



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

Memo No. 2

TO: MEMBERS OF THE SPECIAL COMMITTEE ON NUCLEAR POWER

FROM: David L. Lovell, Senior Analyst

RE: State Laws Limiting the Construction of New Nuclear Power Plants

DATE: November 29, 2006

This Memo responds to a question posed at the end of the November 14, 2006 meeting of the Special Committee on Nuclear Power: what policies exist in other states similar to the Wisconsin “nuclear moratorium”? The Memo first presents the Wisconsin statute and then describes statutes from another 19 states. Statutory citations for the laws are listed in the last section of the Memo.

The Memo is based on similar analyses by other authors, in addition to further original research. However, it is not an exhaustive survey of the 50 states. While it most likely represents the range of state policies, there may be other examples, or even other types of policies not reported here. It does not report requirements regarding nuclear power plant decommissioning except where such requirements are presented as preconditions for construction approval and it does not analyze statements of legislative findings or intent. Also, it does not analyze any differences that might exist in the way that the laws it describes apply to utility-owned facilities and merchant plants, or different effects certain types of policies may have in states with restructured versus non-restructured utility regulation. Finally, it does not report state policies that encourage the construction of new nuclear power plants.*

WISCONSIN’S STATUTE

Under Wisconsin’s “nuclear moratorium” statute, the Public Service Commission (PSC) may not authorize the construction of a nuclear power plant unless it finds that there is a facility with sufficient capacity to receive the spent fuel of all nuclear power plants in Wisconsin and that construction of the

*In most states that do not restrict development, it appears, nuclear plants are treated the same as other plants, neither favored nor disfavored. In some states, legislative findings indicate support for new nuclear power generation or, as in Florida, statutes ensure cost recovery for new nuclear plants.

power plant is economically advantageous. [s. 196.493, Stats.] The specific language of the statute requires findings by the PSC that:

- a. A federally licensed facility, or a facility outside of the United States which the commission determines will satisfy the public welfare requirements of the people of this state, with adequate capacity to dispose of high-level nuclear waste from all nuclear power plants operating in this state will be available, as necessary, for disposal of the waste; and
- b. The proposed nuclear power plant, in comparison with feasible alternatives, is economically advantageous to ratepayers, based upon:
 1. The existence of a reliable and adequate nuclear fuel supply;
 2. The costs for construction, operation, and decommissioning of nuclear power plants and for nuclear waste disposal; and
 3. Any other factor having an impact on the economics of nuclear power plants, as determined by the commission.

OTHER STATES' STATUTES

State laws limiting the development of new nuclear power plants are varied. Most require certain findings regarding waste disposal, project cost, or other matters as conditions of construction approval, or ratification of such approval by the voters or the state legislature. Others relate to the recovery of the cost of a plant by the utility that builds it. One state simply bans new nuclear power plants.

The descriptions that follow are grouped by type of policy, to illustrate the range of policies. It will become apparent, though, that the various policies are often applied in combination. This is most common perhaps in the requirement of multiple findings, though some states also combine, for example, requirements for specific findings with a requirement for statewide ratification.

Construction Prohibited

Minnesota is the only state that completely prohibits new nuclear power plants. Its statute states simply, "The commission may not issue a certificate of need for a new nuclear-powered electric generating plant." In addition, Minnesota requires that a certificate for the addition of on-site spent fuel storage for a facility seeking a license extension must "address the impacts of continued operations over the period for which approval is sought."

Specified Findings Required

At least 13 states require that the regulatory body charged with the approval of new power plant construction, usually a utility, public service, or corporation commission, make certain findings as a condition of the construction of a new nuclear power plant. The majority of these states require findings

regarding disposal of spent fuel, though there are requirements for findings on a number of other topics, as well. Many of the states require findings on more than one topic.

Spent Fuel Management

Eleven states, including Wisconsin, require that the regulatory commission make findings regarding the potential for disposal of spent nuclear fuel. The wording of the required findings vary considerably, and in significant ways. Several states require only that the federal government has identified and approved “a demonstrated (or demonstrable) technology or means for the disposal of high-level radioactive nuclear waste” (California, Connecticut, Illinois, and Kentucky).

A number of states require findings that a disposal facility exists and is accepting waste (Massachusetts, Maine, Oregon, West Virginia, and Wisconsin). Oregon requires a finding that “an adequate repository for the disposal of [spent fuel] has been licensed”; it specifies that the facility be for the “terminal disposition [of the waste] with or without provision for retrieval for reprocessing.” Maine requires further that such facilities are “in full conformity with the technology” approved by the federal government. West Virginia requires that the facility have been in operation for 24 months. Wisconsin is the only state of those discussed in this Memo to allow consideration of facilities outside of the United States.

Two states do not refer to federal approval or operation of a facility, but require findings of a more descriptive nature. Montana requires a finding that, among other things, “the radioactive materials from such nuclear facilities can be contained with no reasonable chance ... of intentional or unintentional escape or diversion of such materials into the natural environment ...” by any cause, including acts of God. New Jersey requires a finding that “the proposed method for disposal of radioactive waste material to be produced or generated by the facility will be safe, conforms to standards established by the Nuclear Regulatory Commission and will effectively remove danger to life and the environment from such waste material.”

Project Cost

Two states require findings regarding the cost of the proposed plant. West Virginia requires a finding that “the construction of any nuclear facility in this state will be economically feasible for West Virginia rate payers,” while, as noted above, Wisconsin requires a finding that the construction of a nuclear plant is “economically advantageous to ratepayers” in comparison to alternatives.

Other

At least four states require findings on other topics, mostly in addition to findings regarding spent fuel management. Massachusetts requires findings that adequate emergency planning, adequate emissions standards, and an approved technology for the decommissioning of retired plants exist, and that the proposed plant offers the optimal means of meeting energy needs.

Montana requires findings that no legal limits or limits on total compensation exist with regard to civil actions for damages and that all safety systems are effective. Pennsylvania requires a finding that there are no sites where a comparable coal facility could be built and operated in compliance with

current and anticipated environmental laws *or* that the coal option is more costly to ratepayers. West Virginia requires a finding that a proposed nuclear power plant will conform to all environmental laws.

Several states, including Massachusetts and Kansas, require a finding of need for the electric generation capacity of the proposed power plant. It was not determined whether these findings are unique to the approval of nuclear plants only or apply to all plants, although they appear in statutes specific to nuclear plants.

Ratification Required

At least nine states require some form of statewide ratification of a commission's decision to license a nuclear power plant. Four states (Massachusetts, Maine, Montana, and Oregon) require ratification by the voters in a statewide referendum, while five others (California, Hawaii, Illinois, Rhode Island, and Vermont) give this role to the legislature. Hawaii is unique in that this requirement is written into the Hawaii Constitution. The Rhode Island statute applies to the approval of oil refineries, as well.

As noted earlier, as a condition of approving construction of a nuclear power plant, Illinois requires a finding that the federal government has identified and approved a demonstrated technology or means for the disposal of waste. The statute provides that, as an alternative, the General Assembly can specifically approve the power plant. Also as noted earlier, Massachusetts requires findings that an operating waste disposal facility, adequate emergency planning, adequate emissions standards, and an approved technology for the decommissioning of retired plants exist, and that the proposed plant offers the optimal means of meeting energy needs. Unlike other states' statutes, the Massachusetts statute requires that these findings be made by the General Court (the name of its state legislature).

California law creates a "passive review" of proposed nuclear power plants by the state legislature. The California Utility Commission is required to report its finding regarding the existence of approved waste disposal technology to the legislature. The legislature then has 100 days to review and "disaffirm" the findings. If the legislature does not act within the 100 days, the commission may authorize construction.

Recovery of Certain Costs

Several states do not allow electric utilities to recover certain expenses related to nuclear power plants in their rates. While these statutes do not pertain to the approval process, they could present significant obstacles particularly for financing a new nuclear plant. In New York, if a nuclear facility is not "commercially used and useful in the actual generation of electricity," as a result of failure to obtain all required permits, abandonment of a partially completed facility, closure of an operating facility, or other circumstances, the owner, if a single utility, may not recover in rates any costs of the facility or costs resulting from the discontinuation of operation. It does not require the utility to refund expenses already recovered. The statute refers to "failure to continue operation" and "abandonment," presumably distinguishing the plants the statute addresses from plants closed for decommissioning.

In Kansas, if any portion of a nuclear power plant is determined to be "excess capacity," and the Kansas Corporation Commission finds also that there is no federally approved technology or means for disposal of the waste from the plant, "it shall be presumed that the cost of acquisition, construction, or

operation of the facility were incurred due to a lack of prudence and the commission shall not include such costs in the reasonable value of the public utility property.”

Kansas statutes also provide that, if the Nuclear Regulatory Commission imposes a fine on the operator of a nuclear power plant for a “safety or quality assurance violation,” the act leading to the fine is presumed to have “occurred due to a lack of prudence, and the commission may reduce the revenue requirement accordingly.” Connecticut statutes contain a provision with similar effect.

Rhode Island excludes from a utility’s rate base the expense of any advertising that promotes a nuclear power plant. Some states exclude costs related to specific power plants from the rate base, such as Connecticut’s exclusion of certain costs of the Seabrook 1 and 2 nuclear power plants.

Posting of Bond for Decommissioning

Montana requires that the developer of a nuclear power plant post a bond of not less than 30% of capitol cost of the plant before construction may be authorized. The bond is specifically for costs related to decommissioning the plant and decontaminating the site after closure of the plant. No other instances of such a bond as a condition of construction were encountered.

STATUTORY CITATIONS TO LAWS DESCRIBED IN THIS MEMO

California

§ 800, 25524.1 and 25524.2, California Public Resources Code

Connecticut

§§ 16-19v., 16-19w., 16-19qq., and 22a-136, General Statutes of Connecticut

Florida

§ 366.93, Florida Statutes

Hawaii

Article XI Section 8, Hawaii Constitution

Illinois

§§ 20 ILCS 3310/75 and 220 ILCS 5/8-406

Kansas

§§ 66-128h, 66-128i, and 66-1,162, Kansas Statutes

Kentucky

§§ 278.600, 278.605, and 278.610, Kentucky Revised Statutes

Maine

§§ 4302, 4373, and 4374 Maine Revised Statutes

Massachusetts

ALM Spec. L. Ch. 563, § 3

Minnesota

§ 216B.243 Subd. 3b., Minnesota Statutes

Montana

§§ 75-20-201 (1) and (4), 75-20-1201 to 1203, and 75-20-1205, Montana Code

New Hampshire

§§ 162-B:1 and 162-B:3, New Hampshire Revised Statutes

New Jersey

§ 13:19-11, New Jersey Permanent Statutes

New York

NY CLS Pub Ser § 66 24.

Oregon

§ 469.595 to 469.599, Oregon Revised Statutes

Pennsylvania

66 Pa.C.S. § 518 (a), (b) and (d)

Rhode Island

§§ 39-3-12.2 and 42-64-14.1, Rhode Island General Laws

Vermont

Title 30 s. 248 (e), Vermont Statutes

West Virginia

§§ 16-27A-1 and 16-27A-2, West Virginia Code

Wisconsin

§ 196.493, Wisconsin Statutes

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