

DOCUMENT RESUME

04005 - [E3054299]

[How the Nuclear Regulatory Commission Carries Out Its Responsibilities under the National Environmental Policy Act of 1969]. EMD-78-4; B-170186. October 28, 1977. 6 pp. + enclosure (4 pp.).

Report to Rep. William J. Hughes; by Robert F. Keller, Acting Comptroller General.

Issue Area: Energy: Federal Role as a Proprietor of Energy Resources (1603); Environmental Protection Programs: National Environmental Policy Act of 1969 (2205).

Contact: Energy and Minerals Div.

Budget Function: Natural Resources, Environment, and Energy: Energy (305).

Organization Concerned: Nuclear Regulatory Commission.

Congressional Relevance: House Committee on Interior and Insular Affairs; Senate Committee on Environment and Public Works. Rep. William J. Hughes.

Authority: National Environmental Policy Act of 1969.

The Nuclear Regulatory Commission (NRC) is required to prepare environmental impact statements before licensing construction or operations of nuclear powerplants. The Commission uses detailed environmental data provided by nuclear powerplant license applicants as the basis for preparing its environmental impact statements. The Commission's staff prepares its own statements which reflect its findings and conclusions, and these staff statements, as modified by NRC hearing boards in their licensing decisions, become the final Commission statements. Findings/Conclusions: Relying on applicants for detailed environmental data makes it especially important for the Commission to subject the data to rigorous and thorough internal and public scrutiny in preparing environmental impact statements. The NRC's staff and the Energy Research and Development Administration-owned, contractor-operated laboratories used in preparing the environmental impact statements conduct an orderly, thorough review of environmental data submitted by the applicants. However, the Commission should highlight those laboratory findings and conclusions on important environmental issues with which it disagreed. Disclosure in the impact statements of such diverse findings and conclusions and the NRC staff's basis for disagreement would permit the hearing boards to explore the issues further in public hearings and would add to the credibility of the entire process. The timing and structure of the NRC's public hearings do not give the public a timely opportunity to affect the NRC's decision on whether and on what conditions construction permits should be issued. Recommendations: The Chairman of NRC should include diverse conclusions on important environmental issues in the Commission's environmental impact statements and take steps to increase public participation on nuclear powerplant construction

permit applications shortly after they are accepted so that the views of interested members of the public can be obtained. (SC)



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

04005

B-170186

OCT 28 1977

The Honorable William J. Hughes  
House of Representatives

Dear Mr. Hughes:

In response to your request here is our report on how the Nuclear Regulatory Commission carries out its responsibilities under the National Environmental Policy Act of 1969. The act requires Federal agencies to prepare environmental impact statements before taking actions, such as licensing construction or operation of nuclear powerplants, that will significantly affect environmental quality.

You were particularly concerned about whether the Commission should continue to use detailed environmental data provided by nuclear powerplant license applicants as the basis for preparing its environmental impact statements. The courts have ruled that Federal agencies can base their environmental impact statements on applicants' detailed environmental reports if the agencies actually independently review the reports and prepare their own statements. As we discuss in more detail below, the Commission's staff prepares its own statements which reflect its findings and conclusions. The staff's statements, as modified by the Commission's hearing boards in their licensing decisions, become the final Commission statements. Therefore, we conclude that the Commission's practice is proper.

Relying on applicants for detailed environmental data makes it especially important for the Commission to subject the data to rigorous and thorough internal and public scrutiny in preparing environmental impact statements. In our opinion the Commission should test the data in applicants' environmental reports for accuracy, completeness, and objectivity to enhance the credibility of its environmental impact statements. The Commission should (1) highlight, rather than dismiss, the diverse conclusions of experts it uses to analyze the data and draft segments of its statements and (2) hold public hearings shortly after it receives applications to obtain the public's views on what the major environmental impacts will be.

Each of these matters is discussed later in this letter, following a brief description of the Commission's procedures for preparing environmental impact statements.

THE COMMISSION'S PROCEDURES FOR PREPARING ENVIRONMENTAL IMPACT STATEMENTS

The Commission requires utilities to submit detailed environmental data--in the form of environmental reports --with their construction permit applications. The reports must describe the location and physical characteristics of proposed powerplants. The reports must also provide data and analyses on the need for additional electric power-generating capacity, alternative sources of providing electric power, alternative locations, and transmission line routes. Once it accepts a utility's application, the Commission begins preparing its environmental impact statement.

The Commission has used three Energy Research and Development Administration-owned, contractor-operated laboratories in preparing environmental impact statements: Oak Ridge National Laboratory, operated by Union Carbide Corporation; the Argonne National Laboratory, operated by the University of Chicago and Argonne Universities Association; and the Pacific Northwest National Laboratory, operated by the Battelle Memorial Institute. The Commission is phasing out the latter because of a decrease in workload.

For any one nuclear powerplant project, about 80 percent of the environmental data analyses and writing of draft environmental impact statements is done at the laboratory. The Commission's staff does the remaining analyses and writing and reviews the laboratory's work for its technical and legal adequacy and completeness. In addition, the staff meets often with the applicant, visits the site and discusses the project with local officials, publishes the draft statements and coordinates comments on it, and publishes the final statement.

The Commission begins preparing for a public hearing at the same time that it begins preparing its environmental impact statement. By law, the Commission must hold a public hearing on the safety and environmental aspects of a nuclear powerplant construction permit application before it may issue a license.

Shortly after it accepts an application, the Commission publishes a notice inviting the public to participate in its hearing. Persons wanting to participate--either as formal parties with rights to present expert witnesses and to

cross-examine other witnesses, or to simply ask questions or make statements for the record--must request to do so within 30 days of the Commission's notice. Any person wanting to intervene formally must provide an affidavit stating his or her interest, how the project may affect that interest, and the specific contentions on which intervention is desired. The Commission's hearing board decides which petitioners should be admitted but does not rule on the merits of the contentions until after the hearing. However, the hearing is not held until about one year later, after the Commission's staff has issued its final environmental impact statement.

THE COMMISSION SHOULD HIGHLIGHT DIVERSE  
CONCLUSIONS ON IMPORTANT ENVIRONMENTAL IMPACTS

We reviewed three construction permit applications with particular emphasis on the work the national laboratories did for the Commission. In these three projects we noted two instances where the Commission's staff disagreed with major laboratory staff findings and conclusions. One instance concerned alternatives to the proposed site. The laboratory's analysis of alternative sites showed that two sites were superior to the utility's proposed site. However, the Commission's staff maintained that the analysis was too subjective, so it made its own analysis. In the published environmental statement the Commission's staff concluded that the proposed site and three alternatives were acceptable. The statement did not mention the laboratory's conclusion that two alternative sites were better than the proposed site.

On another project the laboratory concluded that the utility's projected electrical power needs did not justify constructing nuclear powerplants on the utility's planned schedule. The laboratory believed that construction could be delayed 2 years. However, the Commission's staff was dissatisfied with the technical adequacy of this analysis, so it performed its own and concluded that construction was needed in accordance with the utility's schedule. Again, the published environmental statement did not mention the laboratory's analysis and conclusion. Later, the utility did defer the construction schedule 2 years because of its own revised forecast of electrical power needs.

Commission officials pointed out that the Commission --not the laboratories--is responsible for the content of its environmental impact statements. Therefore, when disagreements arise the Commission staff must prevail. We agree that the Commission is responsible for the content of its statements. However, considering that the statements are heavily based on environmental data supplied by applicants, highlighting

diverse findings and conclusions on this data in environmental statements would help to insure that the environmental impacts of proposed nuclear powerplant projects are rigorously explored in the Commission's public hearings.

CONCLUSION

The Commission's staff and the laboratories conduct an orderly, thorough review of environmental data submitted by applicants. However, the Commission should highlight those laboratory findings and conclusions on important environmental issues with which it disagrees. Disclosure in the impact statements of such diverse findings and conclusions and the Commission staff's basis for disagreeing with them would permit hearing boards to explore the issues further in public hearings. This would add to the credibility of the entire process by providing an additional test of the accuracy, completeness, and objectivity of applicants' environmental data.

RECOMMENDATION TO THE CHAIRMAN  
OF THE COMMISSION

We recommend that the Chairman, Nuclear Regulatory Commission, include diverse conclusions on important environmental issues in the Commission's environmental impact statements.

THE COMMISSION SHOULD OBTAIN THE  
VIEWS OF THE AFFECTED PUBLIC EARLIER

Persons must request to participate in the Commission's public hearing on a construction permit application shortly after the Commission accepts the application. However, the Commission does not actually begin its public hearing until after its staff issues its final environmental impact statement. Thus, by the time the public hearing begins, the Commission's staff has already taken a position on whether or not the permit should be issued and the applicant has invested millions of dollars in project design, procurement, and licensing activities. The momentum of this investment and the Commission staff's position, if favorable to the applicant, strongly argue for the issuance of a construction permit. Yet, the affected public's views have not been heard.

Consequently, members of the public do not have a timely opportunity to affect decisions on licensing the construction of a nuclear powerplant in their area--decisions not only on whether a construction permit should be issued but on steps

the applicant should take to mitigate the environmental impacts of construction and operation.

The Commission could provide a timely opportunity for members of the public to present their views on a construction permit application and to question Commission officials by holding a public hearing shortly after it accepts an application. This hearing need not be in the trial-like format the Commission uses after its staff has issued its final environmental statement. An early hearing would permit members of the public to identify what they believe are the major issues needing careful Commission consideration in its environmental impact statement. It would also give the Commission an additional test of the reasonableness of the applicant's environmental data and analyses.

Commission officials do not believe that an early hearing is needed because under current procedures its staff obtains information on public attitudes and concerns from local officials during its site visit. However, meetings with local officials do not allow members of the public to express their views.

#### CONCLUSION

The timing and structure of the Commission's public hearings do not give the public a timely opportunity to affect the Commission's decision on whether and on what conditions construction permits should be issued. By the time a hearing starts, the momentum of the applicant's investment and the Commission staff's position, if favorable, strongly argue for issuance of a construction permit. Therefore, we believe that the Commission should, shortly after accepting a construction permit application, enable members of the public--not just local officials--to identify what they believe are major issues and to raise and have answered any questions they might have.

#### RECOMMENDATION TO THE CHAIRMAN OF THE COMMISSION

We recommend that the Chairman, Nuclear Regulatory Commission, take steps to increase public participation on nuclear powerplant construction permit applications shortly after they are accepted so that the views of interested members of the public can be obtained.

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We discussed these recommendations with Commission officials and they concurred in a letter dated September 28, 1977. (See enc.) The Commission plans to develop a formal mechanism for public disclosure of differing views on technical issues arising during the environmental review process. By early 1978 the Commission also plans to implement a policy whereby its staff would meet early with interested members of the public to obtain their views on a construction permit application.

As directed by your office, we are sending copies of this report to the Chairman of the Nuclear Regulatory Commission and to the New Jersey State delegation.

Sincerely yours,

Comptroller General  
ACTING of the United States

Enclosure



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

SEP 28 1977

Mr. Monte Canfield, Director  
Energy and Minerals Division  
United States General Accounting Office  
Washington, D. C. 20548

Dear Mr. Canfield:

This is in reply to your letter of September 2, 1977, to T. J. McTiernan, requesting comments on a draft GAO "Letter Report to Congressman Hughes on NRC's Environmental Review Process." The enclosure to this letter contains our planned actions regarding each of the recommendations of the draft letter report.

We appreciate the opportunity for providing comments on the draft letter report.

Sincerely,

*for* Robert B Menozzi  
Lee V. Gossick  
Executive Director  
for Operations

Enclosures:  
1. Comments

{See GAO note 1, p. 10.}

NRC'S COMMENTS AND PLANNED ACTIONS ON THE RECOMMENDATION'S CONTAINED  
IN GAO'S DRAFT LETTER REPORT THE HONORABLE WILLIAM J. HUGHES ON THE  
NRC'S ENVIRONMENTAL REVIEW PROCESS

Planned Action for Recommendation No. 1

The NRC recognizes the importance of providing a mechanism for public disclosure and discussion of diverse technical views regarding safety and environmental issues. Such a mechanism exists for the NRR staff and is described in NRR Office Letter No. 11 dated November 3, 1976 [See GAO note 2, p. 10.] (Enclosure 2). The Office Letter established a formal procedure for the resolution of technical issues within NRR. Its purpose is to assure that differing views within NRR staff are thoroughly considered, and to document for the public record any such views that remain, in the opinion of any staff member, unacceptably treated after these procedures have been followed.

In addition NRR has developed and issued ADEP Project Instruction 76-7 dated July 27, 1976, (Enclosure 3) which contains a description of the mechanism used to resolve differing views on technical issues that arise specifically in the NRC environmental review process. However, as noted in your report, it has not been our policy to include a discussion of differing views, if any, in our environmental impact statements.

This should not be interpreted to mean that differing technical views arising in the environmental review process are not thoroughly considered. The resolution of differing technical views follow the procedures discussed in Enclosures 2 and 3. Thus, the differing technical views were thoroughly considered by laboratory and NRR management in the

environmental review process.

Notwithstanding, NRR plans to develop a more formal mechanism for resolving technical issues and publically disclosing differing views regarding these issues that might arise in the environmental review process. Using NRR Office Letter No. 11 as a guide, each laboratory and/or contractor assisting in the conduct of the NRC environmental review will be required to develop procedures for resolving and disclosing differences on technical issues, such procedures will describe (1) the role of laboratory management; (2) the role of NRR management; (3) the interface between NRR and laboratory management; (4) procedures for documenting resolution of issues; and (5) procedures for public disclosure of differing views, if any.

Planned Action for Recommendation No. 2

Although the hearing process provides an opportunity for public participation in NRC decision-making, there is little practical opportunity for interested members of the public to become aware of the staff's role during the early review stages. A recently completed NRC Study Group Report - NUREG 0292 (Enclosure 4) has recommended that public participation during the staff review be increased. The Study Group recommended that NRR adopt the policy that some staff meetings with applicants, both prior to and after the docketing of an application, be held in the vicinity of the proposed site, with appropriate provision made for citizens to listen, observe and state their concerns (See Recommendation 6 of NUREG-0292). The ultimate goal is to provide increased opportunity for the public to participate in the NRC licensing process.

The Commission has directed the staff to develop implementation plans for each of the Study Group's recommendations and this activity is currently under way. The implementation plan for Recommendation No. 6 would result in increased opportunities for public participation early in the staff review to be realized in early 1978.

- GAO notes:
1. Enclosures 2, 3, and 4 have been deleted for brevity.
  2. Office of Nuclear Reactor Regulation