Schlesinger's Licensing Bill: From Bad to Worse

Although the press has reported favorably on James Schlesinger's Nuclear Licensing and Siting Bill of 1978, a study of the provisions of the bill reveals features which, if the bill becomes law, will further sabotage existing nuclear development and undermine efforts to develop cheap nuclear energy.

Nevertheless, well-meaning industrialists who favor nuclear energy development have recently been heard muttering that perhaps the Schlesinger bill is just about the best that industry can hope for; that it is far better than earlier drafts of the proposed bill. The press has presented the bill in an even more favorable light. The *New York Times,* for example claims the bill will substantially reduce the amount of time required from the conception and siting of a particular nuclear plant to its licensed operation. This process now takes up to 12 years — Schlesinger claims his proposals will reduce the total time to six years.

Energy Secretary Schlesinger is counting on this piece of political bait to divert attention from his previously announced commitment to energy cutbacks and de-industrialization.

Examination of the bill reveals that Schlesinger's pose as the "pronuclear" voice in the Administration is merely an excellent illustration of the Secretary's self-professed political method of "calculated cheating."

In fact, Schlesinger proposes to write into law every major case and law precedent environmentalists have won or tried to win through the courts. The National Environmental Policy Act (NEPA) does not specify at all the manner in which environmental concerns must be considered in the construction and operation of a nuclear plant. NEPA merely states that environmental concerns must be considered. It is lower court precedent, based on environmentalist interventions into the Atomic Energy Commission and Nuclear Regulatory Commission licensing procedures, which has established the NEPA as the environmentalist gauntlet for nuclear reactors.

That lower court case precedent was presented to the Supreme Court for review in the *Consumers Power* and *Vermont Yankee* cases, which were decided last week. In those decisions, merely a partial review of procedure under NEPA, the Supreme Court threw out five years of lower court-ordered obstructionist procedures, citing the existing intention of Congress to develop nuclear power.

The Schlesinger bill now aims to have Congress place its seal of approval on exactly the same obstructionist procedures.

The bill is intended to "improve the nuclear siting and licensing process, and for other purposes." The bill does contain certain lures designed to lure the unwary and placate companies already desperately stalled in building procedures. It would permit the licensing of a standardized reactor design. It would permit the utilities to select potential nuclear plant sites up to 20 years before construction and win preliminary approval for their use. However, these licensing procedures, which are supposed to facilitate rapid plant construction, are predicated on environmental evaluation procedures which will make licensing actually impossible. That is apparently the "other purpose" of the bill.

The key environmentalist concepts which "pro-nuclear" Energy Secretary Schlesinger would have Congress enact into law are these:

Subsidizing Environmentalists' Courtroom Antics:

A five-year "experimental" program to pay the costs of intervenors in nuclear licensing and rule-making procedures. Environmentalists, with the sponsorship of Senator Edward Kennedy, have tried twice to have Congress pass such a law. Congress to date has refused to create a subsidized "right" for individuals to obstruct the development of the energy resources vitally needed to maintain the standard of living of the entire population.

Pot-Luck Planning:

A statutory "right" to "full and open public participation in planning, siting, and licensing of nuclear power reactors." The current standard, which has permitted practically unlimited environmentalist intervention in nuclear licensing matters, extends far beyond that prescribed for almost any other federal agency. It was established in the *Calvert Cliffs* case in 1971 by the D.C. Circuit Court of Appeals. Then-Atomic Energy Commission chairman Schlesinger refused to appeal the D.C. Circuit decision, despite its clear and devastating impact on the nuclear licensing process. The Supreme Court has yet to review its application. The Schlesinger bill will make certain they never do.

Environmentalists have attempted to win full standing for conservation as an alternative to energy production in the *Consumers Power* case. The Supreme Court ruled that the idea of conservation was vague, undefined, and could not even be considered as an alternative unless extremely specifically defined.

Nuclear Equals No Nuclear:

Decisions on the need for energy facilities are based on consideration of "alternative sources of energy" including conservation, solar power, coal, and nuclear power, as well as "other economically feasible technologies." The Schlesinger bill would declare as policy that "conservation," i.e., austerity, and solar

power, a labor-intensive and retrogressive technology, have equal standing with nuclear power — thereby overriding the policy statement of the Atomic Energy Act.

Eliminating Problem-Solving:

Adequate protection" of public health and safety is the "paramount consideration." With this stated purpose, Schlesinger introduces through the back door the persistent efforts to halt nuclear power plant construction until the *final* solution of waste disposal and other long-term technical questions. This tactic has been used in California to prevent the construction of *any* nuclear plants.

Environmentalists claim that the weight of a statistically infinitesimal risk of nuclear accidents is greater than that of the general welfare of the population which would be served by energy production.

No "Need" For Energy:

The bill substitutes an evaluation of "need" for energy production as opposed to the current "demand" criterion. The "need" criterion, first proposed by environmentalist planner Barry Commoner, envisions the evaluation of how the energy produced by a particular plant would be used. Does the state of Michigan "need" to produce electrical power to supply Dow Chemical which manufactures chlorinated hydrocarbons? Environmentalists attempted to establish the "need" criterion in the *Consumers Power* case. The court refused to consider their argument.

States' Rights Uber Alles:

Finally, the bill would make impossible the development of any national nuclear power production program by creating a "right" for every state, region, or subdivision to determine for itself the need for a nuclear power generating plant and make the definitive environmental evaluation of any proposed plant.

Under these provisions, any city, town or other administrative unit could qualify to make energy planning decisions which affect the entire nation. Once such a decision is made, according to the proposed bill, its substance would be unappealable. The court system would still have the right to procedural review.

A glance at the obstacles California Governor Jerry Brown has placed in the way of nuclear power development in that state, through his *now* unconstitutional usurpation of the regulatory perogatives of the Nuclear Regulatory Commission, should provide an excellent model for how Schlesinger's proposals would look in action. Nuclear plants would simply not be built in entire areas of the nation. No national energy development planning could take place.

The Nuclear Licensing and Siting Bill is now before the House Interior Committee's Subcommittee on Energy and the Environment, chaired by Rep. Morris Udall. Hearings will begin shortly.

McCormack Clinches Committee Breeder Victory

On April 12, the House Science and Technology Committee killed the James Schlesinger and Rep. Walter Flowers compromise amendment on the Clinch River project and instead voted 27 to 12 to send to the House floor the alternate amendment proposed by Oak Ridge Congresswoman Marilyn Lloyd.

The Lloyd amendment provides $172.5 million for construction and $35 million for a 30-month study of alternate breeder technologies.

Energy Secretary Schlesinger had proposed a compromise in late March that promised the 30-month study of substitute breeder programs in exchange for allowing the Carter Administration to divert the $80 million approved for the Clinch River breeder reactor into a two-year study which would phase out the project.

Despite intensive lobbying by Schlesinger and the threat of a presidential veto, committee members held firm. As one probreeder congressman put it, "We have a responsibility as representatives to do what this country needs and and cannot be deterred by the threat of a veto."

Leading the fight for the Lloyd amendment was Rep. Mike McCormack, a former nuclear physicist at the Hanford, Wash. research labs. who told a *Fusion Magazine* Washington D.C. correspondent on the day of the vote:

> The action by the Science Committee today in continuing the Clinch River Breeder program is a major victory for the American people. The breeder program is absolutely essential to providing adequate supplies of energy to this nation. Without the breeder program, this country would face economic catastrophe before the end of the century, perhaps before 1990. Today's vote tells the world that Congress intends to reduce American dependence on imported oil and to produce the cleanest, cheapest, safest, and most environmentally acceptable source of energy available to this country.