

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

Presentation to Reactor and Fuel Cycle Technology
Subcommittee of the Blue Ribbon Commission on America's
Nuclear Future

August 31, 2010

Diane Curran
Harmon, Curran, Spielberg & Eisenberg, LLP
August 31, 2010

The Grand Bargain of 1954

2

- The Atomic Energy Act of 1954 legalized the domestic production of nuclear energy.
- State and local governments ceded to the federal government their authority to regulate the safety of nuclear energy production
- In exchange, Congress provided the right to an adjudicatory hearing on all licensing decisions.

Erosion of the Grand Bargain

3

Over time, the NRC has reduced hearing rights in key respects:

- ❑ No right to confront witnesses through depositions and cross-examination;
- ❑ Standard for introduction of issues raised
- ❑ Hearing process streamlined and hearing preparation timeframes shortened
- ❑ Public funding of intervenors eliminated

Hearing rights curtailed for new reactors

4

- ▣ NRC intended standardized design approval to precede individual reactor licensing hearings.
- ▣ But almost no standardized designs have been approved and individual licensing cases have gone forward anyway.
- ▣ Result has been confused, illogical and wasteful hearing processes.

Post-9/11 Changes to Level of Public Disclosure at NRC

5

- Prior to the September 11 attacks, a great deal of information on accident risks posed by reactors, fuel cycle facilities, and spent fuels was publicly available in the NRC's library and electronic document collection.
- Much information that previously was publicly available is now withheld from public disclosure.
- In addition to classified and safeguards information, NRC has a new catch-all category called "Sensitive Unclassified Security Information (SUNSI)"
- SUNSI is information that could reasonably be expected to be useful to a potential adversary.

Tension Between Interests: Protection of Sensitive Information and Value of Public Disclosure/Debate

6

- SUNSI is protected from public disclosure because it may be useful to people who want to cause harm through attacks on nuclear facilities.
- But SUNSI is also important information for state and local governments and the public because it concerns risks and vulnerabilities of nuclear facilities and areas of inadequate regulation that may need correction.
- SUNSI may be shared with interested members of the public under a protective order, but the rigor of public debate and broad exchange of ideas and information is lost.

Example: Spent Fuel Pool Risks

7

- For 25 years, the NRC denied severe accident risks posed by high-density pool storage of spent fuel.
- In 2000, using publicly available documents, a county government involved in a spent fuel pool hearing and environmental organizations concerned about risks pressed the NRC to acknowledge the risk.
- Since 9/11, the NRC has treated the risk of pool fires as a security issue and imposed secret measures.
- Secrecy has deprived state and local governments and the public of a means to verify that the security measures are effective.

Post-9/11 Barriers to Effective Public Participation

8

- NRC casts a wide net for SUNSI
- Much information can be released, but FOIA requests are time-consuming and expensive.
- Hearing requesters must show a “need” for SUNSI from the outset.
- Environmental risk issues that have security implications are sometimes treated as classified information.
- No public debate of environmental and safety issues involving SUNSI.
- Obtaining information through FOIA or participating in closed hearings is very expensive.

SOME BASIC QUESTIONS

- Some basic policy questions need answers before embarking on a U.S. nuclear revival:
 - ▣ Where safer energy alternatives are available, is it wise for the federal government to subsidize and promote a dangerous technology whose risks cannot be debated in public?
 - ▣ Can regulators remain independent and effective where the only group that has information or resources is the regulated industry with a vested interest in minimizing costs?