

## Nuclear Industry, 1 Nuclear Critics, 1

The Supreme Court issued two important opinions affecting the nuclear industry on 19 and 20 April, the first favorable and the second detrimental.

The first case (Metropolitan Edison Company v. People Against Nuclear Energy) had very broad implications but will now recede into obscurity. It dealt with the proposition that the fear of a nuclear accident is something the government must take into account when making regulatory decisions. It applied specifically to the operable reactor at Three Mile Island. In law, it is generally accepted that the National Environmental Policy Act (NEPA) requires agencies to review the physical impacts of their actions. But a group of people living near Three Mile Island argued that NEPA also protects mental health. They said that the Nuclear Regulatory Commission (NRC) is legally bound to make an environmental impact study of the psychological stress that might be created if the reactor is turned on again. Moreover, the citizens argued, the NRC must consider these fears regardless of whether or not they are based on an understanding of the real hazards. It is enough to know that the *fears* are real, they said.

The NRC refused to entertain this logic, arguing that it had already dealt with the physical hazards in other proceedings. The NRC did not want to delve into mass psychoanalysis. Making NEPA apply to popular fears, the NRC claimed, would subject the entire government to innumerable challenges and delays. The NRC's view was rejected by an appeals court. The Supreme Court upheld the NRC's interpretation in a unanimous vote.

Writing for the Court, Justice William Rehnquist said that NEPA was designed to apply directly to the physical environment and only indirectly to public health. NEPA does not reach the further removed concept of potential injuries or risks. There is no reason to think the law should reach beyond the physical world, Rehnquist wrote: "A risk of an accident is not an effect on the physical environment." Furthermore, he said it would be extraordinarily difficult for the government to make distinctions between

"genuine" psychological impacts and self-induced fears. Therefore, the Court ruled that the government need not consider psychological stress as an environmental impact.

The second case involved a suit brought by the Pacific Gas and Electric Company (PG&E) of California against the State Energy Commission. It dealt with California's ban on new nuclear plant construction, made effective in 1976 through amendments to the Warren-Alquist Act. This law now forbids utilities to construct nuclear plants unless the Energy Commission certifies that the U.S. government has put in place a "demonstrated technology or means for the [permanent] disposal of high-level nuclear waste." The federal waste disposal program is not yet in operation. Therefore, California can have no new nuclear plants.

PG&E took the state to court because it wanted to build a new plant in 1978 and believed that federal authority overruled state law. (The plant in question was later canceled, but the legal argument went on.) In the end, the Supreme Court unanimously upheld the state. While the Court agreed with the utility that the federal government has sole authority for dealing with nuclear safety, it also found that the state has the right to regulate electric power from an economic standpoint. The California law carefully avoids dealing with safety issues. It claims jurisdiction only on the grounds that nuclear power may become an economically unsound source of electricity due to its waste disposal problems. California citizens must be protected against bad utility investments, the state argues.

The Court bought this logic, saying that it is unwise to search for motives other than those stated openly in the legislation. Laws must be taken for what they claim to be. On this basis, the Court found that California has a legitimate reason to worry about the economic health of nuclear power and to limit construction of new plants.

The ruling is academic in a sense. No new plants have been ordered since 1978. However, if the nuclear industry is to resume construction at the end of the decade as is often promised, the waste disposal problem now appears to be a much more formidable obstacle than it did a week ago.—ELIOT MARSHALL

## Governor Brown Takes Up Where NAS Leaves Off

Edmund G. (Jerry) Brown, who became an apostle of high technology during his term as governor of California, is using his forced retirement from elected office (he lost a bid for the Senate last year) to continue to advance the cause of high-tech industry. Last month, he announced the establishment of a blue-ribbon, bipartisan commission whose goal will be to draw up a long-range national plan "to encourage innovation and modernization."

The commission, which Brown will chair, includes chief executive officers of several high-tech companies, representatives of labor unions, and members of Congress from both parties. It is being funded by donations from corporations and foundations, and its final report is scheduled for January 1985—after the 1984 presidential election. Brown, who is also writing a book, will devote about 15 percent of his time to the commission.

The establishment of the commission, which will be headquartered in Los Angeles, follows hard on the heels of a report by the National Academy of Sciences, which warned that high-technology companies in the United States are under increasing pressure from foreign competitors, many of which enjoy direct and indirect government support.\* The Academy's study is the product of 14 months' work by a high-level committee under the chairmanship of Howard Johnson, chairman of the Corporation of the Massachusetts Institute of Technology. Its recommendations are unlikely to raise many eyebrows:

- Advanced technology development and trade should be "among the highest priorities in the nation."

- A Cabinet-level review of U.S. trade competitiveness and innovation should be conducted every 2 years.

- The Administration should continue to press for free trade, but if a key industry is endangered by foreign competition, the United States should negotiate with the other country for relief and, if that fails, take unilateral action.—COLIN NORMAN

\**International Competition in Advanced Technology: Decisions for America* (National Academy of Sciences, Washington, D.C., 1983).