

vilian nuclear power reactor to the extent practical and the addition of new spent nuclear fuel storage capacity where practical at the site of such reactor; and

(2) to provide, in accordance with the provisions of this part, for the establishment of a federally owned and operated system for the interim storage of spent nuclear fuel at one or more facilities owned by the Federal Government with not more than 1,900 metric tons of capacity to prevent disruptions in the orderly operation of any civilian nuclear power reactor that cannot reasonably provide adequate spent nuclear fuel storage capacity at the site of such reactor when needed.

(Pub. L. 97-425, title I, §131, Jan. 7, 1983, 96 Stat. 2229.)

**§ 10152. Available capacity for interim storage of spent nuclear fuel**

The Secretary, the Commission, and other authorized Federal officials shall each take such actions as such official considers necessary to encourage and expedite the effective use of available storage, and necessary additional storage, at the site of each civilian nuclear power reactor consistent with—

- (1) the protection of the public health and safety, and the environment;
- (2) economic considerations;
- (3) continued operation of such reactor;
- (4) any applicable provisions of law; and
- (5) the views of the population surrounding such reactor.

(Pub. L. 97-425, title I, §132, Jan. 7, 1983, 96 Stat. 2230.)

**§ 10153. Interim at-reactor storage**

The Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under section 10198(a)<sup>1</sup> of this title for use at the site of any civilian nuclear power reactor. The establishment of such procedures shall not preclude the licensing, under any applicable procedures or rules of the Commission in effect prior to such establishment, of any technology for the storage of civilian spent nuclear fuel at the site of any civilian nuclear power reactor.

(Pub. L. 97-425, title I, §133, Jan. 7, 1983, 96 Stat. 2230.)

**Editorial Notes**

REFERENCES IN TEXT

Section 10198(a) of this title, referred to in text, was in the original a reference to section 219(a) of Pub. L. 97-425, which is classified to section 10199(a) of this title, and has been translated as section 10198(a) of this title as the probable intent of Congress in view of the subject matter of section 10198(a) which relates to development of technologies for storage of spent nuclear fuel, and the subject matter of section 10199(a) which relates to payments to States and Indian tribes.

**§ 10154. Licensing of facility expansions and transshipments**

**(a) Oral argument**

In any Commission hearing under section 189 of the Atomic Energy Act of 1954 (42 U.S.C. 2239)

<sup>1</sup> See References in Text note below.

on an application for a license, or for an amendment to an existing license, filed after January 7, 1983, to expand the spent nuclear fuel storage capacity at the site of a civilian nuclear power reactor, through the use of high-density fuel storage racks, fuel rod compaction, the transshipment of spent nuclear fuel to another civilian nuclear power reactor within the same utility system, the construction of additional spent nuclear fuel pool capacity or dry storage capacity, or by other means, the Commission shall, at the request of any party, provide an opportunity for oral argument with respect to any matter which the Commission determines to be in controversy among the parties. The oral argument shall be preceded by such discovery procedures as the rules of the Commission shall provide. The Commission shall require each party, including the Commission staff, to submit in written form, at the time of the oral argument, a summary of the facts, data, and arguments upon which such party proposes to rely that are known at such time to such party. Only facts and data in the form of sworn testimony or written submission may be relied upon by the parties during oral argument. Of the materials that may be submitted by the parties during oral argument, the Commission shall only consider those facts and data that are submitted in the form of sworn testimony or written submission.

**(b) Adjudicatory hearing**

(1) At the conclusion of any oral argument under subsection (a), the Commission shall designate any disputed question of fact, together with any remaining questions of law, for resolution in an adjudicatory hearing only if it determines that—

(A) there is a genuine and substantial dispute of fact which can only be resolved with sufficient accuracy by the introduction of evidence in an adjudicatory hearing; and

(B) the decision of the Commission is likely to depend in whole or in part on the resolution of such dispute.

(2) In making a determination under this subsection, the Commission—

(A) shall designate in writing the specific facts that are in genuine and substantial dispute, the reason why the decision of the agency is likely to depend on the resolution of such facts, and the reason why an adjudicatory hearing is likely to resolve the dispute; and

(B) shall not consider—

(i) any issue relating to the design, construction, or operation of any civilian nuclear power reactor already licensed to operate at such site, or any civilian nuclear power reactor for which a construction permit has been granted at such site, unless the Commission determines that any such issue substantially affects the design, construction, or operation of the facility or activity for which such license application, authorization, or amendment is being considered; or

(ii) any siting or design issue fully considered and decided by the Commission in connection with the issuance of a construction permit or operating license for a civilian nuclear power reactor at such site, unless (I)

such issue results from any revision of siting or design criteria by the Commission following such decision; and (II) the Commission determines that such issue substantially affects the design, construction, or operation of the facility or activity for which such license application, authorization, or amendment is being considered.

(3) The provisions of paragraph (2)(B) shall apply only with respect to licenses, authorizations, or amendments to licenses or authorizations, applied for under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) before December 31, 2005.

(4) The provisions of this section shall not apply to the first application for a license or license amendment received by the Commission to expand onsite spent fuel storage capacity by the use of a new technology not previously approved for use at any nuclear powerplant by the Commission.

**(c) Judicial review**

No court shall hold unlawful or set aside a decision of the Commission in any proceeding described in subsection (a) because of a failure by the Commission to use a particular procedure pursuant to this section unless—

(1) an objection to the procedure used was presented to the Commission in a timely fashion or there are extraordinary circumstances that excuse the failure to present a timely objection; and

(2) the court finds that such failure has precluded a fair consideration and informed resolution of a significant issue of the proceeding taken as a whole.

(Pub. L. 97-425, title I, §134, Jan. 7, 1983, 96 Stat. 2230.)

**Editorial Notes**

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in subsec. (b)(3), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 919, which is classified principally to chapter 23 (§2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

**§ 10155. Storage of spent nuclear fuel**

**(a) Storage capacity**

(1) Subject to section 10107 of this title, the Secretary shall provide, in accordance with paragraph (5), not more than 1,900 metric tons of capacity for the storage of spent nuclear fuel from civilian nuclear power reactors. Such storage capacity shall be provided through any one or more of the following methods, used in any combination determined by the Secretary to be appropriate:

(A) use of available capacity at one or more facilities owned by the Federal Government on January 7, 1983, including the modification and expansion of any such facilities, if the Commission determines that such use will adequately protect the public health and safety, except that such use shall not—

(i) render such facilities subject to licensing under the Atomic Energy Act of 1954 (42

U.S.C. 2011 et seq.) or the Energy Reorganization Act of 1974 (42 U.S.C. 5801 et seq.); or

(ii) except as provided in subsection (c) require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), such<sup>1</sup> facility is already being used, or has previously been used, for such storage or for any similar purpose.<sup>2</sup>

(B) acquisition of any modular or mobile spent nuclear fuel storage equipment, including spent nuclear fuel storage casks, and provision of such equipment, to any person generating or holding title to spent nuclear fuel, at the site of any civilian nuclear power reactor operated by such person or at any site owned by the Federal Government on January 7, 1983;

(C) construction of storage capacity at any site of a civilian nuclear power reactor.

(2) Storage capacity authorized by paragraph (1) shall not be provided at any Federal or non-Federal site within which there is a candidate site for a repository. The restriction in the preceding sentence shall only apply until such time as the Secretary decides that such candidate site is no longer a candidate site under consideration for development as a repository.

(3) In selecting methods of providing storage capacity under paragraph (1), the Secretary shall consider the timeliness of the availability of each such method and shall seek to minimize the transportation of spent nuclear fuel, the public health and safety impacts, and the costs of providing such storage capacity.

(4) In providing storage capacity through any method described in paragraph (1), the Secretary shall comply with any applicable requirements for licensing or authorization of such method, except as provided in paragraph (1)(A)(i).

(5) The Secretary shall ensure that storage capacity is made available under paragraph (1) when needed, as determined on the basis of the storage needs specified in contracts entered into under section 10156(a) of this title, and shall accept upon request any spent nuclear fuel as covered under such contracts.

(6) For purposes of paragraph (1)(A), the term “facility” means any building or structure.

**(b) Contracts**

(1) Subject to the capacity limitation established in subsections (a)(1) and (d), the Secretary shall offer to enter into, and may enter into, contracts under section 10156(a) of this title with any person generating or owning spent nuclear fuel for purposes of providing storage capacity for such spent fuel under this section only if the Commission determines that—

(A) adequate storage capacity to ensure the continued orderly operation of the civilian nuclear power reactor at which such spent nuclear fuel is generated cannot reasonably be provided by the person owning and operating such reactor at such site, or at the site of any other civilian nuclear power reactor operated by such person, and such capacity cannot be

<sup>1</sup> So in original. Probably should be preceded by “if”.

<sup>2</sup> So in original. The period probably should be a semicolon.