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Joseph L. McCarthy

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# WASHINGTON LAW REVIEW

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## SYMPOSIUM—THE LOCATION OF ELECTRICITY-GENERATING FACILITIES

### INTRODUCTION—THE EVOLUTION OF WASHINGTON SITING LEGISLATION

Joseph L. McCarthy\*

Rarely does the opportunity arise to look backwards over almost the full history of a truly great scientific discovery, its application to military and then peacetime uses, and finally the evolution of social procedures designed to encourage the contribution of major benefits to society and yet ensure that possibly harmful side effects are avoided. Nuclear fission was such a discovery.

Early in January of 1939, Germans O. Hahn and F. Strassman reported their discovery that an isotope of barium was produced by neutron bombardment of uranium. During the same month Niels Bohr of Copenhagen was informed by his colleagues O. Frisch and L. Meitner of their guess that the process described by Hahn and Strassman caused the uranium nucleus to split into two approximately equal parts with the release of enormous quantities of energy, a process which soon began to be called nuclear "fission." Bohr came to

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\*Chairman (since 1961), Governor's Advisory Council on Nuclear Energy and Radiation; Dean of the Graduate School and Professor of Chemical Engineering, B.S., 1934, University of Washington; M.S., 1936, University of Idaho; Ph.D., 1938, McGill University.

the United States during the same month and communicated this idea to several scientists including Enrico Fermi, who suggested the possibility of neutron liberation and a chain reaction. Within a few days experimental confirmation of nuclear fission was reported from four university laboratories in the United States. These, and a rapid sequence of further great events which have been very well described by Henry D. Smyth in his book *Atomic Energy for Military Purposes*,<sup>1</sup> led finally to the atom bombs of 1945.

In the state of Washington, ground was broken on April 6, 1943, for the construction of the Hanford Engineer Works. The Hanford plant was to produce plutonium, the component of one type of atom bomb. Smyth reported in the summer of 1945 that "the piles are operating at designed power, producing plutonium, and heating the Columbia River."<sup>2</sup> In a footnote of particular interest today, Smyth added: "The actual rise in temperature is so tiny that no effect on fish life could be expected."<sup>3</sup>

During the years since World War II increasing emphasis has been placed upon development of peacetime uses for atomic energy and, especially, for electric power. The state of Washington, in part because of the enormous Hanford Engineer Work installations, has been particularly concerned with these matters and sometimes has been identified as the "Nuclear Progress State."

The first governmental concern with nuclear energy in the state of Washington came during the 1950's when the legislature established an Advisory Council on Nuclear Energy and Radiation. The then Governor, Albert Rosellini, appointed seven public members representing industry, labor, the healing arts, research and education; *ex officio* members were the Secretary of Social and Health Services, Directors of the State Departments of Labor and Industry, Agriculture, Commerce and Economic Development, and the Chairman of the Interagency Committee for Outdoor Recreation. Appointed chairman was the respected late Dr. Paul Raver, long-time Superintendent of Lighting for the City of Seattle.<sup>4</sup> Soon after the Advisory

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1. H. SMYTH, *ATOMIC ENERGY FOR MILITARY PURPOSES* (1945).

2. *Id.* at 147.

3. *Id.*

4. Present members of the Advisory Council are: Lewis A. Bell, John Biggs, Milo Harris, Guil L. Hollingsworth, William C. Jacobs, Wallace Lane, Willard E. Matheson, Joseph L. McCarthy, Donald Moos, C. Jack Nyman, Robert I. Thieme, Daniel B. Ward, and David Williams.

Council was created two further steps were taken: the Office of Nuclear Energy Development was formed in 1965 within the Department of Commerce and Economic Development, and in 1967 the legislature established its Interim Joint Committee on Nuclear Energy.<sup>5</sup>

The Advisory Council and representatives of the Office of Nuclear Energy Development began discussions in 1963 concerning the probable future needs for electric power in the Pacific Northwest, the possible contributions of nuclear power plants in satisfying these needs, the problems inherent in identifying prudent sites for nuclear power plants, and the role which might be appropriate for the state to play in relation to these matters. At this point, the effort toward state regulation of power facility siting was well underway.

Since there may be interest in other states developing similar legislation, and indeed since the Washington Act may well be simply one step toward fulfilling the need for comprehensive planning of all physical or technological impacts on the environment, it seems appropriate to record an outline of the several steps and the chronology of the developments leading up to the enactment in 1970 of the Washington State Thermal Power Plant Siting Act.

In February of 1968 the Chairman of the Joint Committee and the Chairman of the Advisory Council discussed the siting problem with Governor Evans, who encouraged both groups to proceed as rapidly as possible to identify appropriate arrangements. The following month a letter was sent to Governor Evans from the Advisory Council summarizing its views on how to proceed and suggesting special studies by the state. A preliminary listing of factors and possible criteria to be considered in identifying appropriate sites for nuclear power plants was assembled in June of that year by the Office of Nuclear Energy Development in conjunction with the Advisory Council.

A letter dated September 12, 1968, was sent from the office of Governor Evans over the signatures of both the Chairman of the Advisory Council and the Chairman of the Joint Committee to the directors of some eighteen state departments, recognizing the state's re-

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5. For the periods of 1967 to 1969 and from 1969 to 1971, Representative Robert L. Charette and Representative Sid Morrison, respectively, served as chairmen of the Joint Committee. Vice-chairmen were State Senator Mike McCormack and then State Senator Damon R. Canfield. For the period 1967 to 1969 and then for 1969 to date, Mr. Donald F. Koch and Mr. Lawrence B. Bradley respectively, served simultaneously as Director of the Office of Nuclear Energy Development and Executive Secretary of the Advisory Council.

sponsibility for securing responsible nuclear power plant siting decisions<sup>6</sup> and requesting ideas from the departments as to relevant siting criteria and appropriate regulatory procedures. In January of 1969 the responses of the several directors to the September request were reviewed.

The Advisory Council recommended to Governor Evans on January 24, 1969 that a council, representative of state agencies, should be formed in order properly to evaluate the propriety of any proposed site for a thermal power plant. In the absence of specific legislation it was recommended that the initial evaluation responsibility would rest with the Governor's office and with the heads of those state agencies most concerned with the entire problem. This recommendation was endorsed by the Joint Committee.

A meeting was held on January 30, 1969, in Governor Evans' Conference Room, attended by the Governor, most of the directors of the state departments, and the members of the Joint Committee and the Advisory Council. The Chairman of the Advisory Council served as chairman *pro tempore* for the meeting. The group reviewed and discussed the test of and responses to the Advisory Council's January 24th letter. Toward the end of the meeting a distinguished state senator expressed its sense as follows: "It's a matter of getting on with it. The state has to speak with one voice. Somewhere we have to start laying the foundation."

By executive order on July 24, 1969, Governor Evans created the Thermal Power Plant Site Evaluation Council, consisting of the state directors whose agencies are responsible for the state's resources and environmental conditions. Thereupon the new siting council began its work on development of guidelines and procedures. It soon became apparent, however, that the siting council needed a legislative cloak to function satisfactorily, and in September Governor Evans requested the drafting of a bill which would integrate the interests of the conservation leaders with those of the utilities and with the agency laws already in force.<sup>7</sup>

A combined meeting of the Joint Committee and the Advisory Council and a number of other state officers was held on November

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6. The letter also recognized the statutory responsibility of the United States Atomic Energy Commission for the public safety aspect of nuclear power plant siting.

7. Dr. Richard Slavin, Mr. James Behlke, Mr. Ralph Larson and Mr. Lawrence B. Bradley were asked to draft the necessary legislation.

25, 1969. The proceedings can be summarized by the following quotations from a December 13th letter to Governor Evans from the Chairman of the Advisory Council:

In summary, our prior conclusions, which we again affirm are:

- (a) The people of our State, during the next decade or two, will call for steadily increasing electric power and this in practice can be provided only from nuclear fission power plants;
- (b) Such power plants will discharge large amounts of heat which certainly will alter the environment to some extent;

. . .

Your Advisory Council believes that there continues to be an urgent need to establish a procedure within State government for reaching conclusions decisively and almost irrevocably concerning nuclear power plant sites, and also to establish a procedure within State government whereby a single voice speaks for the State in relation to the Atomic Energy Commission, to the County and City Governments, to individuals, and to a power company or to the power industry itself. More specifically, the general content of the legislative authorization which we now suggest might well be the following:

(a) That, by legislative action, the TPPSC [Thermal Power Plant Site Evaluation Council] be established as an entity advisory to the Governor which may conduct actions such as the following:

- (1) to provide for interchange within State Government of information concerning thermal power plants and closely related matters;
- (2) to review specific proposals concerning thermal power plant planning, siting, designing, constructing and operating, and closely related matters;
- (3) to arrange for the collection of needed information concerning thermal power plant proposals and related matters, and to review such information when received;
- (4) to advise the Governor concerning the criteria for siting and operating thermal power plants and closely related matters;
- (5) to advise the Governor concerning the certification of certain sites and other arrangements seemingly appropriate for approval by the State for thermal power plants;

. . .

(c) That the Governor, or some other person appointed by the Governor and serving at his pleasure, should serve as Chairman of the TPPSC and speak as the single voice for the State in mat-

ters relating to thermal power plant sites, transmission lines and directly related affairs.

. . .

(f) That the now-proposed legislation be drawn *in terms as narrow as possible* so as to provide the necessary authority in TPPSC relative to thermal or nuclear power affairs, and yet to reduce to a minimum acquisition by TPPSC of any unessential auxiliary authority which might lap over into other matters and thus retard passage of the necessary legislation, or thereafter, confuse the later effective operation of the TPPSC.

The combined meeting also recognized the need for preliminary studies showing that a proposed facility would meet state requirements, and suggested that an applicant be required to pay a fee of \$100,000 at the time of filing and \$500,000 upon final authorization to defray the costs of these investigations. These studies, the letter made clear, were to be supervised by the siting council:

Your Advisory Council believes that investigation work needed by the TPPSC as a basis for consideration of a particular site and plan for a plant usually should be commissioned through and results received by the office of the Chairman of the TPPSC, or of the Governor, but ordinarily not through any particular Department of State Government.

Enabling legislation for the Thermal Power Plant Site Evaluation Council was introduced by Executive Request on January 17, 1970, as Engrossed Senate Bill No. 49. The bill was originally drafted specifically in terms of nuclear power plants. While the legislature was considering the matter the opinion developed that it was preferable to broaden its scope to deal with *all* thermal power plants, because some of the environmental effects of coal- or oil-fired power plants would be the same as those arising from nuclear power plants and possibly also because the word "nuclear" might suggest hazard to some persons. Legislative hearings, conferences and discussions proceeded to attract tremendous interest among environmentalists, utility personnel, and agency representatives.

Many members of the legislature and the public were favorably inclined toward further legislative protection of the environment. Some reactions of the environmentalists toward the proposed legislation were: the environment should receive the highest possible protection; representatives of state departments such as Ecology, Fisheries, Nat-

ural Resources and the like should control the siting council; funds should be provided by utilities to pay for extensive investigation of proposed sites by neutral research personnel; exhaustive hearings should be held to make certain that all interested parties have the opportunity to present full information, for which the "one stop" concept is not feasible; and a "counsel for the environment" should be provided to help protect the public interest.

Representatives of the utilities, on the other hand, because of their particular responsibilities to customers and stockholders and their particular awareness of the probable forthcoming power shortage in the Pacific Northwest, were anxious to see improved review and decision-making arrangements established. Thus the "one stop" concept associated with the siting council was supported, especially in view of the experience which some utilities had had in dealing with some ten or twelve separate state agencies. The representatives of public and private power worked in close collaboration, as they had begun to do during the prior session of the legislature.

Finally, representatives of the several state agencies concerned with siting questions viewed the bill with some concern, since its passage would have diminished the independent authority of their respective agencies.

Senate Bill No. 49 passed unanimously in the Senate and by a majority of 93 to 3 in the House, and was signed by the Governor on February 23, 1970.<sup>8</sup>

Looking ahead, no change appears likely in the concepts and trends upon which the Advisory Council's deliberations were based. More electric power is being called for,<sup>9</sup> and the utilities are moving to build quite a number of nuclear power plants at a cost of perhaps one quarter of a billion dollars each.<sup>10</sup> Increased demand per person for

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8. Ch. 45 [1970] Wash. Laws 1st Ex. Sess., now codified as WASH. REV. CODE §§ 80.50. *et seq.*

9. For example, New York state consumers have increased linearly their use of electricity to the extent of 60 percent in the 1960-1970 period, whereas the number of customers increased only 10 percent during the same decade. N. Y. Times, Aug. 12, 1971, at 1, col. 5.

10. As of the first week in August of 1971, "six utilities were about to place orders for 8-11 units, with options for three more; . . . Four more utilities are considering bids, or soon will be, for eight units and options for two more; and as many as 12 more utilities are expected to seek bids within the next several months." NUCLEONICS WEEK, Aug. 12, 1971. "U.S. nuclear power orders may hit a record total this year of 29-30,000 Mw. capacity. And 1972 may be just as good or better." *Id.*

But the construction of new facilities will apparently be slowed considerably by a



electric power, and increases in population, will not easily be slowed down, yet increased emphasis on preservation of the environment is being called for by all of us. Here, then, is the problem which the Thermal Power Plant Site Evaluation Council and all of us in the state of Washington and elsewhere must resolve.

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recent Court of Appeals decision which held that existing Atomic Energy Commission rules governing consideration of environmental issues during hearings on proposed nuclear facilities do not comply with the 1969 National Environmental Policy Act and must be revised. *See Calvert Cliffs' Coordinating Committee, Inc. v. AEC*, 40 U.S.L.W. 2067 (D.C. Cir., July 23, 1971).