BIL C-14
THE DEMOCRATIZATION OF NUCLEAR ENERGY AND THE REGULATORY PROCESS

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Introduction

The original, working title of this address was, "The Popularization of Nuclear Energy and the Regulatory Process", using one of the Oxford definitions of "popularize" which means, "to cause to be generally known..."

However, it was pointed out to me that in the North American context, "popularize" has come to mean the conscious act of making something popular or acceptable, and is equated with advertising, commerce and sales - in short, "hard sell". Obviously, as President of Canada's nuclear regulatory agency, it would be improper for me to present a talk which appeared to involve mainly, nuclear promotion.

Therefore, we have in the final title for these remarks used that contrived derivative of the root word "democracy", which connotes the acceptance and practice of the principle of equality of rights, opportunity and treatment for the common people. In the context of this address, this refers to access to sufficient, truthful and meaningful information.
Background

Now that we have the title of the talk squared away, some of the background events leading to the preparation of Bill C-14 may be of interest to you.

Starting early in 1975 (about the time I became President of AECB and not because of my appointment) the Board's public involvement emerged with startling speed. From a position of relative obscurity, AECB became an almost daily headline topic because of problems arising from poor management of radioactive wastes, health of uranium miners, intervention by nuclear objector groups, etc. Clearly the AECB was "under the gun" for alleged poor control of past events, a criticism that was largely justified but understandable because of the Board's lack of resources to discharge its responsibilities.

A few of the milestones marking emergence of the AECB into public scrutiny are as follows:

- the finding of radium contamination in the building at 103 Church St., Toronto, early in 1975, which resulted from radium extraction work in the 1930's and 1940's led to the first major radioactivity cleanup program. AECL under contract to AECB decontaminated the building.

- during the summer of 1975, the Energy Probe group in Toronto expressed concern about the level of radioactive emissions at the boundary of some of the refinery waste dumps near Port Hope. AECB inspectors confirmed that some areas exceeded regulations; but more importantly our inspectors found that refinery radioactive waste had been widely used in Port Hope as grading and fill around homes and commercial
premises. Radon - radon daughter problems resulted in unacceptable levels in several hundred homes. AECB, of course, was held accountable for having allowed the radioactive waste to be misused. Such criticism is theoretically correct but in practical terms, AECB was not in a position in the past to licence the Port Hope refinery operation. Nevertheless, we accepted responsibility for cleanup, negotiated funding from the Treasury Board and work is still going on with AECL, Chalk River being the kind recipient of the cleanup waste from Port Hope.

Related to the Port Hope situation are problems at the Port Granby waste management site and Deloro, Ontario which have become public issues.

- another controversial issue has been the matter of health of uranium miners' and the incidence of an excess of lung cancer due to radon - radon daughter inhalation, as an occupational hazard. The Royal Commission on Mining in Ontario, chaired by Prof. James Ham (now President of University of Toronto) focussed strongly on the uranium miners problem. AECB submitted a brief in June 1975 and proposed certain actions such as, realistic involvement in compliance with licences issued, improvement of regulatory standards, support of R&D concerning conditions such as mine radiation, dosimeter development and applications, etc. In the interest of federal jurisdiction, which in the past had not been adequately occupied, and for which AECB was criticized by the labor unions, the press, etc., we have now undertaken to fulfill our responsibilities.
- coincident with the Port Hope and the uranium miners' issues, many other areas of radioactive waste problems involving radon - radon daughter and gamma exposures were found in the 1975 to mid-1976 period. These were caused by mine waste and tailings at Uranium City, Saskatchewan, Elliot Lake, Ontario, Bancroft, Ontario, and by metallurgical slags on the outskirts of Ottawa. You even had a small problem locally at East Braintree, Manitoba where radium contaminated material was brought to our attention and WNRE cooperated by removing the material to your own property.

- to cope with the radioactivity cleanup problem across the country, the federal Cabinet authorized the formation of a federal provincial Task Force early in 1976. This Task Force included members from several federal departments and agencies, provincial representatives from Saskatchewan, Ontario and Quebec. It has been funded so far to the extent of $6 - $8 million with shared cost recovery arrangements with Ontario and Saskatchewan and with industry. There are several years' work yet to be done and several million dollars of cost yet to be defrayed. The cooperation of AECL with the Task Force through its member, regarding instrumentation development, loans of equipment and especially in establishing a bulk low level waste management area at Chalk River has been greatly appreciated.

- early in 1976, as the above events were developing, I had discussions with the Minister of Energy, Alastair Gillespie, concerning the basic conflict of interest perception relative to the other components of the energy ministry, in which AECB was being viewed by the media, the critics and the public. For example, AECB was
becoming "tough" with Eldorado Nuclear (one of Mr. Gillespie's Crown Companies) on waste management. Clearly a conflict arises here between the producer and the controller. Indeed on many occasions in the media and the House of Commons this and other implied conflicts have been criticized. Basically all the components of the energy ministry are promoters or developers except for AECB, a controller or regulator of development. These discussions led to the Minister's concurrence that new legislation was needed and that (with regret) AECB should be removed from the energy clutch. I was asked to prepare a Memorandum to Cabinet outlining the justification for this change together with clarification and strengthening of AECB's role. Early in 1976, this draft memorandum led to much interdepartmental discussion and little resolution of issues as to the role of AECB. Consequently, the Privy Council Office, in July 1976, established a Task Force under the chairmanship of Dr. Maurice LeClair (now Secretary of Treasury Board) to recommend on the mandate of the AECB, its ministerial reporting channels, the resources needed and revisions to the present Act which was to become the Nuclear Control and Administration Act. The Task Force reported on August 3, 1976.

Government Intentions

Thus Bill C-14 was initiated and after many drafts saw the light of day on November 24, 1977 as the Nuclear Control and Administration Act. In so doing, it served notice through certain
provisions of the legislation that Canada's nuclear regulatory authority will become a major source of public information as well as a key agent to facilitate public participation in the nuclear decision-making process.

These expressed intentions are almost diametrically opposed to current practices which essentially reflect political and military requirements for confidentiality dating from the immediate post-World War II period.

Under current legislation - the Atomic Energy Control Act and Regulations - there are very severe limitations on the Board's ability to cope with the modern demand for public information and candor.

One such limitation is the statutory Oath of Fidelity and Secrecy included in the existing Act. While I think anyone can appreciate the 1946-era motivation behind creation of this binding oath, if interpreted literally it provides a pretty powerful gag for each and every staff member. I understand the Board's chief of public information has developed a noticeable twitch each time he fills an envelope with informative documents. And well he might - according to the oath, he is not supposed to communicate with or allow documents to go to any person not legally entitled to such communication. Such legal entitlement, or lack of it, is not easily defined except in the extreme.

Another limiting factor at present is Section 26 of the Regulations, which requires the Board to withhold any information it has received in the course of its regulatory functions. We are thus
bound to keep privy anything provided by our licensees, and although
on a few occasions material has been publicly released following
consultations and mutual agreement, this imposes a rather awkward
mechanism on routine public information requirements.

The Board is open to criticism on its use of Section 26,
not simply because it provides a statutory gag, but because it can
appear to furnish a means to dodge the issue. In contemporary jargon
this is known as "copping out", but fortunately, through judicious
use, Section 26 has not assumed the proportions of the notorious Fifth
Amendment in the U.S.

In the interest of public confidence in the nuclear
regulatory authority, the Government's intention in Bill C-14 is to
do away with de facto secrecy.

Information Provisions

The Nuclear Control and Administration Act as tabled
before Parliament is divided into three parts. Only Part I, titled
"Control of Health, Safety, Security and Environmental Aspects of
Nuclear Energy", is of direct jurisdictional and administrative
concern to the regulatory authority. (Part II deals with commerce
and promotion, while Part III is basically devoted to punitive
consequences for contravention of the Act.)

Of the 55 sections in Part I of the NCAA, seven are
devoted in whole or in part to public information matters.

The key section, which in effect acts as the cornerstone
for the others by setting the public relations tone for the entire
Act, is Section 20 wherein the main objects of the control agency are set out in two sub-sections.

As expected, the first sub-section delineates the Board's all-important responsibility for regulation and control. However, in view of the policies and practices of the past 32 years, it may be considered quite remarkable to discover the second sub-section which instructs the nuclear regulatory authority "to act as a source of information for the public on health, safety and environmental matters related to nuclear energy". In unequivocal terms, the Bill gives equal weight to both regulation and public information.

The regulatory agency, called the Nuclear Control Board (NCB) in the proposed legislation, is not actually exhorted to beat the nuclear drum throughout the realm. In fact, this would seriously jeopardize its neutral, objective and credible position. However, it is enjoined in the legislation from being merely a passive repository of information.

Specifically, Section 27 requires the NCB to "provide for the dissemination of information on the health, safety and environmental aspects of the development, production, use and application of nuclear energy." Following up on this is Section 32 which calls for public hearings, and Section 35 requiring the publishing of significant event notices in various media including local newspapers. The latter section is expanded upon slightly in Sub-Section 56.(2), which requires that proposed Regulations be published in advance in the Canada Gazette, thus permitting public scrutiny and comment.
Section 24 gives the Board clear authority to set up regional offices to achieve its purposes, and without doubt these centres will become important focal points for public information activities. Our experience over the past two years with temporary program coordination offices set up in communities where we have encountered contamination problems indicates that you have to be well prepared for a continuous public interface in these "storefront" locations.

The seventh section of the NCAA which deals specifically with public information is Section 36, which might be described as the antithesis or mirror image of the current Regulations Section 26. Section 36 of the NCAA requires the Board to make available for public inspection all documents in its possession except those exempt from disclosure by Regulation. The section does, however, allow anyone submitting information to the regulatory authority to request that the material not be disclosed, but a formal Board ruling is required for the information to be labelled proprietary and thereafter not released without the submitter's permission.

**Significant Details**

For an audience such as this, there are probably two of the aforementioned seven sections dealing with public information which are of particular interest, and I would like to expand briefly upon these two. (Should I not select the two of prime concern, I am sure we can delve into other points in questions and answers subsequent to these remarks.)
The first section of interest is the one dealing with public hearings, and the second concerns the public release by the Board of information provided by another party, such as a licensee. Both these sections represent a significant departure from current practice insofar as the industry's dealings with the Board are concerned.

Section 32 provides for two types of public hearings: mandatory and discretionary. The former is clearly defined to be a requirement during the licensing process prior to the construction stage for any one of the following:

- a uranium or thorium mine, mill or processing plant;
- a nuclear reactor of power greater than one megawatt (thermal);
- a spent reactor fuel reprocessing plant;
- a radioactive waste management facility;
- a uranium enrichment plant; or,
- a heavy water plant

In other words, all major nuclear facilities will require a public hearing under Board auspices before a licence to construct is issued.

The discretionary public hearings may be used by the Board if and when it deems such action to be desirable in connection with any matter within its jurisdiction.

The mandatory public hearing, while placing a new burden on both licence applicant and regulator, is a logical extension of the public information program the AECB has required of applicants for the
past five years or so. Our challenge will be to ensure that these hearings do not add unwarranted or unnecessary delay to the licensing process, yet fulfill their intended purpose as forums for both expert and public input to the licensing process, as well as vehicles for informing the people of the community concerned with the ultimate decision.

In this respect, coordination with other authorities at both the federal and provincial levels will be important, and in certain circumstances it will undoubtedly be in the best interests of all parties to conduct joint hearings rather than duplicate much of the ground covered. For legal reasons, the term "joint" may have to mean "sequential" where either chairmanship or membership of the hearing panel is specifically defined for the subjects under examination.

To a certain extent, coordination with other authorities may be facilitated by the inclusion of the principle of primacy in the Bill, wherein the Board is the lead agency in all matters nuclear, but counts heavily on other authorities to contribute to establishing standards or guidelines and provide expert advice. Provincial statutes may even be incorporated in license conditions.

A prime area for cooperation is in environmental concerns. At the moment, the AECB is not legally responsible for anything to do with the environment. In theory, if hearings were now a Board requirement, they would not necessarily involve any environmental considerations, and a second round of hearings could be envisaged for federal works coming under the Environmental Assessment Review Process, or undertakings in provinces such as Ontario where environmental impact
is required to be studied in a public forum.

Under the NCAA, however, the Board will have a clear mandate in its control of nuclear energy "to protect the environment from the hazards associated with the production, possession and use of prescribed substances." This gives it statutory encouragement to seek the expertise of and coordinate its regulatory activities with environmental authorities at both the federal and provincial levels.

With respect to discretionary hearings, our challenge will be to avoid a general slowing down of the business of the Board due to pressure from various sources to hold public hearings on a variety of relatively minor issues. At the same time, we cannot jeopardize our credibility by appearing to avoid the use of discretionary hearings.

I believe we can do this reasonably successfully by being quite candid and as open as possible in all our affairs, and by ensuring that hearings are held in circumstances which obviously warrant them. Undoubtedly, the establishment of the ground rules for hearings will be vitally important - the Board may make Regulations on this under Section 56 of the new Act. We will have to carefully define the purpose of hearings in general, and then provide a workable framework such that each hearing accomplishes its aims. One major area of concern is the degree to which discussion and evidence may be confined to the specific topic being examined. As you all are aware, critical groups and many intervenors will seize any opportunity to have the entire spectrum of nuclear issues considered. To counter this, while maximizing the two-way communications aspects of public hearings, such forums will have to tread a very fine line between "town-hall informal" and the legally-
strict courtroom. The credibility of the regulatory authority will depend upon how well this is accomplished.

The Board's credibility, and to a certain extent the reputation of licensees should be significantly enhanced by the section dealing with release of third party information. Under this section of the statute, there will be an almost complete reversal in the policy regarding the treatment of proprietary information. It may be assumed that almost everything acquired by the Board will be made available to the public in one form or another, subject only to the formal acceptance by the Board of a request for non-disclosure, and the provisions of the Regulation covering information exempt from disclosure.

As in the case of all Regulations to be issued under the new Act, public review and comment will be facilitated by the requirement that proposed Regulations be published in the Canada Gazette at least 60 days prior to coming into effect. It is to be expected that a Regulation limiting disclosure of information will result in considerable discussion and debate, but it is likely the following areas will be included as exempt from release in accordance with the current government policy outlined in Cabinet Directives 45 and 46:

- trade secrets;
- commercial or financial, and privileged or confidential internal memoranda and correspondence;
- personnel files, and information relating to individuals;
- information relating to safeguards practices or physical security measures;
- information from various governments or other sources received as "confidential".

If the Board has a challenge in ensuring that it is fulfilling its mandate for both control and public information through the judicious handling of third party information, the licensees have an equal challenge. They must not allow these new circumstances to detract from decades of mutual trust between regulator and licensee. Nor must they under any circumstances withhold information from the control agency in order to guard against its release. Apart from the serious consequences such action could have from the point of view of health and safety, it is something which even a neophyte public relations practitioner would counsel against.

We are in a new era of candor, an era in which the consequences of full disclosure are rarely, if ever, worse than the public discovery of duplicity or suppression of information.

Conclusion

In view of current political uncertainties, it may be some time before Bill C-14 is enacted into law. Nevertheless, it has already begun to have a significant effect on the operations of the Board. The staff, of course, must prepare for the day when the new provisions are in place, something which cannot be done overnight. However, it is the public reaction which is most interesting.

Even though the Bill is simply an expression of intent, there are those who are now under the impression that it is the law. As a consequence, there has been a steady increase in the demands being made on our limited public information resources, and we even
get mail addressed to the Nuclear Control Board. During public information meetings held by licence applicants, the Board staff present may be queried as to why a "hearing" is not being held. News media enquirers become impatient when confronted with the longstanding set of explanations as to why specific information cannot be released. And we regularly avoid certain types of public forums wherein our information release limitations could become a liability with respect to our credibility or perceived independence.

The enactment of this new legislation will have important ramifications for the control agency, the nuclear industry and the general public. It will, in fact, mark the opening of a new era in the peaceful uses of nuclear energy in this country, an era which should be characterized by a significantly greater awareness and understanding of the industry by the public at large.

The increased openness and visibility of the nuclear regulatory body will undoubtedly enhance the degree to which people feel confident in its control capabilities. Confidence in the regulatory process combined with the ability to make a meaningful impact thereon will surely lead to greater public acceptance of nuclear energy as a useful, modern tool.

In forcing a move, after more than three decades, from a professionally-open regulatory process to a democratically-open one, the new legislation presents both a tremendous challenge and a marvellous opportunity.