



IDEOLOGY DRIVES ACTIVISTS' ANTI-ENERGY POLICY AGENDA

by

Daniel E. Frank and David A. Codevilla

To understand why national environmental groups and their local allies oppose newer, technological-ly advanced, and environmentally friendlier sources of energy, it is important to understand the energy policy goals of the radical fringe that has co-opted the modern environmental movement. Those goals are simple: (1) stop all new power generation and all exploration for oil or natural gas; and (2) regulate the price of electricity and its supply to American consumers. Implementing these goals requires eliminating private control of all aspects of the energy market, from exploration and production to retail use. To that end, the radical elements in the green community oppose energy generation, regardless of the benefits to consumers or the degree of harm to the environment. The opposition is not, therefore, based upon perceived environmental harms, but rather is ideological. Unfortunately, it is the radical ideologues who are driving this anti-energy policy. A sound national energy policy depends on the extent to which this ideology and its radical goals are rejected.

The Fight Against More Energy. The policies of the federal government during and hanging over from the previous administration actively buttress the anti-energy environmentalists' agenda. In particular, under the Clinton administration, the Environmental Protection Agency (EPA), Department of Energy (DOE), and Department of the Interior (DOI) severely restricted access to new energy sources, and imposed costly regulations on existing energy facilities. The result has been less domestic production of energy and reduced investment in new power generation assets. The current energy crises in California, brought on largely by the opposition to new generation and enhancements to the energy delivery infrastructure, is but one highly visible example. Other examples include multi-year moratoria on leasing and drilling for oil or gas on the outer continental shelves of the Atlantic and Pacific coasts, as well as the Florida Gulf Coast and portions of the Alaskan coast. The DOI's Bureau of Land Management (BLM) has delayed permitting for energy exploration on federal lands. President Clinton famously declared the nation's last remaining source of low-sulfur coal, the Escalante Staircase in Utah, a national monument and as such off-limits to mining. Thirty domestic oil refineries closed during the past few years.

That administration's budgets cut funding for clean coal, nuclear, and hydropower research in

Daniel E. Frank is an attorney in the Energy and Commodities Practice Group in the Washington office of the law firm Sutherland Asbill & Brennan LLP. **David A. Codevilla** is an attorney in the Environmental Group in the Washington office of the law firm Kirkland & Ellis.

favor of further subsidizing "renewable" energy sources, which have never accounted for more than 3% of nationwide electric generation capacity. Hydropower, which accounts for about 10% of national generation capacity, is under attack by environmentalists, and hydroelectric facility relicensing has been delayed by the Federal Energy Regulatory Commission (FERC) because of alleged threats to fish and riparian areas. The EPA's re-interpretation of the Clean Air Act over the last two years of the Clinton administration would impose crushing compliance costs on fossil-fuel intensive utilities, even though those utilities had reduced their emissions below the targets of the 1990 Clean Air Act amendments.

Each regulatory burden and every reinterpretation, ban on exploration, and lawsuit are part of an apparent campaign to decrease energy supply and raise energy costs. The following examples demonstrate the irrationality of radical environmentalists' opposition to new electric generation:

- "Citizen activists" lobbied the Illinois Pollution Control Board to impose stricter environmental regulations on gas-fired "peaker" power plants, which are designed to provide power quickly during demand spikes (in the Midwest, usually during hot summer days), complaining, without any evidence whatsoever, that emissions might fall on playgrounds. *See William Grady, State Panel Urged to Put Curbs on Peakers*, CHICAGO TRIB. (McHenry County Edition), Sept. 8, 2000, at 5.
- In Massachusetts and Rhode Island, where state and local governments have long blocked any oil pipelines and tolerated few natural gas pipelines through the region, activists complain that the existing coal-fired plants are too dirty, and should meet more stringent air emissions standards. *See Marisa Katz, Activists Urge Chafee to Back Clean Air Bill*, PROVID. J.-BULL., Aug. 23, 2000, at 1B. The standards proposed by Massachusetts regulators would lead to shutting down at least one of the current plants, threatening regional jobs and the reliability of the state electrical grid. *See Marisa Katz, Reducing Emissions from Brayton Point, Somerset Station — What Price Cleaner Air, State Regulators Asked*, PROVID. J.-BULL., July 26, 2000, at 1C.
- In eastern Pennsylvania, environmental activists lobbied local government commissions to kill a proposed \$300 million gas-fired plant project, which would release roughly 40 times less particulate matter into the air than existing coal-fired plants, and would use effluent water from the City of Allentown for cooling purposes. *See Panda Controversy Reflects Larger Supply, Environmental Issues*, EASTERN PA. BUS. J., July 10, 2000, at 7.
- In California, environmentalists opposed a legislative effort to grant the Governor "emergency powers to speed up building new power plants and revamping old ones," despite the "widespread agreement that California urgently needs new power plants and new power lines, and that blackouts will be likelier over the next two summers until plants now being built come on line." Carrie Peyton, *Expected Electricity Savings Short-Circuit in State*, SACRAMENTO BEE, July 10, 2000, at A1.
- In Wisconsin, a 450 megawatt gas-fired plant, which had been approved by state regulators, was delayed by over a year, at a cost of at least \$26 million, due to litigation filed by a local environmental group. *See Naruth Phadungchai, Power Plant Project Finally Begins*, BANK LOAN RPT. (Apr. 10, 2000). The same group refused to denounce the sabotage of equipment on a transmission line near the plant site that caused 500-600 gallons of oil to flow onto the ground. AP, State and Regional, *Gunfire Damages Electrical Line*, Mar. 16, 2000.

These examples highlight the radical environmental movement's strategy and goals: the shutting down or hiking of the cost of old power generation, and the prevention of the construction of new,

cleaner generation, regardless of demand or need. Tactically, putting "local activists" or "citizen groups" out front is helpful, but the sharp edge of the environmentalists' campaign is always either co-opting government regulatory policies, or litigation. The result of the campaigns is fewer generation sources, less power, higher electricity costs, shortages, and millions of wasted dollars.

Real Options for More Energy. Coal, nuclear, hydropower, and natural gas account for roughly 97% of the electricity generated in this country. If nuclear and coal-fired plants are shut down, exploration for additional supplies of natural gas is foreclosed, and hydropower production remains stagnant or decreases, energy costs will skyrocket, because replacing such generation capacity with "renewables" is inconceivable.

"Renewable" sources of energy (solar, wind, geothermal, and biomass) cannot begin to compete in the electric generation market with coal, nuclear, gas, or hydropower. Even with government subsidies, producing electricity from "renewables" is two to three times as expensive as generation from fossil-fuel sources. See Robert L. Bradley, *Renewable Energy: Not Cheap, Not Green*, Cato Policy Analysis, No. 280 (Aug. 27, 1997) (available at www.cato.org/pubs/pas/pa-280.html). In the market for electricity, expensive "renewable" energy thus will not be a viable option for most consumers, even if it were available.

In addition, a significant number of environmentalists oppose building "renewable" capacity as ardently as they oppose building other generation sources, further dwindling what "renewable" supply might be available to consumers. See generally, *id.*; Robert D. Kahn, *Siting Struggles: The Unique Challenge of Permitting Renewable Energy Power Plants*, ELEC. J. (Mar. 2000). For example, both wind and solar generating plants require huge amounts of land to be developed, and, in the case of wind turbines, often result in additional transmission line construction. Once operational, windmills can kill birds, and solar plants allegedly harm fragile desert ecosystems and various endangered species. More to the point, though, neither wind nor solar is a steady, predictable source of energy, which means the additional transmission lines are underutilized, again adding to the cost of power. One well-publicized solar project in Nevada has a real cost five times that of surplus electricity available in the area, and is equipped with a gas-fired turbine to bring the costs down and overcome the natural "intermittency" of the power flow. Bradley, *supra*, at 18. Biomass plants have air emissions problems similar to coal-fired plants and, in any event, constitute only a tiny fraction of the nation's power supply portfolio (1.7% in 1995). Nevertheless, it represents the single largest option within the "renewables" portfolio. See *id.* at 20 & n. 199.

The inherent and economic limitations of "renewables" render them an unviable alternative to 97% of current national generation capacity. Simply put, if radical environmentalists succeed in doing away with existing sources, "renewables" will not constitute a sufficient alternative. Reliance on "renewables" thus is not a sound policy, but is rooted in ideology.

Radical environmentalists' ideological motivation is further illustrated by their unwavering opposition to the continued contribution of nuclear energy to the nation's generation portfolio. Nuclear energy has generated roughly 20% of the country's electricity over the past decade. However, strident environmentalists seek to co-opt governmental policy in order to eliminate this generation capacity without any realistic plan for how to replace it. As noted above, "renewables" are not the answer.

Importantly, the environmental record of the commercial nuclear industry does not support the environmentalists' "no nukes" exhortations that nuclear energy is environmentally unsafe. First, nuclear power plants simply do not emit sulfur dioxide or nitrogen oxides, nor do they generate or emit carbon dioxide. Measured in "carbon equivalents," nuclear power plants substituted for 168 million tons of emissions in 1999 alone. See Nuclear Energy Institute, *Public Policy Issues: Nuclear Energy and the*

Environment (July 2000), available at www.nei.org/doc.asp?catnum=3&catid=25. Second, the entire commercial nuclear industry, since it began in the 1950s, has caused exactly one death — a worker died at a Sequoyah, Oklahoma nuclear fuel fabrication plant when toxic uranium hexafluoride gas escaped from an indoor storage tank. The much-publicized radiation leak from the Three Mile Island plant in Pennsylvania in 1979 not only caused no deaths, but no injuries of any kind. Plaintiffs in continuing federal court litigation have been unable to present even minimal proof that any personal injuries resulted from the leak. People living close to nuclear power plants receive additional radiation doses that are barely detectable above the background radiation to which the average American is exposed daily from natural sources. *See id.* at 4. A sound energy policy should be informed by relevant facts such as these and not be driven solely by ideological opposition to nuclear energy.

Despite the nuclear power industry's record of safety and nuclear energy's demonstrable environmental benefits, environmentalists have actively fought against license renewals for existing plants, which would allow these plants to supply electricity to future generations. Although the Nuclear Regulatory Commission (NRC) has to date approved every application for renewal, environmental groups may nonetheless succeed in shutting down the nuclear industry in an indirect, piecemeal fashion. It is unquestioned that nuclear power plants must dispose of nuclear waste, including items contaminated with low-level radioactivity like cleaning solvents and clothing, and high-level radioactive waste, such as spent fuel, in a safe and responsible manner. The former can be buried in the ground at restricted-access sites and rendered effectively non-hazardous. However, spent nuclear fuel remains highly radioactive for thousands of years, and must be stored carefully and permanently. Recognizing this, in 1982, Congress directed DOE to study and build a permanent, deep underground repository for utilities' spent nuclear fuel, to be funded by a tax on utilities that own nuclear plants, by January 31, 1998. Whereas utilities have paid over \$16 billion into the repository fund, DOE has failed to comply with its statutory obligations to implement the safe and responsible disposal of nuclear waste. By law, nuclear power plants will begin shutting down in 2004 because they have no permanent storage option, a direct result of this governmental inaction. A rational energy policy would not have permitted that to happen; an ideologically-driven policy has.

Conclusion. Our economy, including the growing high-tech sector, is energy intensive. As Bill Gates's marketing slogan — "a computer on every desk" — becomes reality, the demand for energy will continue to rise. The key question is whether radical environmentalists will succeed in pushing governmental policies that impede the supply of energy necessary to meet this growing demand.

America itself has ample reserves of oil, natural gas, uranium, and hydropower. New generation plants, especially gas-fired plants, can be built quickly and in an environmentally responsible manner. Nuclear energy can continue to produce low-cost, reliable electricity, and the resources and means exist to safely dispose of spent nuclear fuel. Hydropower can continue to make a significant contribution to the national energy portfolio if relicensing proceedings are implemented rationally and not held hostage to environmentalists' insistence upon rigid application of unduly stringent federal environmental laws. A real national energy policy, not a national anti-energy policy subordinated to the Luddite goals of the radicals in the modern environmental movement, is necessary in order to allow these generation sources to deliver reliable, low-cost power to American consumers.

On August 31, 2000, the U.S. Court of Appeals for the Federal Circuit ruled that DOE breached its contracts with utilities when it failed to begin moving spent nuclear fuel from the interim storage sites at utilities' nuclear power plants by January 31, 1998.