



Courts Shut Down Nuclear Licensing, Not Wasting a Waste Crisis

Jonathan A. Lesser

You never want a serious crisis to go to waste.

— Chicago Mayor and former White House Chief of Staff Rahm Emanuel¹

But with the Nuclear Regulatory Commission's (NRC's) August 7 decision to suspend all nuclear licensing decisions in response to an appeals court ruling in June 2012 that the NRC needed to analyze the environmental impacts of on-site spent nuclear fuel storage, waste *is* the crisis.

Opposition to nuclear power is nothing new. Galvanized by the accident at Three Mile Island in 1979, opposition gained steam after the accident at Chernobyl in 1986. It was reinvigorated by the March 2011 earthquake and subsequent tsunami that destroyed Japan's Fukushima Dai-ichi nuclear plant, and countries such as Germany have ordered their nuclear plants closed, beginning in 2015.

But fear-mongering about nuclear power—and, really, that is what it is—is not confined to visions of mushroom clouds over the plants; permanent storage of nuclear waste has also been a major fear factor. Opponents have objected to storing spent nuclear fuel at the now-shuttered permanent waste storage facility at Yucca Mountain, Nevada, as well as objected to storing spent nuclear fuel on-site, first in storage pools and then in dry-cask containers. And even if a permanent storage facility is eventually built somewhere, there are opponents who do

not want that spent nuclear fuel transported. Short of traveling back in time to prevent nuclear power plants from ever having been built in the first place, opponents appear to have the entire range of possible options covered.

In a June 2012 decision,² the DC Court of Appeals has created a new roadblock for nuclear power: because the Obama administration shuttered Yucca Mountain, the court found that the Nuclear Regulatory Commission's reliance on the so-called Waste Confidence Decision (WCD) was no longer reasonable. The original WCD, which the NRC issued in 1984, resulted from a 1979 decision by this same court, which remanded the NRC's decision to allow the spent-fuel pools at the Vermont Yankee nuclear plant in Vernon, Vermont, and the Prairie Island nuclear plant in Goodhue County, Minnesota, to be expanded, because there was no permanent storage facility for spent nuclear fuel.³

The WCD was the NRC's way of saying, “no worries.” It determined that a permanent waste storage facility would be ready by 2007–09 and that spent nuclear fuel could be stored safely, and temporarily, on-site until then. Over the ensuing years, the NRC updated the WCD, most recently in 2010, when the NRC concluded that a permanent waste storage facility would be available “when necessary.”⁴ In essence, the NRC said that a permanent repository for spent fuel would be available when nuclear fuel no longer could be stored safely on-site.

The state of New York, whose current governor, Andrew Cuomo, wishes to shutter the Indian Point Nuclear Plants that are located 40 miles north of New York City, challenged the NRC's WCD and “when necessary” conclusion, arguing that it re-

Jonathan A. Lesser, PhD, is president of Continental Economics, Inc., an economic and litigation consulting firm, with offices in Washington, DC, and Albuquerque, New Mexico. He can be reached at (202) 446-2062 or at jlesser@continentalecon.com.

quired an environmental impact statement (EIS) or Finding of No Significant Impact (FONSI).⁵ The DC court agreed, concluding that the NRC effectively had concluded that “temporary” on-site storage had become permanent on-site storage, which required full environmental review.⁶

Having been rebuffed by the court, on August 7, 2012, the NRC announced that it was freezing 19 final licensing decisions, including 9 construction and operating licenses, 8 license renewals, 1 operating license, and 1 early site permit.⁷ According to New York State Attorney General Eric Schneiderman, who argued the case, “In a victory for the 17 million people living and working close to Indian Point, the NRC has committed to addressing the risks posed by long-term nuclear waste storage at the facility before making any relicensing decisions.”⁸

PYRRHIC VICTORY?


The court’s ruling and the NRC’s subsequent decision to no longer issue licenses may be a pyrrhic victory. First, the decision will further exacerbate the risk of investing in new energy infrastructure of all kinds, not just nuclear power plants. Of course, companies that have spent millions of dollars to obtain new operating licenses or to relicense existing plants such as Indian Point, as well as the few companies that have begun construction on new nuclear plants will either absorb significant financial losses, or pass them along to ratepayers.

And what about other generating and transmission investments? With good reason, investors may conclude that further environmental roadblocks await. If so, the cost of financing new facilities will increase, ultimately filtering down to the costs consumers and businesses pay for electricity.

Second, together with the spate of US Environmental Protection Agency rulings that are contributing to the demise of the US coal industry,⁹ strangling the nuclear power industry will eventually leave the United States dangerously short of baseload generating units that have been the foundation of the power system. Moreover, while many environmentalists have stressed the need for a “diverse” portfolio of generating resources, they have simultaneously supported the serial strangulation of generating resource options—coal, nuclear, and now natural gas—because of the perceived dangers of shale gas production. Sole reliance on renewable resources, in addition to being economically unaf-

fordable and operationally impossible, does not a diverse portfolio make.

Third, and perhaps most important of all, is that the court’s ruling and the NRC’s decision to suspend issuing new licenses does not solve the permanent waste storage issue. Furthermore, simply performing the environmental review itself will take several years at least, and will almost certainly be bitterly disputed and adjudicated, further delaying resolution of the issue. One can imagine the reaction to a conclusion that spent nuclear fuel can be safely stored on site indefinitely with no significant environmental impact. And what if the NRC issues an EIS that determines it cannot be safely stored on-site and must be moved? Without a permanent depository, or an acceptance of fuel reprocessing (bitterly opposed in the United States because it creates weapons-grade plutonium, despite being used in France for decades), what then?

Even if they succeed in ultimately destroying the nuclear power industry, which is the real goal, environmentalists cannot make the spent nuclear fuel that today sits in storage pools and dry casks disappear. No EIS or FONSI will change that simple fact. 

NOTES

1. Seib, G. (2008, November 21). In crisis, opportunity for Obama. *Wall Street Journal*. Retrieved from <http://online.wsj.com/article/SB122721278056345271.html>.
2. *State of New York, et al. v. Nuclear Regulatory Commission*, Case No. 11-1045, June 8, 2012 (DC Circ.). *Minnesota v. NRC*, 602 F.2d 412 (D.C. Cir. 1979).
3. *Minnesota v. NRC*, 602 F.2d 412 (D.C. Cir. 1979).
4. Waste Confidence Decision Update, 75 Fed. Reg. 81,037 (Dec. 23, 2010).
5. Preventing relicensing of the Indian Point reactors was the primary purpose of the New York challenge to the NRC. A report by the author for the Manhattan Institute, Center for Energy Policy and the Environment, on the possible alternatives to Indian Point, and the economic impacts of closing it, was published on September 18, 2012, <http://www.manhattan-institute.org/tools/pubs.php>.
6. Ironically, one of the arguments made by the state of New York was that the NRC failed to fully account for the significant societal and political barriers that may delay or prevent the opening of a repository, such as political barriers raised by petitioners.
7. *In the Matter of Calvert Cliffs Nuclear Project, LLC, et al.*, Docket No. 52-016-COL, et al., Memorandum and Order, August 7, 2012, <http://www.nrc.gov/reading-rm/doc-collections/commission/orders/2012/2012-16cli.pdf>.
8. U.S. freezes all nuclear power plant licensing decisions. (2012, August 7). Environmental News Service. Retrieved from <http://ens-newswire.com/?p=47633>.
9. Lesser, J. (2012). How will EPA’s newest regulations affect electric markets? *Natural Gas and Electricity*, 28(11), 30–32.