Proposed Changes in the Nuclear Power Plant Licensing Process: the Choice of Putting a Finger in the Dike or Building a New Dike

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PROPOSED CHANGES IN THE NUCLEAR POWER PLANT LICENSING PROCESS: THE CHOICE OF PUTTING A FINGER IN THE DIKE OR BUILDING A NEW DIKE

HOWARD K. SHAPAR* AND MARTIN G. MALSCH**

The Atomic Energy Act of 1954¹ was enacted at a time when the nuclear power industry was in its relative infancy, when nuclear power plants generally were not competitive with fossil fuel power plants, when the almost exclusive focus of the licensing process was upon ensuring radiological health and safety, and when the public controversy surrounding the safety of nuclear power plants was relatively subdued. In recent years, however, the nuclear licensing process has been the subject of intensive and repetitive scrutiny by Congress, the Atomic Energy Commission, and various private interest and citizens groups. Although there are reasonable differences of opinion concerning the legislative changes necessary to improve the present licensing system, it is manifest that present circumstances differ significantly from those obtaining when the 1954 statute was enacted.

Of paramount importance in evaluating proposed legislative changes are the nation's present and future energy requirements. Observing that nuclear power represents an indispensable source of energy for meeting current needs, the President has emphasized the "need to streamline our governmental procedures for licensing and inspections, reduce overlapping jurisdictions and eliminate confusion generated by the government."² Related to the implementation of this policy, the President has proposed that the AEC's licensing and regulatory functions be vested in an independent administrative agency to be called the Nuclear Energy Commission and that the responsibility for planning, managing, and conducting the government's energy research and development programs be transferred to a new Energy Research and Development Administra-

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tion. In addition, in his November 8, 1973, and January 23, 1974, messages on energy, the President directed that the AEC, without compromising safety and environmental standards, take immediate steps to expedite the licensing and construction of nuclear plants by reducing the time required to bring nuclear plants on-line from the present nine to ten years to five or six years.

The President's increasing concern with nuclear energy matters is a reflection of the nation's growing dependence upon nuclear fission as a source of electrical energy. This has led to widespread discussion of the AEC nuclear reactor licensing process and the factors causing delay in the construction of new nuclear power plants. When the problem areas are isolated, it is apparent that the AEC can make some short term improvements in the present system primarily through exercise of its rulemaking power but that more fundamental long range reforms cannot be effected without amendment of the Atomic Energy Act.

CHANGES WITHIN THE PRESENT STATUTORY FRAMEWORK

One of the most important of the administrative measures which have been taken to improve the licensing process is development by the Commission of a standardization policy. First enunciated in definite terms on March 5, 1973, the goal of the policy is to standardize the designs of nuclear power plants and their components to facilitate the selection of plant designs by utilities, enhance the safety and operating reliability of


5. In February 1974 there were 41 nuclear power plants in operation, producing about 25 thousand megawatts of electrical power and providing about 5 percent of the nation's electricity. Moreover, 55 nuclear power plants were under construction, 55 were in various stages of the Commission's construction permit review process, and another 65 had been ordered or announced by utilities but had not yet become the subject of a construction permit application. Those reactors under construction, in the construction permit review process, ordered, or announced represented a total of almost 180 thousand megawatts of electric power. It has been estimated that nuclear power will provide about 20 percent of the nation's energy by 1980 and about 60 percent by the end of the century. Testimony by AEC Commissioner William O. Doub before the Subcomm. on Reorganization, Research, and Int'l Organizations of the Senate Comm. on Gov't Operations, Mar. 13, 1974; Testimony of L. Manning Munzing, AEC Director of Regulation, before the Joint Comm. on Atomic Energy, Feb. 28, 1974.

nuclear plants, and permit the concentration of safety-related research and development efforts.

The Commission has announced the availability of three options for the processing of standardized designs. The first involves a reference system concept, under which the AEC's regulatory staff would identify as "standard" the design of an entire facility or major components thereof. After a design is approved, it could be referenced in a subsequent construction permit application and generally would not have to be reviewed again by the regulatory staff. Under the second option, duplicate plants to be constructed within a limited period of time would be proposed by a utility or a group of utilities, and the regulatory staff would review the safety-related features of all the plants simultaneously. The final option involves the manufacture of a number of nuclear power plants of identical design at a location different from the site of intended operation.7

The standardization policy is an example of the Commission's efforts to resolve generic issues at an early stage in the licensing process and to minimize the reconsideration at subsequent hearings of issues which previously have been evaluated thoroughly. A more traditional method for an agency to resolve generic issues is through its rulemaking authority. The Court of Appeals for the District of Columbia Circuit recently observed that the power to promulgate rules provides an administrative agency with "an invaluable resource-saving flexibility in carrying out its task of regulating parties subject to its statutory mandate" and that "[i]ncreasingly, courts are recognizing that use of rulemaking to make innovations in agency policy may actually be fairer . . . than total reliance on case-by-case adjudication." 8


Under the new regulations, the Commission would issue a manufacturing license after a review by the AEC regulatory staff and the Advisory Committee on Reactor Safeguards (ACRS) (see note 29 infra & accompanying text) and a mandatory formal hearing. A construction permit would be required before site preparation and transport and installation of the reactor, and an operating license would be required before the power plant could become operative. Generally, matters resolved at any stage of the licensing process will not have to be reconsidered in subsequent stages unless there is new information substantially affecting the conclusions reached at an earlier stage.

A number of rulemaking proceedings have been initiated by the Commission to resolve generic environmental or safety issues. For example, the AEC has held hearings to determine performance criteria for emergency core cooling systems (ECCS), to establish numerical guidance for determining when routine discharges of low-level radioactive materials from light-water nuclear power reactors meet the "as-low-as-practicable" regulatory requirement, to determine the contribution of individual nuclear power reactors to the environmental effects of the nuclear uranium fuel cycle, and to evaluate the environmental effects of transporting radioactive materials.

The Commission has implemented or proposed several other measures designed to improve the licensing process. In February 1973, the AEC announced that it was considering the development of general environmental siting criteria for nuclear power plants, and in November 1973 the Commission invited comments on possible policies and procedures.

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10. Although each of these proceedings involved some form of public hearing, it should be noted that there is no statutory requirement that the AEC hold hearings of any kind in connection with its rulemaking. Siegel v. AEC, 400 F.2d 778 (D.C. Cir. 1968).

11. AEC Docket No. RM-50-1. This proceeding was held to determine whether the ECCS criteria published June 29, 1971 (36 Fed. Reg. 12247) and amended December 18, 1971 (36 Fed. Reg. 24082) should be retained or modified. The ECCS, a subject of intense controversy in individual licensing cases, is a back-up safety system designed to cool the reactor core in the event of a sudden loss of normal reactor primary system coolant.

It is interesting to note that the ECCS hearings lasted 125 days and generated a record of more than 22 thousand pages of transcript, together with thousands of pages of written testimony and exhibits.

12. AEC Docket No. RM-50-2. The subject of the hearings was proposed 10 C.F.R. Part 50, Appendix I. The Commission's present regulations generally require that all licensees, in addition to maintaining routine low-level discharges of radioactive materials into the environment below the limits specified in 10 C.F.R. Part 20, make every reasonable effort to keep such discharges as far below these limits as practicable. 10 C.F.R. § 20.1(c) (1973)


15. Id. 3106 (Feb. 1, 1973).

for the disclosure of proprietary information exempt from automatic disclosure under the Freedom of Information Act.\textsuperscript{17}

Most recently, the AEC in April 1974 published regulations which would permit site excavation and preparation and certain other on-site activities prior to the issuance of a construction permit.\textsuperscript{18} The Commission's regulations in general prohibit commencement of construction of a nuclear power reactor until a construction permit has been issued.\textsuperscript{19} "Commencement of construction" is defined generally to include any clearing of land, excavation, or other substantial construction activity which would adversely affect the natural condition of a proposed site.\textsuperscript{20} The AEC, however, retains the authority to grant exemptions from these requirements on a case-by-case basis to permit some on-site activities prior to the issuance of a construction permit. The granting of an exemption requires determination by the Commission that such action is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest.\textsuperscript{21} It has been the Commission's policy to grant exemptions sparingly and only in cases of undue hardship.\textsuperscript{22} Under the new regulations, the AEC Director of Regulation may, apart from the exemption procedure, authorize certain defined and limited prepermit activity. Such activity could commence, however, only after completion of an expedited staff review of considerations under the National Environmental Policy Act of 1969,\textsuperscript{23} together with a public hearing on the staff's NEPA findings pursuant to Commission regulations.\textsuperscript{24} An evaluation and public hearing regarding general site suitability from the safety standpoint would also be required.

**Proposed Amendments to the Atomic Energy Act of 1954**

Of the measures which may be implemented by the Commission within its present statutory authority, the proposed regulation permitting on-site work to proceed in certain circumstances prior to the issuance of a construction permit would have the most immediate impact on the

\textsuperscript{17} 5 U.S.C. § 552 (1970).
\textsuperscript{18} 39 Fed. Reg. 14506 (April 24, 1974).
\textsuperscript{19} 10 C.F.R. § 50.10(c) (1973).
\textsuperscript{20} Id.
\textsuperscript{21} Id. § 50.12(a).
\textsuperscript{24} 10 C.F.R. Part 50, Appendix D (1973).
licensing process. Nevertheless, this new procedure, even with its expedited NEPA review, would shorten the licensing period under the most favorable circumstances by only eight to fourteen months. Clearly, if the President’s stated goal of reducing the ten-year period presently required to bring a nuclear power plant on-line to six years or less is to be met, more basic reforms will be required. Recognizing this need, the Commission on March 8, 1974, forwarded to the Congress draft legislation which, if enacted, would restructure the nuclear facility licensing process.

Under the Atomic Energy Act of 1954 in its present form a utility must obtain a permit to construct a nuclear power plant and an operating license before the plant may become operative. At the construction permit stage the AEC review focuses upon the adequacy of a facility’s preliminary design and the suitability of the proposed site. Before a permit is issued for the construction of a facility to be used for industrial or commercial purposes, such as a nuclear power plant or a testing facility, a formal “on the record” hearing must be held by the Commission. Moreover, the Advisory Committee on Reactor Safeguards (ACRS), a statutory committee of independent experts on nuclear facility safety, must review each application for a construction permit for such a facility and submit to the Commission a public report of its recommendations. At the operating license stage, in which the focus is upon the final design of the facility, a formal “on the record” public hearing is required only if requested by a person whose interest may be affected. In addition, the ACRS must review each application for an operating license for such a facility and report its recommendations to the Commission.

26. Id. § 2131.
29. 42 U.S.C. § 2232(b) (1970). The provision establishing the ACRS provides, in pertinent part: “The [ACRS] shall review safety studies and facility license applications referred to it and shall make reports thereon, shall advise the Commission with regard to the hazards of proposed or existing reactor facilities and the adequacy of proposed reactor safety standards, and shall perform such other duties as the Commission may request.” Id. § 2039.
30. Id. §§ 2231, 2239(a).
31. Id. § 2232(b). Any final decision by the Commission concerning the granting or denial of a construction permit or operating license is subject to judicial review. Id. § 2239(b).
The AEC’s proposed amendments to the Atomic Energy Act have four basic objectives: to obtain earlier decisions on facility siting; to diminish the possibility that operating license decisions may become delaying factors; to encourage the use of generic designs by structuring the licensing process to place the primary responsibility for the development and presentation of such designs on vendors and architects rather than the utility companies; and to enhance the flexibility of the AEC’s procedures by offering three different approaches to facility licensing. Although two of these licensing approaches are based in large part upon the present system, the third would separate the site review and decisionmaking process from that for plant design and would emphasize the use of standardized designs. Instead of mandating a single licensing procedure, the AEC’s proposals would permit an applicant to select any of the three approaches; indeed, as will be discussed subsequently, it would be possible to pursue two of the procedures concurrently.

Proposed Statutory Reforms of General Effect

Although the three licensing procedures proposed by the AEC differ significantly, several changes in the present system would apply to all. First, section 189(a) of the Act would be amended to eliminate the requirement for a mandatory public hearing prior to the issuance of a construction permit. Public hearings would still be available but would be held only if requested by a person whose interest may be affected by the proposed agency action. In addition, at least 30 days prior to the approval of any application for a manufacturing license, construction permit, or operating license for an industrial or commercial facility, an application for a construction permit or operating license for a testing facility, or an amendment to such a license or permit, the Commission would be required to publish a notice in the Federal Register that it is considering approval. Similar to the existing provision in section 189(a), the Commission could dispense with the 30-day notice and publication requirements if it determines that an application for an amendment to a license for the manufacture of one or more nuclear facilities. Id. §§ 2131, 2133, 2134. Thus, in some situations the first step in the licensing process may be the issuance of a license to manufacture, followed by issuance of a construction permit and operating license authorizing installation and operation of the facility on-site. Although the Commission has established procedures for the issuance of manufacturing licenses (see note 7 supra & accompanying text), none have yet been issued.

construction permit or operating or manufacturing license involves no significant hazards consideration; in addition, as now, a hearing in such a case, if requested, could be held after the amendment is granted.

At the time the present provisions requiring mandatory hearings were added to the Atomic Energy Act, it was the belief of Congress that such hearings, even in the absence of any controversy concerning a particular application, were beneficial as a means of informing the public of aspects of the relatively new nuclear technology. Today, with the increased use of nuclear power as a source of generating electricity, there are significantly fewer uncertainties concerning the safe commercial use of nuclear energy. Moreover, as a practical matter, public hearings have become forums for the resolution of disputed licensing issues, rather than vehicles for the dissemination of public information. Thus, underlying the Commission's proposed amendment to section 189(a) is the belief that a public hearing, unless requested by an interested person, serves no significantly useful purpose and can result in the expenditure of technical resources which could be devoted to other regulatory matters.

A second common feature of the three proposed licensing procedures involves amendment to section 182(b) of the Act to remove the present requirement for mandatory review by the ACRS of certain applications for construction permits and operating licenses, providing instead for review only when requested by the Commission. Although a mandatory ACRS review may have been necessary when nuclear power represented a new technology and reactor designs differed significantly, these considerations have diminished in strength, especially as nuclear reactors become increasingly standardized. Relaxation of the mandatory review provisions would have the salutary effect of permitting the ACRS to devote its attention to standardized designs and to more novel and difficult questions involving the safety of proposed nuclear facilities. It would also facilitate more efficient processing by the ACRS of the growing volume of nuclear license and permit applications by giving it the flexibility to review particular features of power plant designs, rather than all technical aspects of each application. Moreover, a provision for ACRS review only when requested by the Commission would be consistent with the status of the ACRS as an advisory body.

The AEC has also proposed, as a third common element of the licensing procedures, that section 189(a) be amended to authorize the

33. Id. § 2232(b).
Commission to issue an interim operating license or an interim amendment to a manufacturing license, construction permit, or operating license for a nuclear power reactor or, in cases where a combined permit and license has been issued, to allow the interim operation of a nuclear reactor before a hearing. The Commission would be empowered to grant such interim licenses or amendments upon determination that such action is necessary in the public interest because of the need for power in the affected area. Apart from affording the AEC the power to grant interim authorizations, the proposed amendment to section 189(a) would not allow an applicant to bypass the other licensing requirements imposed by the Act. For example, a hearing would still be required if requested by an interested person. The amendment would provide, however, that the hearing could be held after the interim license, permit, or amendment is granted.

In providing the Commission with "standby" authority, the proposed amendment to section 189(a) should not affect the AEC's general policy of completing the review and hearing procedures by the time a nuclear facility is fully constructed and ready for fuel loading. Nevertheless, the amendment recognizes that there have been and may be instances in the future where fully constructed nuclear power plants stand idle pending completion of the hearing process and that there may be cases in which the public interest requires prompt action prior to the conclusion of all formal procedures.

Under the new section 189(a) an interim license or amendment could be issued and interim operation permitted for a period not to exceed twelve months, unless the Commission for good cause shown extends the period. In granting such authorizations prior to a hearing, the Commission could impose such conditions as it deems necessary to ensure that findings and recommendations growing out of subsequent hearings would be given full force and effect. Thus, issuance of an interim license or amendment or authorization of interim operation would not prejudice the resolution of issues raised in the formal licensing process, since the Commission would have the authority to vacate or modify any license granted after such procedures have been completed.

The final common feature of the three proposed licensing procedures involves deletion from section 185 of the Act of the requirement that construction permits state the earliest and latest date for completion of

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34. See text accompanying notes 36-37 infra.
construction or modification of a facility. Experience has shown that this requirement serves no significantly useful purpose in the nuclear facility licensing process.

Proposed Approaches to Facility Licensing

The first of the AEC's three proposed licensing procedures would consist of the present licensing system with the four general reforms just discussed. Thus, while a two-stage construction permit and operating license process would remain, hearings would be held only if requested by an interested person, there would be no mandatory ACRS review, the construction permit application would not have to specify the earliest and latest completion dates, and, in limited circumstances, an operating license could be issued before any requested public hearing is held.

Implementation of the second approach would require amendment of section 185 of the Act\(^{36}\) to provide for the issuance of a combined construction permit and operating license if the application for such a "combined permit" contains sufficient information to support the issuance of both a construction permit and an operating license under the rules and regulations of the Commission. At least 30 days prior to commencement of operation of any facility for which a combined permit has been granted, the Commission would be required to publish in the Federal Register a notice that the facility is expected to become operational. The notice would also state that, upon request by any person whose interest may be affected by such operation, a hearing will be held to determine whether, as a result of a significant advance or change in technology or a violation of a permit, license, rule, or order of the Commission occurring after the most recent Commission action in the combined permit proceeding, a modification of the facility or some other action is necessary to provide substantial, additional protection to the public health and safety, the common defense and security, or the environment. A hearing would be granted only upon a prima facie showing by the party requesting the hearing that there are sufficient grounds for delaying the Commission's approval of the combined permit. Any final Commission decision after such a hearing, or denial of such a hearing, would be subject to judicial review.

The "prima facie showing" would have to be set forth in the petition for hearing, which should state with particularity the nature of the

36. Id.
alleged advance or change in technology or violation and the nature of the modification or other action the petitioner believes should be taken. Moreover, the petitioner would have to present evidence, by affidavit or other appropriate means, which would be sufficient as a matter of law to establish, unless rebutted, that Commission action is required. The licensee and the AEC staff probably would file answers to a petition, and the Commission, or a designated presiding officer, would rule on the petition after a consideration of all the pleadings and supporting affidavits. If the petition is granted, a formal “on the record” hearing would be held to determine whether the Commission should approve the combined construction permit and operating license. Under the proposed amendments to section 189(a), however, the Commission would be authorized, in limited circumstances, to issue an interim operating license before the hearing is held. 37

The third facility licensing approach proposed by the AEC involves the amendment of section 192, a recent addition to the Act, now expired by its own terms, which authorized the issuance of temporary operating licenses. 38 In effect providing separate review processes for site and facility design evaluations, proposed section 192(a) would authorize the issuance of site permits before an application for a construction permit or combined construction permit and operating license has been filed with the Commission. Persons other than facility license or permit applicants, such as states, would be allowed to file site permit applications. The Commission would, by rule or regulation, prescribe the period or periods of duration for site permits; if the time period expires and the site has not become the subject of an application for a construction permit or combined construction permit and operating license, the site would lose its “approved” status.

Unless otherwise ordered by the Commission, under proposed section 192(b) any applicant for a construction permit or combined construction permit and operating license for a facility to be located on a site approved pursuant to section 192(a) could prepare the approved site for construction and commence such construction activities as the Commission might by rule or regulation determine to be permissible. 39

37. See text accompanying note 34 supra.
38. Section 192 was added to the Act by Pub. L. No. 92-307, 86 Stat. 191 (1972). Only one temporary operating license was ever applied for or issued under the section, which expired under its own terms October 30, 1973.
39. As indicated previously (see notes 18-24 supra & accompanying text), the Commission presently has the authority to permit certain site preparation and other on-site activities prior to the issuance of a construction permit. The AEC has indicated that
Finally, under proposed section 192(c), the Commission would be authorized to issue a construction permit, operating license, or combined permit without a further hearing, except as will be explained, if the facility is to be constructed and operated on an approved site (for which there would have been an earlier opportunity for hearing) and the preliminary design with respect to a construction permit, or the final design with respect to a construction permit, operating license, or combined permit, has been approved in a rulemaking or manufacturing license proceeding in which, if requested by a person whose interest may be affected, a formal "on the record" hearing has been held.

The justification for eliminating the opportunity for a hearing at the construction permit stage when an applicant proposes a design previously approved on a generic basis by the Commission is that under this proposed facility licensing procedure the suitability of a site and a substantial portion of a facility's design will have been thoroughly reviewed, with an opportunity for hearing, in the site permit and manufacturing license or rulemaking proceedings. The same rationale supports the Commission's proposal to eliminate the general opportunity for hearings at the operating license stage, or combined construction permit and operating license stage, in those cases where a facility's final design has been previously approved in a proceeding where an opportunity for a hearing was afforded.

There may, however, be limited circumstances in which a hearing should be held in the final stages of the licensing procedure. Accordingly, section 192 would require the Commission to publish in the Federal Register, at least 30 days prior to the issuance under that sec-

the proposed amendment to section 192(b) was included in its legislative package to establish a statutory licensing framework specifically accommodating such action, thereby providing a measure of predictability to the facility planning and construction process.

40. See note 43 infra & preceding text.

41. The Commission would be authorized to define the preliminary or final design information that must be previously approved in order to eliminate the general opportunity for a hearing at the construction permit and operating license stages. With respect to nuclear power plants, such preliminary or final design information would probably be required for the structures, systems, and components within the boundaries of the reactor containment, auxiliary building, control building, diesel generator building, and radwaste building.

42. The Commission has authority under existing law to approve generic facility designs in rulemaking and manufacturing license proceedings. See notes 6-14 supra & accompanying text. The Commission has indicated that these concepts were incorporated into the proposed legislation in the interest of providing a self-contained and integrated licensing framework.
tion of any operating license or the commencement of operation of any facility for which a combined construction permit and operating license has been issued under that section, a notice that consideration is being given to granting an operating license or that commencement of operation is expected to take place. The notice would state that, if requested by a person whose interest may be affected, a hearing will be held to determine whether, as a result of a significant change or advance in technology or a violation of a permit, license, regulation, or order of the Commission occurring after the most recent Commission action in the licensing process, a modification of the facility or other action is necessary to provide substantial, additional protection to the public health and safety, the common defense and security, or the environment. A hearing would not be granted, however, unless the party requesting it made a prima facie showing that there were sufficient grounds for delaying issuance of the operating license. If a petition for a hearing requested the modification of a final facility design which had been approved in a prior rulemaking or manufacturing license proceeding, the Commission, in its discretion, could either limit the hearing to the particular facility under consideration or hold a hearing to determine whether the prior rule or manufacturing license should be amended.43 Any final Commission decision following such a hearing, or a denial of a hearing, would be subject to judicial review.

**Effect on Antitrust Review Procedures**

Section 105 of the present Act requires the Attorney General and the Commission to review most construction permit applications for industrial or commercial facilities for antitrust considerations and provides that, when necessary, the Commission must conduct a hearing on antitrust issues before such a permit is issued.44 If there has been an antitrust

43. The hearing provisions in proposed section 192 closely parallel those in proposed section 185 (see text accompanying notes 36-37 supra), except that section 192 specifically authorizes the consolidation of the hearing on the facility with the hearing on whether the prior rule or manufacturing license should be amended. Such a procedure is consistent with the generic character of the underlying approved design. As with proposed section 185, section 192 would provide that once the requisite prima facie showing has been made, the hearing on the facility, as well as any consolidated hearing, would be “on the record.” The Commission would also have the authority to institute separate proceedings to amend any prior rule or manufacturing license. Moreover, under proposed section 189 the Commission would be authorized in appropriate circumstances to issue an interim operating license before any hearings are held. See text accompanying note 34 supra.

review and hearing at the construction permit stage, these procedures do not have to be repeated with respect to operating license applications, unless the Commission determines that, because of significant changes in the applicant's activities or proposed activities, further antitrust review is advisable.\(^4\)

Although the AEC's proposed legislation would affect the point in the utility planning and construction process at which it would be necessary to obtain a construction permit, since certain site preparation and construction activities could be commenced before issuance of a permit,\(^5\) the existing requirement for an antitrust review and hearing prior to the issuance of a construction permit would not be affected. Proposed section 192(c) expressly provides that the elimination of the general opportunity for hearing at the construction permit or operating license stages does not affect any requirement for an antitrust review and hearing prior to the issuance of a construction permit or operating license. The existing antitrust provisions would, however, be affected by the proposed amendment to section 189(a) authorizing the issuance of interim operating licenses.\(^6\) Finally, where an applicant pursues the AEC's second proposed licensing approach, the antitrust review and, if necessary, hearing would take place prior to issuance of the combined construction permit and operating license.\(^7\)

**Effect on the Commission's NEPA Procedures**

The Commission's substantive regulatory jurisdiction under the present Act is limited essentially to matters involving radiological health and safety, common defense and security, and special antitrust problems found in the nuclear industry.\(^8\) The Commission, however, is directed by NEPA to consider a broad range of environmental issues in reaching decisions regarding the issuance of construction permits and operating licenses.\(^9\)

Although the Commission has proposed significant changes to the present facility licensing process, it has not suggested any revision of

\(^{45}\) Id. § 2135 (c) (2).
\(^{46}\) See note 39 supra & accompanying text.
\(^{47}\) See text accompanying note 34 supra.
\(^{48}\) See text accompanying notes 36-37 supra.
\(^{50}\) See, e.g., Calvert Cliffs' Coordinating Comm. v. AEC, 449 F.2d 1109 (D.C. Cir. 1971).
NEPA provisions affecting that process. In explaining its legislative proposals, the Commission has indicated that environmental impact statements required by section 102(2)(C) of NEPA would be prepared in connection with issuance of any site permit for a nuclear power plant pursuant to proposed section 192. Because the Commission may be asked to approve a site before the selection of the particular design of the facility to be placed on that site, the impact statement in some cases would have to be prepared on the basis of an "envelope" of environmental parameters associated with typical nuclear power plants. It is also expected that a detailed impact statement would be prepared prior to the generic approval of a nuclear power plant design in a rule-making or manufacturing license proceeding authorized by proposed section 192(c).

Advantages of the Proposed Licensing Approaches

Several benefits should be realized from the four basic statutory amendments which serve as a basis for the Commission's first proposed licensing procedure. Abolition of the mandatory hearing and ACRS review requirements should streamline the licensing process and conserve technical manpower resources. Elimination of the requirement that construction permits state the earliest and latest possible completion dates would remove an unnecessary aspect of the licensing process. Finally, and most importantly, the suggested amendment authorizing the issuance of interim operating licenses without a prior hearing would permit the Commission to take action when the public interest demands that a fully constructed nuclear power plant should begin generating electricity before completion of all normal licensing procedures.

The AEC's second proposed licensing approach consolidating construction permit and operating license procedures would avoid a redundant operating license review and opportunity for hearing where these measures had been taken with respect to the final design of the facility at the construction permit stage. There would, however, remain an opportunity for public participation on certain important questions not previously presented or decided. Provision for a combined construction permit and operating license would also encourage standardi-

52. It is expected that the NEPA review at the site permit stage may result in some environmental restrictions regarding the use of the site at the construction permit stage.
53. See text accompanying notes 36-37 supra.
zation of nuclear power plants, with the resulting benefits discussed previously.\textsuperscript{54}

The Commission's third proposed procedure is the most significant in terms of dealing with deficiencies in the present nuclear facility licensing process. First, by providing for an early decision and opportunity for hearing on the acceptability of a proposed site, the procedure attempts to focus public participation upon a crucial aspect of the overall facility planning and construction process at an early stage, when it can be most effective. Second, the procedure would significantly reduce delays due to the construction permit process by allowing an applicant to commence certain site preparation and construction activities prior to the issuance of a construction permit. Third, the use of generic rule-making and manufacturing license proceedings should encourage the standardization of facility designs. Finally, since the applicant in the rulemaking or manufacturing license proceedings will most likely be the facility component vendor or architect-engineer, the proposed procedure should enhance the efficiency of the safety review process by enabling the Commission to deal closely with those directly responsible for the development of facility designs.

Another important advantage of the Commission's proposed legislation is that the second and third facility licensing procedures could be pursued concurrently. Thus, it would be possible to apply for a combined construction permit and operating license for a facility with an approved final design to be located on an approved site. Under these circumstances, there would be no hearing at the construction permit stage, and the applicant could commence site preparation and construction activities while the Commission reviews the construction permit application. There would, however, be a carefully defined opportunity for hearing prior to operation.\textsuperscript{55}

\textbf{Conclusion}

The AEC has responded to the nation's objective of developing new energy sources by taking administrative measures and proposing new legislation designed to improve and expedite the present nuclear facility licensing and regulatory process. It has been estimated that full im-

\textsuperscript{54} See text accompanying note 6 supra.

\textsuperscript{55} See text accompanying notes 36-37 supra and note 43 supra & preceding text. Where necessary in the public interest by virtue of the need for power, however, interim operation could be authorized prior to any hearing. See text accompanying note 34 supra.
plementation of the standardization and early site permit concepts could reduce the overall time required to bring a nuclear power plant on-line from the present ten years to six years or less. Moreover, this would be accomplished without compromising the thoroughness of safety, environmental, or antitrust reviews and without sacrificing public participation in the licensing process.

Other interesting and thoughtful legislation has been introduced to reform the nuclear facility licensing process, including a bill\textsuperscript{56} introduced by Congressman Price, Chairman of the Joint Committee on Atomic Energy, and co-sponsored by Congressmen Holifield and Hosmer, the former Chairman of the Committee and the ranking House minority member, respectively. Another bill\textsuperscript{57} has been introduced by Congressmen McCormack, with Congressmen Price, Holifield, and Hosmer as co-sponsors. Hearings before the Joint Committee on Atomic Energy on the various legislative proposals commenced March 19, 1974. These hearings, as well as discussions and debates regarding reforms among those involved with or concerned about the nuclear energy regulatory program, promise to be among the most important since the enactment of the Atomic Energy Act of 1954. The scene changes at this point to the crucible of the legislative process.

\textsuperscript{57} H.R. 12823, 93d Cong., 2d Sess. (1974).