



10-1977

## Vermont Yankee Nuclear Power Coporation v. Natural Resources Defense Council (NRDC)

Lewis F. Powell Jr.

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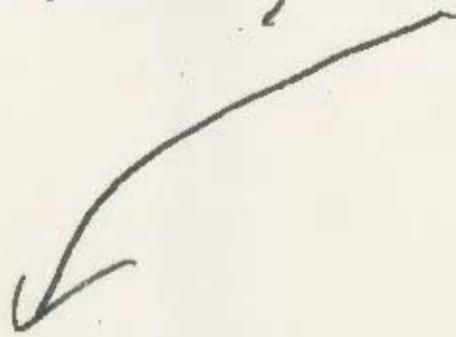
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Linda: Out letter  
(Law Firm) *Hand sent 1/28/77 Pak*



*CA DC in this case vacated and remanded on the basis of the Vermont Yankee cases in which Hunter Williams is involved. I assume you are "out" here as well?  
CCA*

PRELIMINARY MEMORANDUM

February 18, 1977 Conference  
List 1, Sheet 1

Cert to CA DC  
(Bazelon, Fahy,  
Justice, by designation)

No. 76-528 CFX

CONSUMERS POWER CO.

v.

AESCHLIMAN

Federal/Civil

Timely

*You are "out" of these*

1. SUMMARY: Like Vermont Yankee, No. 76-419, Baltimore Gas, No. 76-548, and Long Island Lighting, No. 76-745, this case involves the licensing of nuclear power plants. In addition to the issue of the adequacy of AEC and NRC rulemaking proceedings presented in those cases, this petition presents several distinct questions: (a) whether the National Environmental Policy Act, 42 U.S.C. §4321, requires agency licensing proceedings to be reopened to assess more fully information bearing on energy conservation

measures as possible alternatives to a nuclear power plant; and  
(b) whether a reviewing court can properly order the amplification of an AEC advisory report on safety factors with respect to a proposed nuclear power plant.

2. FACTS: Consumers Power is a Michigan-based utility. In 1969, Consumers applied for permits with the AEC, the predecessor of the NRC, for the construction of two nuclear reactors in Midland, Michigan. Among other things, the plants were to provide energy for a nearby Dow Chemical plant pursuant to a long-term contract between Consumers and Dow.

After two years, both the AEC Staff and the Advisory Committee on Reactor Safety, a 15-member watchdog committee set up to review safety factors relating to proposed nuclear power plants, reported favorably on the safety features of Consumers' proposed facilities. An AEC Licensing Board then began hearings on the proposed plants, whereupon respondents intervened and objected. Immediately before the hearings were concluded, CA DC rendered its landmark decision in Calvert Cliffs' Coordinating Committee, Inc. v. AEC, 449 F.2d 1109 (1971), which required the AEC to prepare an environmental impact statement in connection with the licensing of nuclear plants. In light of Calvert Cliffs, the staff issued a draft environmental statement some 6 months later, which became the final impact statement in March 1972 after the receipt of public comments. The Licensing Board subsequently granted the construction permits, subject to various conditions. Resps filed exceptions with an AEC Appeal Board, which essentially affirmed the Licensing Board's decision.

Resps then sought review in CA DC. While the cases were pending in that court, one intervenor filed a motion with the AEC to reopen

the construction permit proceedings. The intervenor contended that the Licensing Board should have, but did not, consider energy conservation issues, as was required under the AEC's intervening decision in an unrelated case, Niagara Mohawk Power Corp., 6 A.E.C. 995. In a lengthy opinion, the AEC denied the motion to reopen the proceeding. Appendix, at 257-278. Among other things, the Commission stated:

"Purported energy conservation issues must meet a threshold test -- they must relate to some action, methods or developments that would, in their aggregate effect, curtail demand for electricity to a level at which the proposed facility would not be needed." Appendix, at 265.

Reviewing the contentions previously filed by the intervenor-respondent with the Licensing Board, the Commission held:

"[Intervenor] properly raised one related group of legitimate energy conservation issues which the Licensing Board allowed. [Intervenor] obliquely raised a second energy conservation issue essentially similar to the ... issue we allowed in Niagara, which the Board also allowed. The Board properly excluded several alleged energy conservation contentions concerning certain customer uses of electricity." Id., at 267 (Emphasis supplied.)

The cases therefore remained in CA DC, where they were deferred for 2 years pending decision in Vermont Yankee, No. 76-419. On the same day that it handed down Vermont Yankee, a decision concerning the adequacy of the record in the AEC's rulemaking proceedings and the validity of procedures employed by the AEC<sup>in</sup> that proceeding, a different panel of CA DC, but with Chief Judge Bazelon likewise presiding here as in Vermont Yankee, sustained the intervenors-respondents' position.

A. Failure of the Environmental Impact Statement to Consider Certain Alternatives to a Nuclear Power Plant.

Writing for the court, Chief Judge Bazelon primarily faulted the Commission for its failure to include in the impact statement any discussion with respect to measures aimed at reducing consumer demand for electricity. Such measures, CA DC surmised, would directly bear upon the need for a nuclear plant. Hence, the failure to examine this form of energy conservation rendered the impact statement "fatally defective...." Appendix, at 5. The court acknowledged the Commission's detailed criticisms of intervenor's comments on energy conservation and the Commission's "threshold test" for agency consideration of energy conservation matters. See quote, supra, at 3. CA DC flatly rejected the agency's threshold test. Rather, the burden of going forward in such matters properly rested on the agency:

"In our view, an intervenor's comments on a draft EIS [impact statement] raising a colorable alternative not presently considered therein must only bring 'sufficient attention to the issue to stimulate the Commission's consideration of it.'" Thereafter, it is incumbent on the Commission to undertake its own preliminary investigation of the proffered alternative sufficient to reach a rational judgment whether it is worthy of detailed consideration in the EIS." Id., at 12-13.

The court determined that intervenor's suggestions, even prior to its petition to the AEC to reopen the proceedings, were adequate to "stimulate" the AEC's consideration of energy conservation alternatives. The court did not directly comment upon the Commission's entirely different characterization of the intervenor's original suggestions:

"The [intervenor's submission] was hardly a model pleading. As the Licensing Board noted,

certain contentions ... were 'long on rhetoric and short on specificity'. Many contentions were redundant. And many sought to raise multiple and more or less unrelated issues. Although [intervenor] now professes to view 17 of its 119 contentions as 'energy conservation' contentions, its original submission to the Board did not point up any such common theme." Appendix, at 266-267.

The court concluded that the Commission's rejection of energy conservation issues was "capricious and arbitrary." A remand on that point, as well as other issues, was therefore necessary. Appendix, at 16.

B. Adequacy of Advisory Committee's Report.

Next, CA DC reviewed the adequacy of the Advisory Committee's report on safety considerations. Consistent with statutory requirements, all nuclear projects are subjected to review by an independent, 15-member Advisory Committee, chaired at the time of these events by James Schlesinger. In his opinion, Judge Bazelon recounted the essential terms of the Committee's report in this case, which enumerated several specific problems with the project and proposed solutions to deal with the difficulties. The Committee's report concluded in rather general language:

"Other problems related to large water reactors have been identified by the Regulatory Staff and the [Advisory Committee] and cited in previous [Advisory Committee] reports. \*\*\* The Committee believes that the above items can be resolved during construction...." Quoted, in Appendix, at 17-18. (Emphasis supplied.)

CA DC held that intervenors-respondents were improperly denied the opportunity to conduct full discovery into the "other problems" to which the Advisory Committee alluded. Since the report on its face omits material information, CA DC ordered that on remand the report be returned to the Advisory Committee for supplementation. Appendix, at 20-21.

C. Consideration of Fuel Reprocessing and Waste Disposal.

Noting that the environmental impact statement prepared by the Commission as to Consumers' facilities was incomplete as to the handling of nuclear fuel wastes, CA DC ordered the Commission to reconsider these issues in light of the opinion handed down in Vermont Yankee, supra. In that regard, the court ordered the Commission to consider any intervening changes in the contractual relationship between petr and its big customer, Dow Chemical.

3. CONTENTIONS: Consumers seeks review, claiming: (a) CA DC's decision simply disagrees with judgments which the Commission is empowered to make; (b) the Commission painstakingly analyzed the "energy conservation" issue and determined, after consultations with other federal agencies, that the two proposed plants were clearly needed; (c) the Commission carefully considered and rejected intervenor's generalized assertions about energy conservation; (d) CA DC exceeded its authority and erred on the merits in ordering the Advisory Committee to supplement its safety report years after the fact; and (e) the AEC reasonably concluded here that environmental considerations as to fuel use would be confined in the construction permit proceedings to transportation of fuel to and from petr's plant.

Respondent replies: (a) CA DC's order with respect to the Advisory Committee's report was clearly correct and conflicts with no other decision; (b) the remand for consideration of energy conservation alternatives accorded with environmental policy under NEPA; and (c) the remand for consideration of the Vermont Yankee issues in this case was likewise proper, since little or no consideration to nuclear waste management was given by either the Licensing Board or the Appeal Board.

The SG's response in Vermont Yankee addresses, in addition, the two issues peculiar to this case. Again, the federal respondents are in disagreement. The NRC contends: (a) NEPA does not require the reopening of an agency proceeding to assess information bearing on alternatives to nuclear power plants, "where the alternatives were neither obviously central to decision nor clearly identified as issues in the agency hearing at the outset;" Response, at 11; (b) CA DC erred in holding that the Commission should have returned the Advisory Committee's report for amplification, without any clear objection to the report having been interposed. The SG says: (a) there is no need at this time to review whether the Commission was correctly ordered to consider energy conservation alternatives on remand; even if CA DC was wrong as to this case, "that error is not likely to have a substantial precedential effect...."; (b) CA DC was indeed wrong in ordering amplification of the Advisory Committee's Report, but review of that issue is unwarranted either separately or in connection with a decision to review the other issues in these cases.

4. DISCUSSION: The Court's disposition of Vermont Yankee will obviously control this case as to the nuclear waste-management issue. As to the other issues, I tend to think CA DC engaged in overreaching here. In proceedings of this magnitude, it is easy to single out some point of inquiry with respect to which the Commission may not have zeroed in as fully as it might. I fear that CA DC's results in these cases suggest that nuclear power plants simply are not going to be warmly received in that court, unless the Commission can show that it has focused upon and investigated every nook and cranny even arguably raised by an intervenor. And even if that fear is without foundation, petr makes the following troublesome point:



"[CA DC's decision] brought the entire nuclear power plant licensing program of the Nuclear Regulatory Commission to a crashing halt. The Commission's immediate reaction to the decision below was to announce [citation] -- as it doubtless was required to do -- that is would issue no more licenses for either construction or operation of nuclear power plants until it could attempt to satisfy the demands of the court below...." Petn, at 23.

CA DC's decision in this case is by no means clearly correct. More likely than not, this Court would reach a different result if it took the case. However, if the Court decides the deny the petitions in No. 76-410 and 76-548, then this petition, standing alone, may not merit review, at least at this time.

There are responses.

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February 18, 1977 Conference  
List 7, Sheet 3

No. 76-419

VERMONT YANKEE NUCLEAR  
POWER CORP.

Motion of Edison Electric  
Institute et al. for Leave  
to File an Amici Curiae Brief

v.

NATURAL RESOURCES DEFENSE  
COUNCIL, INC.

No. 76-548

BALTIMORE GAS AND  
ELEC. CO.

v.

NATURAL RESOURCES DEFENSE  
COUNCIL, INC.

Edison Electric Institute and seven New York utility companies seek leave to file an amici curiae brief in support of cert. The cert petitions are listed on page 1 of the current conference list and raise issues arising out of federal licensing of nuclear power plants. Resp NRDC refused to consent

Out.  
EXB

to the filing of the brief. See Rule 42(1).

EEL, the principal national association of electric utility companies, and the other amici participated in the rulemaking proceedings before the Atomic Energy Commission that are the subject of the present case and appeared amici curiae before CA DC. Amici utilities each have an interest in one or more nuclear power plants for which construction permits or operating licenses have been issued by the Commission or for which construction permit applications are pending. Amici purport to present a different and relevant statement of the issues involved and an additional issue with respect to the correctness of the remedy prescribed by the CA.

The amici brief was filed February 2. Rule 42(1) provides that amicus briefs or a motion for leave to file when consent of the parties is refused may be filed "a reasonable time prior to the consideration of. . .the petition. . . for cert." The Rule also provides that "(s)uch motions are not favored."

There is no response.

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Linda - Out letter  
(My former law firm)

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PRELIMINARY MEMORANDUM

February 18, 1977 Conference  
List 1, Sheet 1

No. 76-419 CFX

VERMONT YANKEE NUCLEAR  
POWER CORP.

Cert to CA DC  
(Bazelon, Edwards, by  
designation; Tamm,  
concurring in result)

v.

NATURAL RESOURCES DEFENSE  
COUNCIL, INC.

Federal/Civil

Timely

Cases of local interest  
in  
CA DC

represented by  
Huntton  
&  
Williams

No. 76-548 CFX

BALTIMORE GAS AND ELECTRIC CO.

Cert to CA DC  
(Bazelon, Edwards;  
Tamm, concurring in  
result)

v.

NATURAL RESOURCES DEFENSE  
COUNCIL, INC.

Federal/Civil

Timely

OUT

1. SUMMARY: These are nuclear regulatory cases. The issues  
arise out of federal licensing of nuclear power plants. The principal

question presented is whether rulemaking by the Nuclear Regulatory Commission and its predecessor, the AEC, with respect to the environmental effects of nuclear waste disposal was properly overturned by CA DC.

2. FACTS: The subject matter of this litigation is fuel reprocessing and waste disposal in connection with nuclear power plants. "Fuel reprocessing" is the process by which spent fuel is treated to recover unused materials for later use. Waste management and disposal involves the handling and disposal of radioactive waste materials left after fuel has been used. These processes are subject to regulation by the Nuclear Regulatory Commission, which has licensing powers as to the construction and operation of nuclear power plants.

In 1966, Vermont Yankee applied for a license to construct a nuclear power plant at Vernon, Vermont. During the lengthy licensing proceedings, various intervenors, including respondent, raised the issue of the environmental effects of fuel reprocessing and waste disposal at petr's facility. An AEC Board considering the license determined that such environmental issues were inappropriate for consideration in licensing proceedings for an individual plant. Instead, the Board deemed such matters to be part of other, distinct proceedings concerning the licensing of nuclear reprocessing plants, which would reprocess unspent fuel and store unsalvagable nuclear wastes. This determination was upheld by an AEC Appeals Board, which determined that no meaningful exploration of such environmental effects could be undertaken in the context of licensing proceedings for a single reactor. Appendix, at 68-69.

Notwithstanding these decisions, the AEC in November 1972 began a general inquiry into how, if at all, environmental effects of

nuclear waste disposal should be considered in individual licensing proceedings. The Commission proceeded by way of informal rulemaking, rather than by adjudication. Consequently, notice of the proposed rulemaking was published, hearings were conducted, and oral and written submissions by interested parties, including respondent and other environmental groups, were received. Consistent with rulemaking procedures, however, neither discovery nor cross-examination was permitted. Following those hearings, the AEC determined that the environmental effects were capable of quantification as part of the comprehensive cost-benefit analysis mandated by CA DC's decision in Calvert Cliffs Coordinating Committee, Inc. v. AEC, 449 F.2d 1109 (1971). Accordingly, the agency adopted a rule setting out a complicated but short table of numerical computations (Table S-3, reprinted in Appendix, at A-262), to be included in the environmental impact statement filed pursuant to the National Environmental Policy Act, 42 U.S.C. §4332(2)(c), for each nuclear power plant for which a license was thereafter sought. This computation was the only submission required with respect to nuclear fuel reprocessing and waste disposal.

"No further discussion of such environmental effects shall be required [in the environmental impact statement]." Appendix, at 261.

The environmental groups sought review in CA DC. They challenged (a) the licensing of petr's nuclear power plant, which began operations in 1972 and (b) the validity of the AEC's general rulemaking proceeding. After pending in that court for 2 years, CA DC handed down its decision in July 1976. That decision is the subject of this petition. CA DC, in brief, invalidated the agency's rule pertaining to the environmental impact statement and remanded for further proceedings. The court also



remanded the Commission's order granting a full license for petr's nuclear plant pending the outcome of the future rulemaking proceedings.<sup>1/</sup>

Beyond this bare holding, however, there is much dispute over exactly what CA DC's decision requires. Because much of the case's significance is connected to the differing interpretations of the opinions below, CA DC's holding warrants discussion in some detail.

A. Chief Judge Bazelon's Majority Opinion.

Concluding that the licensing of a nuclear reactor was a "major" federal action requiring an environmental impact statement, CA DC rejected the NRC Appeal Board's two justifications for postponing extended consideration of the environmental effects of reprocessing and waste disposal. First, the fact that such issues were "speculative" and "contingent," the court concluded, did not justify the Commission's limited inquiry. "[T]he obligation to make reasonable forecasts of the future is implicit in NEPA and therefore an agency cannot 'shirk [its] responsibilities under NEPA by labeling any and all discussion of future environmental effects as 'crystal ball inquiry.'" App., at A-9. Second, the fact that other proceedings might be more "appropriate" for weighing the environmental effects of waste disposal and reprocessing did not justify postponement of the inquiry.

"The real question . . . is whether the environmental effects of the wastes produced by a nuclear reactor may be ignored in deciding whether to build it because they will later be considered when a plan~~x~~ is proposed to deal with them. To answer this question any way but in the negative would be to misconstrue the fundamental purpose of NEPA. \*\*\* NEPA's purpose was to break the cycle of such incremental decision-making. . . ." App., at A-10 - A-11.

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<sup>1/</sup> This aspect of the decision affects only Vermont Yankee, the petr in No. 76-419. Petrs in No. 76-548 are 15 major utilities who have been adversely affected by CA DC's order invalidating the rulemaking proceeding.

Because of the importance of such environmental considerations, the court held that "absent effective generic proceedings to consider these issues, they must be dealt with in individual licensing proceedings." Id., at A-12.

The court then turned to the AEC's rulemaking proceedings in 1972 which culminated in the adoption of <sup>the</sup> cost-benefit analysis set forth in a prescribed form (Table S-3). Since the intervenors' "primary argument" was that the Commission's decision to preclude discovery and cross-examination denied them a meaningful opportunity to participate in the proceedings, the court stated: "[W]e are called upon to decide whether the procedures provided by the agency were sufficient to ventilate the issues." Id., at A-17 (Emphasis supplied.) The court then examined in detail three sources supporting the Commission's limited-inquiry approach: (a) data assembled by the Commission staff in an Environmental Survey (which initially proposed quantifying the environmental considerations of waste disposal in Table S-3); (b) the back-up documentation to which the Environmental Survey refers; and (c) the oral and written testimony offered at the public hearings conducted by the Commission on the proposed rule. Appendix, at A-24 - A-34. After a review of this process, <sup>2/</sup> CA DC surmised:

"In substantial part, the materials uncritically relied on by the Commission in promulgating this rule consist of extremely vague assurances by agency personnel that problems as yet unsolved will be solved. That is an insufficient record to sustain a rule limiting consideration of the environmental effects of nuclear waste disposal to the numerical values in Table S-3." Id., at A-38. (Emphasis added.)

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<sup>2/</sup> The review by CA DC was not error-free. The court incorrectly stated that one key witness was not subjected to any questioning by the Hearing Board. "Given the opportunity, [the witness] might have provided convincing answers to many of the questions which his statement leaves untouched." App., at A-35. In actual fact, a range of questions was directed at the witness. CA DC subsequently admitted its error and granted petrs' motion for correction of the opinion in this respect.

Judge Bazelon closed with a three-page exegesis on possible "procedures" to be followed by the Commission on remand. While not purporting to "intrude" on the agency's province by dictating procedures, the court indicated:

"It may be that no combination of the procedures mentioned above (e.g., cross-examination and discovery) will prove adequate, and the agency will be required to develop new procedures. . . . On the other hand, the procedures the agency adopted in this case, if administered in a more sensitive, deliberate manner, might suffice." Id., at A-40.

B. Judge Bazelon's Separate Statement.

Adding some comments of his own about agency procedures, Judge Bazelon in a separate statement, among other things, approvingly referred to Judge Friendly's observations about judicial review of administrative action:

"[O]ften it does not really matter much whether a court says the record is remanded because the procedures used did not develop sufficient evidence, or because the procedures were inadequate. From the standpoint of the administrator, the point is the same: the procedures prescribed by [the APA] will not automatically produce an adequate record." Id., at A-48 - A-49. (Emphasis in original.)

C. Judge Tamm's Concurring Opinion.

Judge Tamm concurred in the result, solely on the basis of the inadequacy of the record. He refused, however, to endorse the majority's approach or its "suggested disposition on remand." Specifically, Judge Tamm read the majority opinion as apparently requiring "the Commission to institute further procedures of a more adversarial nature than those customarily required for informal rulemaking. . . ." Id., at A-52. He noted that the Commission followed procedures which exceeded the minimum required by the APA. Consequently, his quarrel was not with the type of proceeding but with the "completeness of the record generated." Id., at A-53.

Judge Tamm indicated that he was vexed by two other aspects of the majority opinion. First, in his view, the opinion failed to tell the Commission "what it must do in order to comply with the court's ad hoc standard of review." Id., at A-54. The Commission is left up in the air, Judge Tamm fears, only to be further confused by the court's comment that maybe no presently used procedures will suffice to achieve adequate "ventilation" and "dialogue." He concluded:

"I believe it almost inevitable that, after fully considering the problems and alternative methods of waste disposal and storage, the Commission will reach the same conclusion and therefore see little to be gained other than delay from imposing increased adversarial procedures in excess of those customarily required." Id., at A-55.

Second, Judge Tamm stated that the majority's insistence upon "increased adversariness and procedural rigidity," coupled with the lack of explicit direction on how to comply with the court's mandate, "continues a distressing trend toward over-formalization of the administrative decision-making process which ultimately will impair its utility." Id., at A-56.

3. CONTENTIONS: The contentions asserted by the parties stem from radically varying interpretations of the meaning of CA DC's decision. Petr Vermont Yankee says: (a) CA DC incorrectly required further "ventilation" of the issues, even though the Commission complied with the APA; (b) NEPA imposes no new procedural requirements besides those mandated by APA; (c) CA DC's emphasis on "ventilation" and "dialogue" creates unworkable administrative standards; (d) the decision conflicts with this Court's interpretation of NEPA in Kleppe v. Sierra Club, 42 USLW 5104 (1976); and (d) the decision improperly disregards the technical judgments of the Commission.

Petr Baltimore Gas & Electric in No. 76-548 contends: (a) CA DC

improperly faulted the Commission's procedures, because the intervenors "persistently refused even to attempt to show specifically" why existing agency procedures were either inadequate or unfair; (b) as to the environmental issues with respect to fuel reprocessing, rather than waste disposal, the court nowhere explains its unjustifiable conclusion that the record is inadequate; and (c) the decision will have pervasive impact on agencies which desire to pursue informal rulemaking under the APA by causing them to substitute instead protracted adversarial proceedings.

Resps-Intervenors reply: (a) there is no reason to take the case, because CA DC has held simply that the record in this case is inadequate; hence, the case will inevitably have to be remanded to the Commission for further proceedings; (b) petrs are trying to refashion the holding of CA DC; its discussion of Commission procedures was tied directly to the agency's failure to generate an adequate record; (c) there is no conflict with Kleppe, since that case simply addresses when an environmental impact statement has to be filed; and (d) CA DC's review of the record was legally proper and its conclusion as to inadequacy was correct.

The SG has filed a brief indicating that the federal respondents are not of one accord as to this case. Both the Commission and the SG agree that the decisions of CA DC in these cases are not without error. However, the SG says that the Court should not take the cases, whereas the Commission wants review now. The NRC says: (a) CA DC has held <sup>that</sup> the Commission's procedures are inadequate; yet, no guidance is provided as to the precise nature of the procedures to be employed; (b) the procedural question is of "great significance" to the Commission, because the NRC will be compelled, improperly, to conform its rulemaking procedures

to "unarticulated standards" generated by the court's "vaguely articulated preferences." The SG says: (a) the procedural issue is not squarely presented, because CA DC unanimously held that the record was inadequate to support the rule promulgated; therefore, the most reasonable reading of CA DC's opinion is that it remands the case "with directions to supplement the record, leaving the manner in which that is to be done to the agency's discretion." Response, at 9.

4. DISCUSSION: I think CA DC's finding of an inadequate record reflects a deeper dispute with the NRC. For the court decided that consideration of environmental factors relating to waste management must be undertaken in a comprehensive way now, at the licensing stage. The agency, in contrast, decided that full-blown consideration would be given in different proceedings, e.g. licensing proceedings for disposal plants, which would be more appropriate for reviewing such matters. Compare Aberdeen & Rockfish v. SCRAP, 422 U.S. 289 (1975), where the Court, among other things, sustained the ICC's desire to defer extensive environmental considerations to later proceedings "more appropriate to the task." Id., at 322.

Unfortunately, this is not a case with only clear-cut legal issues. For that reason, there will undoubtedly be considerable sentiment, and justifiably so, to leave the case alone. But I have a nagging feeling that, given the exceeding bad law seemingly made by the majority opinion below, this case has too much practical importance to turn it down.

There are responses.

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Op in petn app



February 27, 1978

No. 76-419 Vermont Yankee v. Natural Resources  
Defense Council  
No. 76-528 Consumers Power v. Aeschilman

Dear Bill:

Please show at the end of the next draft of your memorandum that I took no part in the consideration or decision of the above cases.

Sincerely,

Mr. Justice Rehnquist

lfp/ss

cc: The Conference