



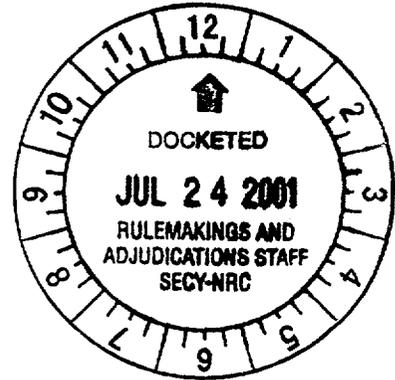
NUCLEAR ENERGY INSTITUTE

PRM-52-1

Robert Willis Bishop  
VICE PRESIDENT &  
GENERAL COUNSEL

July 18, 2001

Annette L. Vietti-Cook  
Secretary  
U.S. Nuclear Regulatory Commission  
Mail Stop O-16 C1  
Washington, DC 20555-0001



Attention: Rulemakings and Adjudications Staff

Dear Ms. Vietti-Cook:

On behalf of the nuclear energy industry and pursuant to 10 CFR 2.802, the enclosure to this letter provides an industry petition to amend the Commission's regulations. Specifically, the petition requests that the Commission add two new provisions to 10 CFR Part 52 to enhance the focus and efficiency of the early site permit and combined license processes. The NRC is in the process of updating its requirements under Part 52, and we understand that a notice of proposed rulemaking will be issued for public comment in the September time frame. To ensure the appropriate consideration of all pertinent changes to Part 52, we request that the Commission merge the proposals that are the subject of this petition into the Part 52 update rulemaking now in preparation.

The industry has previously discussed the proposed provisions in public meetings with the NRC staff. The industry's proposals were also described in our April 3, 2001, letter to the NRC staff concerning their inclusion in the forthcoming notice of proposed rulemaking to revise Part 52.

In its staff requirements memorandum of February 13, 2001, the Commission placed particular emphasis on the early identification of regulatory issues and potential process improvements related to new plant licensing. Proposed Sections 52.16 and 52.80 would provide application and review process efficiencies to companies seeking early site permits or combined licenses at already licensed sites. Specifically, these provisions would eliminate the need for duplicative applicant production and NRC review of valid, existing information relative to the existing site or facility that was previously approved by the NRC and subject to a public hearing.

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July 18, 2001  
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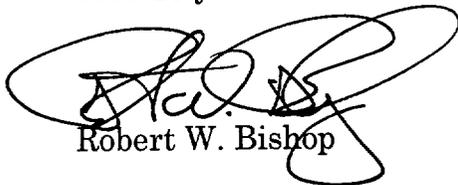
The proposed provisions are consistent with the view expressed by Chairman Meserve in a February 28, 2001, letter to Senator Domenici, namely, that "the NRC's review of an application for a new plant at an already licensed site should consider only those matters that must be considered to provide reasonable assurance that the site is acceptable for the additional incremental impact of the new unit."

Early site permitting and combined licensing would be more focused and efficient under this approach, conserving both licensee and NRC resources. This is because the review would focus on the incremental impact of the new unit(s) on the existing site or facilities and not on information previously approved by the NRC that is unaffected by the proposed additional unit(s). Importantly, under this proposal, ESP and COL applicants would still be required to account for new information and meet all current NRC regulations.

As discussed in the enclosed petition, we believe that the NRC has the statutory authority to initiate and, following notice and opportunity for public comment, implement the actions sought in the enclosed petition. Doing so is important to ensure the efficiency and safety focus of NRC reviews of new licensing applications that are expected in the near term and to otherwise improve the efficiency of the NRC's processes and the effectiveness of its allocation of its resources.

If you have any questions concerning this petition, please contact me at 202-739-8139 or [rwb@nei.org](mailto:rwb@nei.org).

Sincerely



Robert W. Bishop

Enclosure

- c: The Honorable Richard A. Meserve, Commissioner, NRC
- The Honorable Greta Joy Dicus, Commissioner, NRC
- The Honorable Nils J. Diaz, Commissioner, NRC
- The Honorable Edward McGarrigan, Jr., Commissioner, NRC
- The Honorable Jeffrey S. Merrifield, Commissioner, NRC
- William D. Travers, EDO, NRC
- Karen D. Cyr, GC, NRC
- Samuel J. Collins, (NRR/OD), NRC
- James E. Lyons, Director of Future Licensing Organization, NRR, NRC



and an opportunity for hearing, to account for changed circumstances, such as new regulations and significant new information.

### III. DESCRIPTION OF PROPOSED SECTIONS 52.16 AND 52.80

Subpart A to Part 52 contains provisions governing issuance of early site permits (ESPs). Proposed Section 52.16 would be added to Subpart A to allow an ESP applicant to incorporate by reference all or portions of the current licensing basis for an existing reactor site to the extent that they are valid and applicable to one or more additional nuclear power plants that fit within the ESP environmental envelope. Proposed Section 52.16 would also require that any information incorporated by reference be augmented to include:

- significant new safety or environmental information that materially affects the ability of the site to support the proposed additional nuclear facility(ies)
- information regarding the cumulative radiological and environmental impacts of the existing facility(ies) and the facility(ies) as described in the ESP application
- an analysis of the potential safety impacts of the existing facility(ies) on the suitability of the site for the facility(ies) as described in the ESP application
- an analysis of the potential safety impacts on the existing facility(ies) from the facility(ies) as described in the ESP application
- information that addresses regulations applicable to siting issues that became effective after licensing of the existing facility(ies), to the extent that such regulations are not addressed in the current licensing basis

Under proposed Section 52.16, the NRC would treat as resolved those matters incorporated by reference, except to the extent that those matters are subject to augmentation with new information described above. In addition, proposed Section 52.16 would allow the NRC to impose a change in the application with respect to the information incorporated by reference, to the extent that the change satisfies the principles underlying 10 CFR 50.109, *Backfitting*. In preparing its environmental impact statement for the early site permit, the NRC would adopt the applicable portions of the existing environmental impact statement associated with the site, modified or supplemented as necessary to reflect the Commission's review of the new environmental information identified above.

Subpart C to Part 52 contains provisions governing issuance of combined construction permits and operating licenses (COLs). Proposed Section 52.80 would be added to Subpart C and would contain provisions similar to those proposed in Section 52.16. Additionally, proposed Section 52.80 would allow a COL application to incorporate by reference programmatic information identified in the current licensing basis of an existing licensed facility located at the same site or owned or operated by the same licensee. Proposed Section 52.80 would require this programmatic information to be augmented to include information that addresses applicable regulations that became effective after the existing facility was licensed,

to the extent that such regulations are not addressed by the current licensing basis for the existing facility(ies). Under proposed Section 52.80, the NRC would treat as resolved those matters incorporated by reference from the existing facility, except to the extent that those matters are subject to new information as identified above. In addition, the NRC could direct that a change be made in the COL application with respect to the information incorporated by reference, to the extent that the change satisfies the principles underlying 10 CFR 50.109.

#### IV. JUSTIFICATION

Proposed Sections 52.16 and 52.80 are consistent with and promote the NRC's five Principles of Good Regulation and regulatory performance goals. In particular, focused review on new information and new regulations is consistent with NRC goals to maintain safety, protect the environment, ensure public confidence, increase NRC effectiveness, and reduce undue regulatory burden.

- Protection of Safety and the Environment - The proposed regulations are consistent with NRC's mission to ensure adequate protection of the public health and safety, the common defense and security, and the environment. In particular, the proposed regulations focus NRC reviews on new information and the incremental impact of an additional unit at an existing site. Consideration of changed circumstances (such as new regulations or significant new information) would be required that could materially affect NRC's previous resolution of matters. Furthermore, even in the absence of new information, the proposed regulations provide NRC with the authority to impose new requirements on previously approved information if required to ensure adequate protection of the public health and safety and the environment.
- Increasing NRC Effectiveness - The proposed regulations will serve to enhance the efficiency of the regulatory process, by eliminating duplicative reviews of matters resolved in previous proceedings. The proposed regulations will reduce the amount of information applicants will need to include in their license applications and the scope of follow-on requests for additional information (RAIs). The proposed regulations will also increase administrative efficiency within the NRC by focusing NRC resources, both review and hearings, on new and material information and the incremental impact of potential new units on the site. They would ensure that NRC resources would be most effectively used and focused on the potential safety significance of the information.
- Ensuring Public Confidence - Proposed Sections 52.16 and 52.80 will also ensure that the public has an opportunity for a hearing on all material issues. To the extent that an ESP or COL application incorporates information by reference from a previous proceeding, the public had an opportunity for hearing on that information. Furthermore, to the extent that a petitioner has significant new information or other information that would warrant further NRC review under

Section 52.16 or 52.80, a petitioner would have a right to request a hearing on such information. Thus, these proposed sections provide meaningful public participation opportunities for any interested persons.

- Reducing Unnecessary Regulatory Burden – Proposed Sections 52.16 and 52.80 will facilitate the preparation and prosecution of an application by potentially reducing the number and scope of issues requiring consideration. The proposed regulations should also serve to facilitate the NRC review and hearing process by focusing attention on matters that have not been previously addressed and decided in other proceedings. These provisions also will significantly reduce unnecessary regulatory burden for new license applicants in accordance with the Commission's directions. In a like manner, 10 CFR 51.29(a)(3) provides that the NRC may exclude from its environmental review issues that have been subject to a previous environmental review.

The proposal to treat as resolved programmatic information that has been previously reviewed and approved by the NRC also promotes the operational benefits of standardization of licensee programs and procedures.

Finally, the approach embodied in proposed Sections 52.16 and 52.80 is also supportive of ongoing NRC initiatives directed at assuring a regulatory infrastructure is in place to handle new license applications. The Commission has directed the staff to place particular emphasis on the early identification of regulatory issues and potential process improvements.<sup>1</sup> For the reasons discussed above, proposed Sections 52.16 and 52.80 are consistent with this direction.

The costs of a new plant are affected by the expense of preparing an application and responding to RAIs. Activities associated with defending an application in hearings are also a significant contributor to the overall duration and cost of the licensing process. Ensuring that costs are predictable and commensurate with the safety significance of issues associated with ESP and COL applications, and reducing time-to-market for new nuclear plants, will be important factors in business decisions on whether to go forward with new nuclear projects.

## V. NRC LEGAL AUTHORITY

### Applicable Legal Principles

The NRC clearly possesses the authority to adopt the new regulations. There is nothing in either the Atomic Energy Act (AEA) or the Administrative Procedure Act (APA) that would impede their adoption.

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<sup>1</sup> See, e.g., Staff Requirements Memorandum SRM-COMJSM-00-0003, Staff Readiness for New Nuclear Plant Construction and the Pebble Bed Reactor (Feb. 13, 2001). See also, Letter from Chairman Meserve to Vice President Cheney, dated Feb. 28, 2001.

It is a fundamental tenet of administrative law that, in the absence of express statutory requirements to the contrary, the choice between the use of either rulemaking or adjudication rests with the sound discretion of the agency.<sup>2</sup> Administrative agencies have the option of announcing policy changes either through rulemaking, during which the comments of all potentially affected interests can be obtained, or in an adjudicatory proceeding.<sup>3</sup>

As pertains to the actions of the NRC, the courts have emphasized that the AEA “is virtually unique in the degree to which broad responsibility is reposed in the [Commission], free of close prescription in its charter as to how it shall proceed in achieving the statutory objectives.”<sup>4</sup> In the *Vermont Yankee* decision, the U.S. Supreme Court held that the Commission and other agencies are free to fashion their own rules of procedures and methods of inquiry for making factual findings, as long as they satisfy the minimum requirements of the APA.<sup>5</sup>

In terms of the specific provisions of the proposed Sections 52.16 and 52.80, there is nothing in either the AEA or APA that would preclude their adoption. In particular, there is nothing in Section 189 of the AEA, which governs hearings, that would prohibit the Commission from adopting a rule that would treat as resolved information reviewed and approved by the NRC in a previous licensing proceeding.

In this regard, it should be emphasized that the proposed rules would only treat as resolved matters that were previously subject to an opportunity for hearing or programs utilized by that licensee or a corporate affiliate that have been determined by the NRC to comply with applicable NRC requirements. Further, the proposed rules would require consideration of new information in appropriate circumstances. As explained below, this approach is wholly consistent with NRC precedents and court cases – both under Part 52 and other NRC regulations.

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<sup>2</sup> See, e.g., *Nat'l Labor Relations Bd v. Bell Aerospace Division of Textron, Inc.*, 416 U.S. 267 (1974); *Securities & Exchange Comm'n v. Chenery Corp.*, 332 U.S. 194 (1947).

<sup>3</sup> In exercising their discretion agencies may, and often do, use their rulemaking power to resolve issues that would otherwise be subject to continuing relitigation. For example, in the late 1970's, the Department of Health, Education, and Welfare (HEW) promulgated rules for determining whether work was available for a disability claimant to perform. Prior to adoption of the regulations, HEW had relied on the testimony of vocational experts, presented in individual cases, to make determinations. To provide uniformity, HEW adopted guidelines directing a conclusion as to whether work existed for a claimant to perform. The U.S. Supreme Court upheld the use of the guidelines against a charge that the Social Security Act required disability proceedings to be considered through separate adjudications, based on evidence adduced at individual hearings. In upholding the generic regulation, the Court pointed out that, while the rule provided a basis for proceeding in individual cases, applicants retained the right to show that the information established in the regulation should not be applied in a particular circumstance. *Heckler v. Campbell*, 461 U.S. 458 (1983).

<sup>4</sup> *Siegel v AEC*. 400 F.2d 778, 783 (D.C. Cir. 1968)

<sup>5</sup> *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 543 (1978).

## NRC Authority to Enact Sections 52.16 and 52.80

10 CFR Part 52 currently contains three provisions (10 CFR 52.63(a)(4), 52.39(a)(2) and 52.103) that treat as resolved information that was reviewed and approved by the NRC in previous proceedings. The courts have upheld each of these provisions, holding that these provisions do not deprive members of the public of their rights to a hearing under Section 189 of the AEA.

10 CFR 52.73 allows a COL application to reference a design certification. In the COL proceeding, 10 CFR 52.63(a)(4) requires the Commission to treat as final matters resolved in connection with issuance of the design certification, even though the design certification proceeding was a different proceeding that may have taken place 15 or more years earlier<sup>6</sup> and likely did not involve the persons that are party to the COL proceeding.

Similarly, 10 CFR 52.73 allows a COL application to reference an ESP. In the COL proceeding, 10 CFR 52.39(a)(2) requires the Commission to treat as resolved those matters resolved in the ESP proceeding, even though the ESP proceeding was a different proceeding that may have taken place 20 or more years earlier<sup>7</sup> and likely did not involve the persons that are party to the COL proceeding.

In a case challenging the NRC's rule to treat as resolved in a COL proceeding any matters approved by the NRC in the ESP and design certification proceedings, the court rejected that challenge, stating as follows:

Petitioners also challenge subpart C [of Part 52] when combined-license applications reference earlier site and design certifications pursuant to subparts A and B [of Part 52]. Petitioners argue that, because site and design certifications may be made many years in advance, combined licenses under subpart C deprive the public of a right to a hearing on siting and design issues. We believe that the Commission has wide latitude in structuring the scope and timing of its hearings . . .<sup>8</sup>

Of particular relevance to proposed Sections 52.16 and 52.80, the court considered whether the Commission could rely on previous determinations in another proceeding to resolve issues raised in the Section 52.103 context and held that:

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<sup>6</sup> See 10 CFR 52.55 and 52.61, which state that a design certification may have a duration of up to 15 years and may be subject to renewal for another 15 years.

<sup>7</sup> See 10 CFR 52.27 and 52.33, which state that an ESP may have a duration of up to 20 years and may be subject to renewal for another 20 years.

<sup>8</sup> *Nuclear Information & Resource Service v. NRC*, 918 F.2d 189, 196-97 n. 14 (D.C. Cir. 1990), *affirmed on rehearing* 969 F.2d 1169, 1172 (D.C. Cir. 1992).

- Section 189 of the Atomic Energy Act “provides no unambiguous instruction as to *how* the ‘hearing’ is to be held; nor does it speak in any direct fashion to the question of whether the Commission must rehear issues already resolved at earlier stages in the licensing process.”<sup>9</sup>
- Under Section 189, the Commission has the “power to hear argument on each material issue only once, and to consider every issue heard as settled thereafter.”<sup>10</sup>
- “[T]here is nothing in the statute to suggest that the Commission cannot rely on its prior decisions finding portions of the plant to be in compliance with the Act (*e.g.*, its design after Subpart B proceedings, or its siting after Subpart A proceedings) when it makes its post-construction findings.”<sup>11</sup>
- “Significantly, the Supreme Court has found agency reliance on prior determinations to be perfectly acceptable, even when the statute before it plainly calls for individualized hearings and findings. . . . the Court has consistently held that reliance on prior determinations is perfectly harmonious with statutory schemes similar to the one now before us.”<sup>12</sup>

In summary, Part 52 already contains a number of provisions that treat as resolved information approved in previous proceedings (both rulemaking proceedings and individual adjudicatory proceedings). Each of these provisions was explicitly upheld by the courts. Proposed Sections 52.16 and 52.80 are fully consistent with these existing provisions and court cases.

Limitations of the type presented in the proposed Sections 52.16 and 52.80 are also consistent with NRC practice in a number of other areas. For example:

- License Renewal - The scope of issues appropriate for review as part of reactor operating license renewal proceedings is limited under both 10 CFR Part 51 and Part 54. The effect of these regulations is essentially to eliminate from consideration those matters that have been previously considered either as part of prior licensing proceedings or within the context of rulemaking under Part 51.
- License Amendments - The NRC has long held that the right to intervene and raise contentions in license amendment proceedings is limited to issues related to claims involving matters arising directly from the proposed change. It is

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<sup>9</sup> Nuclear Information Resource Service v. NRC, 969 F.2d 1169, 1170 (D.C. Cir. 1992) (emphasis in original).

<sup>10</sup> *Id.*, 969 at 1174 n. 3.

<sup>11</sup> *Id.*, 969 at 1175.

<sup>12</sup> *Id.* 969 at 1175-76.

inappropriate in an amendment proceeding to embark on a fresh assessment of issues thoroughly considered in initial licensing that are not affected by the amendment<sup>13</sup>

- Table S-3 - The Table S-3 rulemaking involved a determination by the Commission regarding the environmental effects associated with the nuclear fuel cycle. The courts have approved the Commission's approach, stating that the generic disposition of environmental matters not only is proper, but also precludes unnecessary and repetitive litigation in individual cases.<sup>14</sup>
- Spent Fuel Storage Casks - 10 CFR 72.46(e) prohibits review of cask design issues during a hearing on the grant of a license for a site-specific independent spent fuel storage installation (ISFSI) and in cases in which the cask was approved in a generic proceeding. Additionally, 10 CFR 72.210 and 72.212 grant a general license to nuclear plants to use generically approved storage casks, without providing any opportunity for a plant-specific hearing. The courts have held that this process does not deprive members of the public of any hearing rights under Section 189 of the AEA.<sup>15</sup>
- Quality Assurance (QA) Programs – 10 CFR 50.54(a) has long required a licensee to obtain prior NRC approval for changes that reduce the commitments in its QA program description. However, in a recent revision to this section, the NRC eliminated the need for prior NRC review and approval of changes to the QA program description in cases where the change involves the use of a QA alternative or exception previously approved by a NRC safety evaluation for another plant.
- Facility and Procedure Change Process – 10 CFR 50.59(a)(2)(ii) and NRC endorsed implementing guidance allow licensees to adopt, without prior NRC approval, methods of evaluation approved by NRC for use by other licensees, provided that the method has been approved by the NRC for the intended application and the licensee satisfies the applicable terms and conditions for its use. See Regulatory Guide 1.187 and NEI 96-07, Revision 1.

Thus, there are numerous precedents in which the Commission has treated as resolved prior determinations made in rulemaking or licensing proceedings (including licensing proceedings involving other plants) and has foreclosed re-

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<sup>13</sup> See, e.g., Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-235, 8 AEC 873, 875 (1974). See also Georgia Power Co. (Vogtle Nuclear Plant, Units 1 & 2) ALAB-291, 2 NRC 404, 415 (1975) (specifically addressing the proper scope of environmental considerations within the context of an amendment proceeding).

<sup>14</sup> Baltimore Gas & Electric Corp. v. NRDC, 462 U.S. 87 (1983).

<sup>15</sup> Kelley v. Selin, 42 F.3d 1501, 1510-14 (6th Cir. 1995), *cert. denied* 515 U.S. 1159 (1995).

review and relitigation of those matters in subsequent proceedings. Proposed Sections 52.16 and 52.80 are fully consistent with those precedents.

### NEPA Considerations

Section 102 of the National Environmental Policy Act of 1969 (NEPA) requires an environmental impact statement (EIS) for major federal actions significantly affecting the quality of the human environment. NRC's regulations in 10 CFR 52.18 and 52.89 require an EIS for an ESP and a COL.

NEPA and its implementing regulations do not require that the NRC start from scratch to assess the environmental impacts of approving a license application in locating a new reactor at an existing reactor site. For example, the Council on Environmental Quality (CEQ) has issued regulations to standardize the NEPA process, to reduce delays, and to eliminate duplication of federal, state, and local agency efforts. *See e.g.*, 40 CFR 1500.4 (n). These regulations became effective for and binding upon federal executive agencies in 1979, and the NRC voluntarily incorporated the substance of these regulations into 10 CFR Part 51.<sup>16</sup> CEQ regulations permit agencies to take credit for prior environmental analyses. CEQ regulations specifically authorize an agency to either "adopt" all or part of an earlier EIS when drafting a new EIS to support a new application (*see* 40 CFR 1506.3), or to "supplement" the EIS if either: (a) the agency makes substantial changes in the proposed action that affect the environment; or (b) there are significant new circumstances or information that affect the environment (*see* 40 CFR 1502.9(c)(1)).<sup>17</sup>

Similarly, NRC's own regulations in Appendix A.1(b) to Part 51 state that the NRC may use techniques such as "tiering" and "incorporation by reference" in order to "eliminate repetition or reduce the size of an environmental impact statement." It also states that the NRC may "adopt" in whole or part another EIS. Although NRC regulations explicitly refer to adoption of an EIS prepared by another federal agency, there is nothing to preclude NRC from adopting all or part of an EIS of its own.

Finally, 10 CFR 51.29(a)(3) states that NRC may exclude issues that "have been covered by prior environmental review from review." Section 51.29 states that an EIS may simply provide "a reference to their coverage elsewhere."

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<sup>16</sup> The NRC gives substantial deference to CEQ regulations, *see e.g. Deukmejian v. NRC*, 751 F.2d 1287, 1302 (D.C. Cir. 1984), but is not bound by those regulations. *See Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions and Related Conforming Amendments*, 49 Fed. Reg. 9352 (1984).

<sup>17</sup> The NRC's regulations appear to prevent the NRC from merely conducting an environmental assessment. *See* 10 CFR 51.20.

In summary, the principles embodied in proposed Sections 52.16 and 52.80 are wholly consistent with the guidance of CEQ and NRC on adoption and reference of previous EISs.

## VI. PROPOSED ACTION

We propose that the Commission amend Part 52 to add Sections 52.16 and 52.80 as follows:

### Section 52.16 - Early Site Permits for Licensed Sites

- (a) If an application for an early site permit is filed for a site for which a license or construction permit has been issued, the application may incorporate by reference all or part of the current licensing basis for the site to the extent that it pertains to the siting issues specified in Section 52.17.
- (b) Information incorporated by reference shall be supplemented to include, to the extent applicable:
  - (1) significant new information that materially affects the ability of the site to support the additional nuclear facility as described in the early site permit application;
  - (2) information regarding the cumulative radiological impacts of the existing facility and the facility as described in the early site permit application;
  - (3) an analysis of the potential safety impacts of the existing facility on the suitability of the site for the facility as described in the early site permit application;
  - (4) an analysis of the potential safety impacts on the existing facility from the facility as described in the early site permit application; and
  - (5) information that addresses regulations applicable to siting issues that became effective after licensing of the existing facility, to the extent that such regulations are not addressed by the current licensing basis.
- (c) Environmental information incorporated by reference shall be supplemented to include, to the extent applicable:
  - (1) significant new information relevant to environmental concerns bearing on the ability of the site to support the additional nuclear facility as described in the early site permit application; and
  - (2) information regarding the cumulative environmental impacts of the existing facility and the facility as described in the early site permit application.
- (d) The Commission shall treat as resolved those matters incorporated by reference pursuant to paragraph (a) of this section, except to the extent that those matters are subject to new information under paragraph (b) of this section. In addition, the Commission may impose changes with respect to the information incorporated by reference pursuant to paragraph (a) of this

section to the extent that each such change satisfies the criteria in 10 CFR 50.109.

- (f) The Commission also shall treat as resolved the environmental information incorporated by reference under paragraph (a) of this section, except to the extent that those matters are subject to new information under paragraph (c) of this section. In preparing its environmental impact statement for the early site permit, the Commission will adopt the applicable portions of the existing environmental impact statement associated with the site (including any supplements), modified or supplemented as necessary to reflect the Commission's review of the new information identified under paragraph (c) of this section.

Section 52.80 - Combined Licenses for Sites with Existing Licensed Facilities or for Applicants Holding Licenses for Other Facilities

- (a) If an application is filed for a combined license for a facility located at a site with an existing licensed facility or by an applicant that holds a license for an existing facility at another site, the application may incorporate by reference the type of information described in Section 52.16, subject to the requirements of that section.
- (b) The application may also incorporate by reference all or part of the type of information identified in 10 CFR 50.33(g); 50.34(b)(6)(i), (ii), (iv), and (v); 50.34(c); 50.34(d); 50.34(f)(2)(ii); and 50.34(f)(3)(i), (ii), (iii), and (vii), to the extent such information is contained in the current licensing basis of an existing licensed facility located at the same site or at a site owned or operated by the same licensee or an affiliate of that licensee. The information incorporated by reference shall be supplemented to include:
  - (1) information that addresses regulations applicable to the incorporated information that became effective after licensing of the existing facility, to the extent that such regulations are not addressed by the current licensing basis for the existing facility.
- (c) The Commission shall treat as resolved those matters incorporated by reference under paragraph (a) of this section, except to the extent that those matters are subject to new information under paragraph (b) of this section. In addition, the Commission may direct that changes be made with respect to the information incorporated by reference pursuant to paragraph (a) of this section to the extent that each such change satisfies the criteria in 10 CFR 50.109.

## VII. CONCLUSIONS

Proposed Sections 52.16 and 52.80 would enable NRC to treat as resolved applicable information approved in previous licensing proceedings, while ensuring consideration of significant new information that could materially affect the Commission's findings. These provisions are consistent with Section 189 of the

AEA and are in accordance with a number of NRC and court precedents authorizing the NRC to limit the scope of licensing proceedings to avoid re-review and relitigation of previously approved matters. Furthermore, proposed Sections 52.16 and 52.80 are supported by sound policy reasons and the NRC's five Principles of Good Regulation, including conservation of scarce NRC resources and streamlining of the agency's administrative processes to eliminate unnecessary costs and burdens on applicants for new licenses.

