

# After Parker: A Review of the Windscale Inquiry and Subsequent Developments

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by Geoffrey Greenhalgh

## INTRODUCTION

For 100 days in 1977, an Inquiry was held in Great Britain to look at the implications of building a plant at Windscale, on the Cumbrian coast, to reprocess oxide fuel from thermal nuclear reactors. However the Windscale Inquiry was but one step in a chain of events extending over several years. And while the Inquiry and the report of the Inspector Ref. [1] were key factors in determining the course of these events they should be related to the preceding and following events. There were two public debates before the Inquiry and two debates in the House of Commons after the publication of Mr. Justice Parker's report. The decision to proceed with the thermal oxide reprocessing plant (THORP) was taken by Parliament following the final debate on 15 May, 1978.

Public debates on the proposals to refurbish the existing Magnox reprocessing plant, and to build the THORP plant were held firstly on the local scale at Barrow in Furness on 11 December, 1975 and secondly on the national level at Church House, Westminster on 15 January, 1976. The debates were held under independent Chairmen with the participation of environmentalist groups and a wide range of representatives of both local and national organizations

The outcome of these debates was sufficiently positive for the Minister of Energy to announce on 12 March, 1976 that British Nuclear Fuel Limited (BNFL) could continue to accept overseas business "having given full consideration to the safety and environmental implications of accepting more work of this kind, taking account particularly of the views which have been expressed in the recent extensive public discussion of the question."

BNFL then made a formal submission to the local authority, Cumbria County Council, for outline planning application on 25 June, 1976. On 2 November, 1976 the Town and County Planning Committee of Cumbria County Council "being minded to approve the application" nevertheless resolved to refer the matter to the Secretary of State for the Environment, Mr. Peter Shore. With the sensational publicity given to the announcement in December 1976 that there had been a leakage of low level radioactive water from a storage silo containing spent fuel hulls it was not surprising that Mr. Shore announced on 22 December, 1976 that the proposals to build the THORP oxide fuel plant should be called in for his own determination. The less controversial aspects of the BNFL plans relating to Magnox fuel, site services, etc. were separately resubmitted to the Cumbria County

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Council and outline planning permission granted on 1 March, 1977. The THORP proposals were called in by Mr. Shore on 25 March, 1977 and became the subject of the Public Inquiry which began its hearings on 14 June, 1977 and ended on 4 November, 1977.

## THE WINDSCALE INQUIRY

The Inquiry was conducted by Mr. Justice Parker assisted by two technical assessors, Sir Edward Pochin, a radiobiologist and former Chairman of the ICRP and Sir Frederick Warner, a chemical engineer who had earlier been a member of the Royal Commission on the Environment. The assessors did not play a prominent role in the Inquiry and asked few direct questions; their function seemed to be more to provide elucidation of technical points to the Inspector in private.

The procedure adopted was that evidence was given under oath and this evidence was then tested by cross-examination and when necessary re-examination with the witnesses still under oath. The main participants at the Inquiry were represented by legal counsel.

An analysis by BNFL of the amount of time and effort devoted to the cases presented at the Inquiry shows that BNFL occupied 30 of the 100 days, BNFL supporters another 10 days, Government departments 10 days, the objectors 40 days, with 10 days given to opening and closing statements. BNFL produced 17 witnesses and received support from another 19 organizations and individuals. The objectors produced 84 witnesses including a number from the United States. As contributions to the flood of paper, BNFL produced 16 proofs of evidence and 300 reference documents, its supporters 18 proofs and about 200 documents, Government departments 10 proofs and 75 documents and the objectors 92 proofs and 1100 documents. At the Inquiry itself more than 4 million words of evidence were heard.

## DEVELOPMENTS FOLLOWING THE INQUIRY

These figures demonstrate clearly the wide ranging debate, which explored fully all the issues involved. Indeed, the Secretary of State for the Environment suggested that no other country in the western world has had a more open, thorough and impartial examination of a major nuclear proposal. The impartiality of the Tribunal was also recognized in the final submission by Mr. Kidwell, the Counsel for the Friends of the Earth.

"something which all my clients specifically wish me to say and with which I whole-heartedly associate myself; we are grateful for the patience and care with which the Tribunal has treated our case. We accept also without limitations or hesitation the total integrity and independence of the Tribunal from any outside influences." Ref. [2].

As might have been expected this view did not survive the publication of the report, and in the Friends of the Earth's report on what they call "the Parker Inquiry" the Inspector is accused of "a marked asymmetry of judgement" of being "insufferably patronizing and inexcusably slipshod", and of "obscurantism". They say that

"Anything which BNFL desire to do, no matter how novel, technically challenging, or even purely hypothetical, is accepted by the Inspector as feasible; anything objectors wish to do, no matter how comparatively straight forward, is set aside as unproven or imprudent." Ref. [3].

But it must be emphasized that the decision to proceed with the Windscale reprocessing plant was not made by Mr. Justice Parker but by Parliament. This point was clearly put by Mr. Wedgewood Benn, the Minister for Energy, in winding up the second debate on 15 May:

“I can fully understand the disappointment of environmentalists that their view did not prevail with BNFL, with Mr. Justice Parker nor with the Government. But BNFL, the Parker Inquiry and the Government are not deciding the matter. The decision will be made in a few moments in this Chamber.” Ref. [4].

Although the Parker report understandably had a strong influence on both the Parliamentary debates, and was in general accepted by the Government and the Opposition, the debates in the House of Commons provided a searching and critical assessment of the THORP proposals

Mr. Shore, Secretary of State for the Environment, in opening the debate on 22 March 1978 summed up the Government belief that Mr Justice Parker’s report, based upon the mass of evidence submitted, had shown that reprocessing can be carried out without any significant increase in radiological risk; that environmentally it offered a better option than the alternative of storing spent fuel for disposal in a form which includes the plutonium and unused uranium; that the security risk can be contained in ways compatible with a democratic way of life; and that the reprocessing of foreign fuel does not run counter to the policy of preventing the proliferation of nuclear weapons.

Mr. King, the Opposition spokesman for energy also believed that Mr. Justice Parker had produced a valuable report and said that the Opposition supported his recommendations. It was only the minority Liberal party, supported by some Labour and Conservative members who urged the rejection of the report. The voting was 186 to 56 in the first debate, 224 to 80 in the second.

Although this must be a subjective assessment it is believed that the thorough examination of the Windscale project by the Parker Inquiry, and the subsequent debates in Parliament has done much to allay the fears of the public at large, not only on reprocessing but on nuclear power in general. But while the public may have accepted that the Windscale plant should now be built, such is not the case for many of the objectors. There have been a number of complaints by some of the Windscale objectors about the way in which their evidence had been treated by Mr. Justice Parker. The Times published a letter signed by 17 of the witnesses for the objectors in which they said.

“We each consider that our evidence has been either misunderstood, misrepresented, distorted or ignored.” Ref. [5].

A frequent charge also levelled at the Inspector is one of selective quotation. But to some extent these criticisms misunderstand the purpose of the Inspector’s report; it was never intended to be a summary or précis of the differing views put forward at the Inquiry but rather a presentation of the basis on which the Inspector’s view was formed – a setting out of the arguments and evidence which led to the judgement given. It was in this process of sifting and assessing the relative value of disputed opinions that Mr. Justice Parker’s long legal experience was particularly valuable. If a decision is to be arrived at between two opposing views, the evidence of one party must be preferred to that of the other. It is unrealistic to expect that a judge can give equal weight to both sides. Yet this seems to be the foundation of the charge by the Friends of the Earth for what they refer to as a “marked asymmetry of judgement.”

Another criticism (letter to the Times, 10 March, 1978) was raised by the Chairman of the Town and Country Planning Association, (this is now an environmentalist group and took a leading part at the Windscale Inquiry, being represented by a Q.C. and organizing the presentation of evidence by a number of expert witnesses) who wanted

“a process which would weight many things in the balance, rather than reduce them to one factor; which allows for qualitative, as well as the quantitative, which acknowledges opinion as well as experienced fact, meaning as much as knowledge, which gives human judgement its place and which no longer worships at the altar of the fetish of certainty. It is a process of which we shall have increasing need in the very different future which though Mr. Justice Parker may be unaware of it is now evidently in the making.”

This seems to be an echo of the view advanced over 60 years ago by the guild socialist A.J. Penty who complained of

“the prejudice of the modern intellectual against all reasoning which is not based upon material facts .... People who are wise before the event reason from a metaphysical position and a knowledge of human nature. This is natural because it is the spirit of man which is the creative force in society and is the cause of things. Phenomena are the manifestation of the spirit in the material universe. To base our reasoning on social questions entirely upon phenomena, which alone in these days are recognized as facts, is to leave out of our calculations the most important facts of life” Ref. [6].

On these points the comment by Mr. Arthur Palmer in the debate on 15 May is worth recalling.

“ .... it is obvious now that the anti-nuclear forces have regrouped themselves and, having been defeated on the facts at the Inquiry are falling back on the timeworn device of challenging the scope and fairness of the Inquiry .... there are some who contend there is no such thing as objectivity, that all opinions are subjective, and that one opinion is as good as another, irrespective of the supporting evidence .... If that is truly the case there was no point in having the Inquiry at all, which could have been held only on the normal rational basis of taking evidence, written and oral, cross-examining witnesses and at the end drawing e conclusions and making recommendations to the Minister as required ... had (Mr. Justice Parker) decided on the evidence that the development should not proceed, I suspect the Friends of the Earth and the others who now accuse him of bias would have applauded his upright judgement.” Ref. [7].

The distinction between fact and value judgement is one of the points made in a preliminary report of the “Windscale Assessment and Review Project”, a one year programme of study into the Windscale Inquiry, led by Prof. David Pearce of Aberdeen University and financed by the Energy Panel of the Social Science Research Council. Prof. Pearce argues that no institutional procedure will ‘resolve’ conflict because what is at stake is not just scientific issues but differing value systems and these are not altered by structured debate. The opposition to nuclear power is not just based on fears and worries about the physical consequences but, in some cases, is based on different views of what constitutes a desirable future. The distinction between fact and value, he maintains, is not a simple one in the nuclear context. But it is one that should be recognized, even if the debate on factual issues is confined to one institution and the value debate takes place elsewhere. In the end Prof. Pearce recognizes that decisions will have to be made; the losing side will remain the

losing side, and it is clear that institutional procedures cannot resolve the conflict. Somewhat surprisingly after arriving at this conclusion Prof. Pearce goes on to argue that the Windscale Inquiry failed because the Inspector did not include in his report the full arguments on "alternative" values of low growth societies that were presented at the Inquiry. This is also the complaint of the opposition. The Friends of the Earth say

"In no way does it convey the substance of the Inquiry deliberations, nor the balance of arguments there presented." Ref. [8].

It can be asserted that the judgement on the "values" and political issues involved in the Windscale development were dealt with in the debates of the House of Commons. For instance the possible conflict between the U.K. non-proliferation policy in relation to the views of the American administration, and the desirability or otherwise of awaiting the outcome of the INFCE programme before proceeding with the Windscale development were covered by authoritative statements in debate by Government ministers, the Secretary of State for the Environment and the Foreign Secretary.

## WHAT FORMAT FOR FUTURE INQUIRIES?

The question now to be faced is what lessons can be learnt from the way in which the Windscale Inquiry was conducted. Is it unique or can it serve as a model on which to conduct future inquiries into nuclear projects? In what way does it differ from other inquiries such as the public hearings on reactor licensing held in the USA? These points are of special interest in the UK in view of the announced intention of the Government to hold an inquiry before proceeding with the construction of a prototype commercial power plant using a fast reactor

The American experience has not been too happy. The inquiries have led to very long delays. The intervenors, once they were permitted to participate, have been able to extend the scope of their objections far beyond matters covered in their original petitions. The issues have been confused and clouded. Intervenors have concentrated more on the dramatic impact of their cross-examination, so much so that many commentators believe that the adversary process of cross-examination is not appropriate to administrative adjudication of complex issues of technology and economics. It has been claimed that the public hearings on AEC license applications have made no substantive contribution to the advancement of nuclear safety or to the resolution of technical questions. The intervenors representing small segments of the public, have been able, however sincere their purpose, to use trial techniques and procedures to hold up indefinitely the issuance of licences, either in the interest of defeating the project or of forcing settlements according to their own notions of nuclear safety or environmental protection. Ref [9]

The force of this claim is demonstrated in a paper given at a study course on environmental law in January 1971 by Irving Like, the attorney to the Lloyd Harbour Study Group.

"If the licensed project will damage the environment it must be opposed irrespective of the prospects of victory or defeat. The administrative arena must be used as an environmental forum to alert the public to the project's adverse effect on environmental quality. The environmental stakes must be vividly dramatized as a prelude to organizing political action to block the project or correct its deficiencies. Viewed in this perspective a losing

environmental cause is worth fighting for because it adds to the ecological enlightenment of the public.”

The strategy to be used is that of a “multi-media confrontation”, each day must become, whenever possible “a dramatic and suspenseful event.”

In this scheme the right to cross-examine is a particularly potent tool. But cross-examination is a two-edged sword, particularly when carried out before an experienced and competent judge. It was noticeable at the Windscale Inquiry that many of the points put forward by the opponents did not stand up to a searching cross-examination.

Despite this there is general agreement from both sides in the United Kingdom that an adversary procedure with cross-examination is a necessary part of any future inquiry. This view is supported by Dr. Wynne who played a prominent role at Windscale for an organization called “Network for Nuclear Concern” and also by Prof. Pearce in his preliminary report for the Social Science Research Council.

The courteous, polite but very firm control that Mr. Justice Parker maintained throughout the Windscale Inquiry was outstanding. One of the successful innovations of the Inquiry was the insistence by the Inspector that where disputed contentions were susceptible to experimental measurement such measurements should be made, using procedures agreed upon by the technical experts of both sides. In this way when one of the objectors suggested that some lakes near Windscale, which supply water to the city of Manchester, were contaminated with tritium the Inspector ordered that samples should be taken and analysed. The results showed that the tritium content was below the detection level of 0.4 nanocuries per litre. At this level a person would have to drink at least 10 000 litres of water a day to reach the ICRP limit.

In the same way it was established that potatoes grown on the Isle of Man, using local seaweed as fertilizer allegedly contaminated with plutonium, would have to be consumed at the rate of 30 tonnes per day to reach the maximum permitted dose level.

It is then not surprising in view of the effective manner in which Mr. Justice Parker conducted the Inquiry that attempts are being made to ensure that the same firm control will not be possible for future inquiries. Dr. Wynne for instance has proposed in a letter to the Times, 27 April 1978, that for future inquiries it would be “more constructive” to have a “wider range of views reflected among the assessors leading to a report which was an authentic reflection of the Inquiry (and possibly inconclusive in itself).”

The argument for an inquiry body that should be representative of the major stances that will be taken at the debate has been taken even further by Prof. Pearce, who suggested that the chances of finding truly ‘independent’ persons is often remote, and since the conflicts at the inquiry will not be resolved, what matters is that they should be fully explored and properly presented; there is nothing odd about, and many desirable features of having opposing views presented.

“This is not to say they must present opposing views: they should present the differing views as presented to them, but it may well be that they disagree on the appropriate advice to be given.” Ref. [10].

Prof. Pearce supports his proposal by arguing that failure to provide an institutional procedure for nuclear protest will merely divert that protest somewhere else, quite possibly

into channels which should be regarded as socially the least desirable (civil disobedience or even violence)\* As he points out,

“it is significant that in the UK now we are witnessing the beginnings of a debate about the ‘value’ of taking part in inquiries of the Windscale type compared with the alternative of civil disobedience. . . Our suggestion is that this debate would not be taking place, regardless of the fact that the opposition ‘lost’ at Windscale had the inquiry procedure come closer to the model we suggest.” Ref [11].

But this proposal would seem to ignore his own differentiation between fact and value, and the suggestion that *these issues could be determined in separate institutions* Instead of diluting the inquiry board, so as to prevent it from arriving at a clear recommendation on the factual issues rather than a mere reflection of opposing and often confused arguments, the aim should be to separate out and concentrate on determining objective facts at an inquiry. The acceptance or rejection of these facts and their integration into the fabric of society should be the task of Parliament where elected representatives can debate the different value systems and decide on the future course that society should take The threat of civil disobedience or violence can then be seen in its true light as a rejection of the democratic process.

#### References

- [1] The Windscale Inquiry, HMSO, London (1978)
- [2] Windscale Inquiry Transcript, Day 92, p 51 G
- [3] The Parker Inquiry, Friends of the Earth, London (April 1978), para 2 8
- [4] Hansard, 15 May 1978, No 116, Col 177
- [5] Quoted in Hansard, 15 May 1978, Col 140
- [6] Penty, A J , Old Worlds for New, Allen & Unwin, London (1917), p 32
- [7] Hansard, 15 May 1978, Col 154
- [8] The Parker Inquiry, para 1 2
- [9] See G F Trowbridge, AEC Licensing Procedure, JCAE (1971), p 329
- [10] Pearce, D , “Opposition to civilian nuclear power and the role of the public inquiry, ” presented at the Uranium Institute, London (July 1978), p 11
- [11] Ibid , p 16

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\* “We call on all those who object to the FBR to boycott the coming Inquiry and instead commit themselves to a programme of non-violent, civil disobedience We believe that no option is left to us if the scourge of nuclear power is to be stopped, as it must be, if we are to preserve our country and our planet” (*New Ecologist, March-April 1978 ‘Reprocessing the Truth’*)