



EYE ON ENERGY

A Monthly Newsletter from the Public Citizen Energy Team

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Court Allows NRC to Hold Informal Public Hearings in Reactor Licensing Proceedings

The NRC can hold informal public hearings during reactor licensing proceedings, but parties can file case-by-case challenges where such procedures fall short of ensuring a fair hearing, the 1st Circuit U.S. Court of Appeals in Boston has ruled in a case filed by Public Citizen and the Nuclear Information and Resource Service (NIRS).

Until the NRC modified its 10 C.F.R. Part 2 regulations last year, the public had the right to full, on-the-record hearings in all reactor licensing proceedings. Public Citizen and NIRS challenged these new "Part 2" regulations, charging that they violate the Atomic Energy Act by eliminating the right to these formal hearings in most agency adjudicatory proceedings.

"The court does not say that the NRC can scuttle the process required by federal law," said Wenonah Hauter, director of Public Citizen's energy program. "In fact, the decision makes it clear that NRC must permit the necessary procedures, including cross-examination, for a fair hearing decision."

Other petitioners in this case included Citizens Awareness Network and the National Whistleblower Center. Attorneys

general from Massachusetts, New York, California, New Hampshire, Wisconsin and Connecticut filed an amicus brief in support of the petitioners.

The Power of PUHCA

The Power Trusts are Coming! Huge electric utility holding company, Exelon, (now in Pennsylvania and Illinois) has announced it will take over Public Service Gas & Electric of New Jersey. Wall Street deal makers are licking their chops, predicting that the utility holding company mergers will come fast and furiously if the SEC allows this one to take place under PUHCA, which it almost certainly will do, given the SEC's recent "flexible" approach to interpreting the statute (that is, bending it like a pretzel).

NRC Restricts Public's Access to Info in License Proceeding

Despite objections from Public Citizen and NIRS, a licensing board of the NRC has ordered that the case regarding the license application of Louisiana Energy Services (LES)—a multinational company seeking a permit to build a uranium enrichment plant in New Mexico—shall proceed under the terms of a "protective order" that will have the effect of restricting the public's access to information and documents relevant to the case.

The Atomic Safety and Licensing Board (ASLB) governing the case—in which Public Citizen and NIRS are acting jointly as an intervening party—ruled on Dec. 21 to approve the NRC staff's proposed protective order, an arrangement that sets strict guidelines on access to the hearing file of the case and may limit the public's knowledge of the proceedings. Public Citizen and NIRS have protested the order, charging that it is in violation of NRC rules and regulations that require an open hearing.

The ASLB's order is purportedly a remedy to a situation that has made it impossible for parties in this case to meaningfully participate: On Oct. 25, the NRC unilaterally blocked public access to virtually all of the electronic documents posted on its Web site pending a security review. Under the terms of the protective order, documents that may contain "sensitive information" are restricted until edited versions are available; this may have the further effect of making important elements of the case secret.

Information that has already been questionably restricted from public access includes an evaluation of accidents that could occur at the LES plant that was eliminated from the NRC's environmental review of the facility.

Moreover, it is not clear whether the protective order means that the

initial licensing hearing scheduled in February can be open to the public. Public Citizen and NIRS have asked the Board to clarify the order, so that the public can attend.

In other LES news, Public Citizen and NIRS have jointly filed comments with the NRC on the draft version of its "Environmental Impact Statement" for the National Enrichment Facility proposed by LES.

<http://www.citizen.org/documents/nefeiscomments.pdf>.

Public Citizen Wins Right to Cross-Examine Witnesses in Merger Hearing

Public Citizen has won the right to cross-examine a utility's witnesses in the upcoming merger hearing of two giant utility holding companies, American Electric Power Company (AEP) and Central and Southwest Corporation (CSW). On Jan. 6, Public Citizen asked the Securities and Exchange Commission (SEC) to overturn a judge's ruling, saying that depriving the consumer group of that right would constitute "secret law," rules that are hidden from the public.

The hearing is based on the AEP/CSW merger that took place in 2000. But in 2002, a Court of Appeals decision sent back the SEC's approval for further explanation as to how it complied with the provisions of the Public Utility Holding Company Act (PUHCA), which the SEC enforces. PUHCA was designed to geographically limit the spread of utility holding companies in order to promote effective state utility regulation and prevent the widespread abuses by holding companies that were rampant prior to enactment of PUHCA.

QUICK QUOTE:



"There are some things that maybe Republicans will have to take a second look at."

~ Sen. Pete Domenici (R-N.M.)

On Jan. 10, discussing the energy bill, where he promised Democrats a discussion on proposed requirements for utilities to produce a certain amount of power from clean sources and requiring fuel economy standards for vehicles.

New Energy Secretary Nominated

On Dec. 12, President Bush nominated Sam Bodman to head the Department of Energy. Bodman – a surprise selection – has little experience with energy or nuclear weapons issues, both of which are under the jurisdiction of the Energy Secretary. He is currently a deputy secretary at the Treasury Department and was formerly a deputy secretary with the Commerce Department. Before joining the Bush Administration in 2001, Bodman was the Chairman and CEO of Cabot Corporation, a chemical manufacturing company, for 15 years. Prior to that, he worked at Fidelity Investments for 17 years. His background is in chemical engineering, and he taught at MIT after receiving his doctorate in 1968. Bodman has personally donated more than \$38,000 to Republicans over the past three

election cycles, according to the Center for Responsive Politics. His Senate confirmation hearing is scheduled for Jan. 19.

Senator's Wife Resigns

On Jan. 4, Susan Allen - wife of U.S. Sen. George Allen (R-Va.) - resigned from the Board of Directors of Dominion Resources after Public Citizen questioned whether Sen. Allen could effectively serve on his new appointment to the Energy Committee without raising conflict of interest concerns: Among them, her annual \$55,000 salary paid by the company, combined with the fact that Dominion's Political Action Committee and its executives constitute the third largest source of campaign contributions to Sen. Allen's re-election efforts (\$39,900 since 1999). Public Citizen first complained in April 2003, when Susan Allen was appointed to the board. Just two months after her appointment, Sen. Allen was forced to recuse himself on a vote that would have had profound impacts on Dominion (a proposal to provide federal financing for the construction of new nuclear power plants).

Corporate Corner

\$250,000
What
ExxonMobil
donated to
President Bush's
Inauguration
Day festivities.