



Political springtime for nuclear energy? But what about the law?

The political message in 2009 is to rely upon nuclear energy for many years to come. Licences have already been issued to increase the production capacity in existing reactors and it is not unlikely that new reactors will be constructed, foremost to replace outdated existing ones. This policy has several legal implications.

The Nuclear Technology Act of today includes an explicit prohibition to issue a license for a new nuclear reactor. This prohibition has to be removed if new reactors shall be possible to construct. However, increased generation of electricity by modernisation of an existing reactor may be an economically more preferable alternative than to construct a new reactor. It is therefore of interest that the prohibition applies only to the construction of a new “reactor”, defined as the entire nuclear installation, while e.g. replacement of a reactor tank or other components is not covered the prohibition. The law does in fact require the operator to continuously update the installation for safety reasons.

Who should decide? Politicians or nuclear safety experts?

It is disputable if the major decisions on nuclear energy issues (new reactors, deposits of radioactive waste etc.) should be taken by the government, as is the case in Sweden, Finland and most other nuclear energy states. Is the government an impartial body, capable to comply with legal requirements? Will e.g. the government turn down an application for a new, politically desired nuclear plant if legal requirements on environmental protection in e.g. the Environmental Code are not fulfilled? It is noteworthy that

the International Atomic Energy Agency (IAEA) recommends that these decisions should be taken by a nuclear safety expert authority. This system is adopted by USA and Canada.

The municipal power

Another controversial issue is the role of the municipality. The municipality is not only chief responsible for physical planning, but has also a right of “veto”. As in Finland, the municipality must approve, otherwise the government cannot legally permit the installation. There are no exceptions for nuclear reactors. One may ask if the right of veto may lead to locations which are not optimal from safety, environmental or infrastructural point of view. One may also ask why a veto power is vested only in the municipality where the nuclear plant is planned to be located, but not in other municipalities possibly affected by the plant and its risks.

Legal control takes time

A nuclear plant necessitates decisions on plans and permits according to the Plan

and Building act, the Environmental Code (at least three decisions) and the Nuclear Technology act. All decisions can be appealed. Although the Environmental Code to a considerable extent coordinates the processes, the legal decision making process can be expected to take many years, probably more than ten from the first application to the final decision.

In Sweden, the Environmental Court prepares the case and advises the government to approve or disapprove the application. In two rather recent cases concerning increased production capacity in reactors at Ringhals and Oskarshamn, the Court considered the operation at the plant to be non-complying with environmental requirements prescribed in the Code (in one of the cases because of the risk for terror attacks or other kinds of sabotage). The Government accepted the two applications despite the Courts’ recommendations to disapprove. (Miljö- och samhällsbyggnadsdepartementet, 2005-10-20 in case M2005/2913/F/M and 2006-

Energy Policy will publish an article by Gabriel Michanek (law) and Patrik Söderholm (economics), presumably in fall 2009. The article discusses legal and economic aspects on the licensing of nuclear reactors, comparing Sweden with other states, especially Finland.