which have presented national papers have expressed concerns about the militarization of space. The suggestion has also been raised that the responsibilities of CO-PUOS be broadened to include looking at ways of ensuring that outer space is used solely for peaceful purposes.

Not all political comments come from the smaller nations. The United States, in line with the Reagan Administration's approach to foreign aid, has suggested the final report should explicitly state that "the primary responsibility for the development of developing countries rests upon these countries themselves."

The United Nations is expecting delegates from over 100 countries, including several heads of state, to attend the Vienna meeting. The agenda will be divided into three broad categories: the state of space science and technology, the applications of space science and technology, and international cooperation and the role of the United Nations. This year's conference has one great advantage over its predecessors. After the linguistic awkwardness of UNCSTD and UN-ERG, the bureaucracy has relented and come up with an acronym that slips effortlessly off the tongue, UNISPACE-2.—**David Dickson**

## Budget Resolution Treats R & D Relatively Well

The Republican budget resolution that squeaked through Congress on 23 June was surprisingly generous in its treatment of research and development. That is to say, it did not slash the Reagan Administration's budget request for civilian R & D, as many had feared and as the House Republican leadership had proposed.

In general, the resolution is expected to result in budget totals for major research agencies, such as the National Aeronautics and Space Administration (NASA), the National Science Foundation (NSF), and the National Institutes of Health (NIH), that are close to those proposed in the Reagan Administration's generally discredited fiscal year (FY) 1983 budget. Many scientists may not regard those totals as generous, but R & D certainly fared better than most other areas of domestic spending.

Passage of the budget resolution is far from the final step in the Byzantine process of determining how much money each agency will have to spend next year, but it is important in establishing an overall framework. In essence, the resolution sets spending limits in broad budget categories such as defense and health, and the appropriations committees are now supposed to come up with detailed agency budgets that stay within those limits.

The resolution provides \$7.8 billion for general science, space, and technology, a category that includes NASA, NSF, and some of the basic research programs of the Department of Energy. This would represent an increase of about \$800 million over FY 1982 and provide roughly the level that Reagan had proposed. It is, however, a lot more than House Republicans wanted to spend.

The Republican budget resolution passed by the House on 10 June would have frozen spending in this category next year at \$7.0 billion, a level that would have resulted in severe cuts in some NASA and NSF programs.

That sent a wave of anxiety through the research agencies and the scientific community, but fears of impending catastrophe proved groundless.

The Senate's version of the budget resolution contained \$7.8 billion for general science, space, and technology, and that level prevailed in the House-Senate conference committee. (The budget resolution proposed by House Democrats, which was defeated, would have provided \$8.15 billion for these programs.)

As for NIH, its budget was also in jeopardy because the House resolution had made some deep cuts in spending on health. But the conference committee restored some funds specifically to protect spending on health research, and the final budget for NIH is now expected to be close to that proposed by Reagan.

It will be many weeks before the appropriations committees complete their work and it will be well into FY 1983 before program officers will know how much they will be able to spend.—**Colin Norman**

## NIH Sees No Need for DNA Weapons Ban

A National Institutes of Health (NIH) advisory committee on 28 June turned down a proposal to prohibit the development of biological weapons by recombinant DNA methods. It argued that the ban is redundant because a 1972 multilateral treaty already prohibits such work. The ban, which would have been inserted into NIH's recombinant DNA guidelines, was proposed by Richard Goldstein of the Harvard Medical School and Richard Novick of the Public Health Research Institute.

Instead, the Recombinant DNA Advisory Committee voted 15 to 5 to advise the NIH director that the treaty did indeed prohibit the development of biological weapons. The committee declared that the existing treaty "includes the prohibition on the use of recombinant DNA's for development of microbial or other biological agents or toxins, of types or in quantities that have no justification for prophylactic, protective or other peaceful purposes."

The United States Arms Control and Disarmament Agency and the Army wrote that they did not object to the prohibition amendment but said it was redundant.—**Marjorie Sun**