

America's Nuclear Future: Is it Possible in a Democratic Society?

Summary of Diane Curran's Presentation to the Reactor and Fuel Cycle Technology Subcommittee of the Blue Ribbon Commission on America's Nuclear Energy Future
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In legalizing the domestic production of nuclear energy through the Atomic Energy Act of 1954, Congress struck a grand bargain with state and local governments: the new industry would be exempt from state and local regulation and subject only to federal regulation; and in exchange, state and local governments and members of the public would receive the right to challenge every federal licensing decision in an adjudicatory hearing. Over the ensuing years, the hearing right guaranteed by the Atomic Energy Act of 1954 proved to be an extremely important tool for state and local governments and members of the public to hold nuclear facility licensees and the federal government accountable for the safe operation of these inherently dangerous facilities.

The elements of the grand bargain have eroded steadily over time under relentless pressure by the nuclear industry and its Congressional supporters: the Nuclear Regulatory Commission ("NRC") has eliminated the right to depositions and cross-examination of witnesses in hearings, drastically shortened timeframes for case preparation, raised the bar for admission of issues to a case, and erected a labyrinthine set of hearing procedures that is studded with procedural tripwires. These barriers make it virtually essential for neighbors of nuclear facilities – whose resources are generally quite limited – to hire expensive lawyers and expert witnesses for NRC licensing cases. But Congress has repeatedly refused to restore the federal funding for intervenors that was briefly provided during the 1980s.

These problems are dwarfed, however, by the tremendous reduction in public access to information that has followed the attacks of September 11, 2001. Information on such important issues as spent fuel pool accident risks, which was once widely available, is now withheld. The risk of a catastrophic spent fuel pool accident is a particularly disturbing subject of government secrecy because the NRC denied that the pools were dangerous for twenty-five years, and did not concede the danger until environmentalists used publicly available information to urge it to reconsider. The NRC now claims to have resolved the problem, but there is no way to evaluate the reliability of that claim because the information is secret.

Clearly, it is essential to ensure that sensitive security information that could be used to damage a nuclear facility and cause widespread harm should not be shared with the public. But here are some questions that should be answered before we get too far into the "nuclear renaissance."

- Where safer energy alternatives are available, is it wise for the government to subsidize and promote a dangerous technology whose risks cannot be debated in public?
- Is it possible for the public to enforce safety and environmental laws through the NRC's difficult hearing process without access to information or funding?
- Can regulators maintain their independence and effectiveness when the only group speaking to them with an informed voice is the regulated industry with a vested interest in minimizing costs of safety and environmental protection measures?