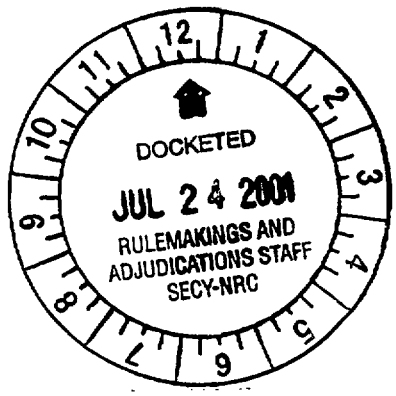
PRM-52-2

NUCLEAR ENERGY INSTITUTE

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 amend 10 CFR 52.17 and 52.18 to eliminate the requirement for an early site permit (ESP) applicant to include, and for the NRC to review, alternatives to the site proposed in an ESP application. The Commission 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 Part 52 aspects of this petition into the forthcoming Part 52 update rulemaking.

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.

The need for these changes is a direct outgrowth of the dramatic changes that have occurred in the electric power industry, most notably the passage of the Energy Policy Act of 1992 and the resultant actions by the Federal Energy Regulatory Commission (FERC) to impose open access transmission requirements on electricity transmission providers. These changes have fundamentally altered both the marketplace for electricity and the makeup of electricity generating companies. The regulatory framework that the NRC uses to implement its responsibilities under National Environmental Policy Act (NEPA) should be revised accordingly.

Template = SECY-051

SECY-02

1776 I STREET, NW SUITE 400 WASHINGTON, DC 20006-3708 PHONE 202.739.8139 FAX 202.785.4019 www.nei.org

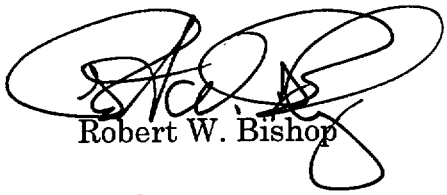
To appropriately address the proper implementation of NEPA in the new reality of the electricity generating marketplace, the petition further requests that the Commission initiate a rulemaking to amend 10 CFR Part 51, and related provisions in 10 CFR Parts 2 and 50, to remove the requirement for applicants and licensees to analyze and for the NRC to evaluate alternative sites, alternative sources of energy and need for power with respect to the siting, construction and operation of nuclear power plants.

Accordingly, the petition is structured into two parts. Appendix A includes the specific changes proposed to amend Part 52 to remove the NEPA-related language from Subpart A, and Appendix B includes the specific changes recommended to Parts 2, 50 and 51 to address the broader issue of the appropriate scope of the NRC's NEPA analysis.

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 its resource allocation.

If you have any questions concerning this petition, please contact me at 202-739-8139 or 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 McGaffigan, 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, NRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of a Proposed Rulemaking Regarding	)	
Amendments to Reviews of Alternative Sites,	)	
Need for Power and Alternative Energy Sources	)	Docket No. _____
Under the National Environmental Policy Act	)	

PETITION FOR RULEMAKING

This petition for rulemaking is submitted by the Nuclear Energy Institute (NEI) on behalf of the nuclear energy industry pursuant to 10 CFR 2.802. The Petitioner requests that the U.S. Nuclear Regulatory Commission (NRC), following notice and opportunity for comment, amend Part 52, Subpart A, *Early Site Permits,* Sections 52.17(a)(2) and 52.18 to remove those provisions that are more appropriately dealt with pursuant to the NRC's implementation of the National Environmental Policy Act (NEPA) through the application of 10 CFR Part 51, *National Environmental Policy Act – Regulations Implementing Section 102(2).*

Further, Petitioner requests that the NRC amend 10 CFR Part 51 and revise associated NRC regulations and guidance (e.g., 10 CFR Part 51, Appendix A to Subpart A) to remove the requirement for applicants and licensees to conduct an analysis of and for the NRC to evaluate alternative sites, alternative sources of energy and need for power and with respect to the siting, construction, operation and license renewal of nuclear power plants. All other reviews of matters pertinent to the NRC's responsibilities would still be required (e.g., seismology, hydrology, meteorology, endangered species, water use, thermal discharges).

I. STATEMENT OF PETITIONER'S INTEREST

NEI is the organization of the nuclear energy industry responsible for coordinating the combined efforts of all utilities licensed by the NRC to construct or operate nuclear power plants, and of other nuclear industry organizations, in all matters involving generic regulatory policy issues and regulatory aspects of generic operational and technical issues affecting the nuclear power industry. Every utility responsible for constructing or operating a commercial nuclear power plant in the United States is a member of NEI. In addition, NEI's members include major architect / engineering firms and all of the major nuclear steam supply system vendors.

II. ANALYSIS

The provisions of Subpart A of 10 CFR Part 52 apply to applicants seeking an early site permit (ESP) separate from an application for a construction permit or for a combined license for a nuclear power plant. The basic purpose of Subpart A, consistent with all of Part 52, is to resolve all site suitability issues in a licensing proceeding as early as possible. This process makes it possible to bank sites, thereby improving the effectiveness of the nuclear power plant licensing process by enabling siting issues to be resolved before large commitments of resources are made. As a matter of fundamental principle, any environmental issues that can be raised must be raised and resolved as part of the ESP proceeding, or the ESP will have no value. The NRC recognized that principle in Section 52.39 (". . . the Commission shall treat as resolved those matters resolved in the proceeding on the application for issuance or renewal of the early site permit. . . "), with exceptions not pertinent here.

NEPA requires consideration of "alternatives" to proposed actions, but does not specifically require alternative site reviews. However, currently there are several NRC regulations that specify that an alternative site review must be conducted.[1] Similarly, NEPA does not specifically require an analysis of alternative sources of energy or of a need for power, but the NRC's implementing regulations, 10 CFR Part 51, require that those matters be addressed.[2] General guidance on the environmental reviews that are to be conducted are given in Regulatory Guide 4.2, "Preparation of Environmental Reports for Nuclear Power Plants" (July 1976), and in NUREG-1555, "Environmental Standard Review Plan" (March 2000), which call for a review of alternative sites, alternative energy sources, and need for power.

The NRC's regulations and implementing guidance reflect the structure of the 1970's electric utility industry. However, dramatic changes have occurred in the electric power industry, most notably resulting from the passage of the Energy Policy Act of 1992 and the resultant actions by the Federal Energy Regulatory Commission to impose open access transmission requirements on electricity transmission providers. These changes have fundamentally altered both the marketplace for electricity and the makeup of electricity generating companies. The regulatory framework that the NRC should use to implement its responsibilities under NEPA should be revised accordingly.

As described in the February 28, 2001, letter from NRC Chairman Meserve to Senator Domenici, Chairman of the U.S. Senate Committee on Appropriations Subcommittee on Energy and Water Development, the evaluation of alternative

[1] *See* 10 CFR 2.101(a)(3)(ii), 2.101(a-1)(1), 2.603(b)(1), 2.605(b)(1), 52.17(a)(2), and 52.18; 10 CFR Part 50, Appendix Q.2 and 7; 10 CFR Part 52, Appendix Q.2 and 7.

[2] *See* 10 CFR 51.71 footnote 4; 10 CFR Part 51, Appendix A.4.

sites, alternative sources of power and need for power are matters "that are distant from NRC's mission." The nuclear energy industry believes that the NRC has the statutory authority to revise its regulations to eliminate the NRC's review of alternative sites, alternative sources of energy and need for power. The Commission can, and should, conclude that, in its implementation of NEPA, these reviews are no longer required because of the fundamental changes that have occurred in the electricity market.

NEPA Requirements

NEPA requires that federal agencies prepare an analysis that weighs environmental costs and benefits for "major federal actions significantly affecting the quality of the human environment." The "detailed statement" that the agency must prepare must evaluate:

- The environmental impacts of the proposed action;
- Any adverse environmental effects which cannot be avoided should the proposal be implemented;
- Alternatives to the proposed action;
- The relationship between local short term uses of the environment and the maintenance and enhancement of long term productivity; and
- Any irreversible and irretrievable commitments of resources that would be involved if the proposed action were to be implemented.

NEPA requires a Federal agency to take a "hard look" at, and to publicly disclose, the environmental impacts of, and alternatives to, a proposed Federal action in its decision-making process.

The environmental report accompanying an application will serve as the basis for the NRC's evaluation of the environmental impacts of a decision whether to issue the permit or license as applied for and whether any terms or conditions should be imposed upon the permit or license in light of the NEPA review. Pursuant to current NRC regulations, an applicant's environmental report must include an evaluation of the environmental effects of the permit or license being granted and alternatives available for reducing or avoiding any adverse environmental effects. It also must assess the environmental, economic, technical and other benefits of the proposed action.

The environmental report also must list those permits, licenses and approvals that must be obtained and describe the status of compliance with those requirements

including, but not limited to, applicable zoning and land use regulations and thermal and other water pollution limitations or requirements which had been imposed by federal, state, regional and local agencies having responsibility for environmental protection.

Significantly, NEPA does not require the NRC to evaluate a general goal of whether power is needed or other possible ways by which that power could be supplied. Nor is the NRC required to redefine an applicant's objective to determine whether the proposed site is suitable for the possible location of one or more different types of electricity generation facilities.

Role of State and Local Governments

The NRC's licensing process does not change the division of authority between the federal government and the states over the siting of electric generating facilities. An NRC license or permit constitutes approval of a site or plant only under the federal statutes and regulations administered by the NRC, not under other applicable laws. For example, individual state laws may require a state determination of the need for power and an evaluation of alternative energy sources or may require the issuance of a certificate of public convenience and necessity, as well as various environmental permits. Further, local zoning laws may control the use to which a potential site may be put.

The NRC's evaluation of the environmental impacts of the proposed site or plant neither supplants nor interferes with the traditional responsibilities of states in evaluating the need for power, alternative sites, or the suitability of alternative energy sources with respect to the potential use of that site. The NRC explicitly recognized the extent of its authority in the evaluations of alternatives in 10 CFR 51.71(e) *Preliminary Recommendation,* footnote 4.[3]

Nonetheless, in the license renewal rule context, many states expressed concern that the NRC's findings, even though not legally dispositive, would establish an official Federal position that the states believed would be difficult to rebut in state proceedings.[4]

---

[3] "The consideration of reasonable alternatives to a proposed action involving nuclear power reactors (e.g., alternative energy sources) is intended to assist the NRC in meeting its NEPA obligations and does not preclude any State authority for making separate determinations with respect to these alternatives and in no way preempts, displaces, or affects the authority of States or other Federal agencies to address these issues."

[4] It is clear from the license renewal process that the states recognize that the NRC's NEPA review cannot preempt traditional state authority as a matter of law. Section 271 of the Atomic Energy Act explicitly preserves state authority over the generation, sale, and transmission of electric power produced by nuclear plants (42 U.S.C. § 2018). Based on this provision and clear Congressional intent, the Supreme Court has held that states have jurisdiction over "the need for additional generating capacity, the type of generating capacity to be licensed, land use, ratemaking, and the

Specifically, the states expressed concern regarding the NRC's consideration of need for power and alternative energy sources in the license renewal Generic Environmental Impact Statement (NUREG 1437, Chapters 8 and 9) and the associated proposed amendments to Part 51. They were concerned that an NRC finding in those matters would infringe on state jurisdiction over economic regulation of utilities, including the generation, sale, and transmission of electric power produced by nuclear power plants. While *Pacific Gas & Electric Co.* makes it clear that the NRC's review cannot preempt state authority in these areas, the states' concerns were not allayed by that fact. To address the states' concerns and the questions raised by the U.S. Environmental Protection Agency and the Council for Environmental Quality, the NRC issued a supplement to its proposed license renewal rule to address whether, under NEPA, the agency could and should delete from its consideration the issues over which states have primary jurisdiction.

In that supplement, the NRC thoroughly and thoughtfully evaluated its responsibility under NEPA in the context of the articulated states' concerns. First, it recognized the primacy of state regulatory decisions regarding future energy options. Second, it recognized that the choice of energy options also will be made by the electricity generating company. Third, it correctly characterizes the NRC process as one that preserves the option for operating nuclear plants.

In the license renewal context, the NRC revised the definition of the purpose of the "major federal action" to appropriately reflect the applicant's goals in seeking NRC licensing action. The NRC's definition of the purpose of the major federal action in the license renewal context was:

> ...to preserve the option of continued operation of the nuclear power plant for state regulatory and utility officials in their future energy planning decisions.

Importantly, the NRC concluded that it should not define the proposed major federal action in any way that would suggest that the agency was making a determination regarding whether the plant seeking license renewal was at the best possible site or whether there would be a need for the power to be generated by that plant.[5] Rather, the NRC revised the definition of the proposed federal action to more accurately reflect that which is really to be accomplished: establishing a stable and predictable regulatory approach to determine whether the option of nuclear power as a source of generating capacity at that site would be able to be considered

---

like." *Pacific Gas & Electric Co. v. State Energy Resources Conservation and Development Comm.*, 461 U.S. 190 (1983).

[5] In the license renewal context, the NRC did decide that it would examine other possible sources of future generating capacity in the exercise of its discretion to determine what "alternatives" should be addressed as part of its NEPA review. The nuclear industry believes that the NRC should reconsider that decision because it is fundamentally inconsistent with the other related NRC decisions.

in future state energy planning decisions. In applying the proposed definition, only two basic alternatives reasonably flow from it: renewing the license to preserve the nuclear option or not renewing the license. 59 Fed. Reg. 37725.

The nuclear industry believes that the license renewal example demonstrates that the NRC has the authority to determine what matters are pertinent to the NRC's NEPA evaluation of an application to site and build new nuclear power plants, just as the NRC modified the appropriate scope of its NEPA review in the license renewal context.

Application of NEPA to the Siting, Construction, and Operation of Nuclear Power Plants[6]

At the time Part 52 was promulgated, the NRC staff felt it was necessary to include language that further refined its interpretation of the scope of the NRC's NEPA review. The first change was to clarify that a need for power analysis was not necessary as part of the environmental report that is part of the ESP application but rather could be deferred until the COL stage. The second change related to performing an alternative site analysis. Because early site permitting is a siting decision, the NRC revised Part 52 to state explicitly that an alternative site analysis was necessary at the ESP stage to determine if there is an "obviously superior" alternative to the site proposed. As a result, 10 CFR 52.17(a)(2) and 52.18 provide that the environmental report for an ESP need not include an assessment of the need for power but must include an evaluation of alternative sites.

In the industry's view, the provisions of Part 52 relative to alternative site reviews are based on an interpretation of NEPA that is neither necessary nor desirable, nor is it reflective of the evolving electricity marketplace. NEPA requires consideration of "alternatives," but does not require the NRC to evaluate the need for power, alternative sites, or alternative sources of energy.

While NEPA has never required these analyses, the electric utility structure in the 1970s was such that a typical environmental review associated with siting, constructing and operating a nuclear power plant included an evaluation of need for power, alternative sites, and alternative sources of energy. As a result, there are many licensing decisions and judicial determinations based on the NRC's interpretation of its responsibilities under NEPA and corresponding NRC regulations and practices that were adopted accordingly. However, simply stated, what may have been pertinent thirty years ago is no longer pertinent.

[6] Given the expectation that future plants will be licensed under Part 52, the discussion in this section reflects that context. The elimination of NRC requirements concerning need for power, alternative sources and alternative sites is appropriate regardless of whether plants are licensed under Part 52 or Part 50, and the analysis should be read accordingly.

In the 1970s, the typical applicant for a nuclear power plant was an electric utility that was regulated by a state public utility commission. Additionally, as a regulated electric utility, the applicant had the legal authority to exercise the power of eminent domain to build generating facilities and any necessary supporting infrastructure. Today, any new nuclear power plant is likely to be constructed and operated by an unregulated merchant generator. The merchant generator will operate in a competitive marketplace. A merchant generator will not build and operate a plant unless it believes that there is a benefit to its making that investment, such as a need for power or because that facility will generate electricity at a lower cost than its competitors. Additionally, a merchant generator will not build and operate a nuclear power plant if there is a superior alternative source of energy. In states where utilites are still subject to regulation, the situation described relative to license renewal will be directly applicable. Thus, given all of these factors, it is not reasonable to believe that a nuclear power plant will be built in today's environment absent a need for power or some other benefit.

Furthermore, it is not reasonable to assume that the NRC would be able to identify an alternative site or alternative energy source that is both feasible and preferable to the choices made by the merchant generator. Because the consideration of alternatives under NEPA is subject to a rule of reason, NEPA does not compel the NRC to consider these factors in today's environment. Even if other sites or sources are available – perhaps even preferable in some respects to the applicant's proposal – the NRC lacks the authority to compel the applicant to use the alternative site or source. Because the NRC consideration of alternative sites, alternative sources and need for power is not required under NEPA, denial of a permit or license for reasons related to these matters would be inappropriate.

In the context of an ESP, the proposed "major federal action" is the granting of a permit for a site for one or more nuclear power plants. To actually build and operate one or more nuclear plants on that site, an applicant must also obtain a combined license (COL). In a COL proceeding, the proposed "major federal action" is the approval to build and subsequently operate a particular nuclear plant at a specified site. If the COL references an ESP, the site approval is already established,[7] and the site suitability issue reduces to whether the proposed nuclear power plant(s) fit within the ESP's environmental envelope. If the COL applicant does not reference an ESP, the "major federal action" with respect to approving the

[7] 10 CFR 52.39(a)(2), Finality of early site permit determinations, states "In making the findings required for the issuance of a construction permit, operating license, or combined license, or the findings required by § 52.103 of this part, if the application for the construction permit, operating license, or combined license references in early site permit, the Commission shall treat as resolved those matters resolved in a proceeding on the application for issuance or renewal of an early site permit, unless a contention is admitted that a reactor does not fit within one or more of the site parameters included in the site permit, or a petition is filed which alleges either that the site is not in compliance with the terms of the early site permit, or that the terms and conditions of the early site permit should be modified." (emphasis added)

specified site is the same as for an ESP. In each of these cases, (i.e., ESP or COL, with or without a referenced ESP), the proposed action is not deciding whether there is a need for power, whether an applicant should select a different site, or which of various possible sources of electric generating capacity best meets the state's or the region's needs, provides the most economic electricity to ratepayers, or is environmentally most benign.

The proposed elimination of the consideration of alternative energy sources, alternative sites, and need for power by the NRC is based on a fundamental principle of NEPA law; an agency need only consider alternatives that will accomplish the applicant's goal. In the Part 52 context, the ESP applicant's goal is to determine whether the proposed site satisfies statutory and NRC regulatory requirements as a suitable location for a nuclear power plant. Similarly, the goal of a COL applicant is to determine whether the proposed plant satisfies applicable safety and environmental requirements, including the criteria established in any referenced ESP. Thus, the only site suitability issue before the NRC in either an ESP or COL proceeding is whether that site is suitable for one or more nuclear facilities.

Each federal agency must determine what alternatives are reasonable and should be considered under NEPA. Further, the NRC must consider the no-action alternative and actions that could mitigate the environmental impact of the proposed plant. In addition to the no-action alternative, the NRC must consider only those alternatives that serve the purpose for which an applicant is seeking approval – and there are none. Defining the proposed action in this manner reflects reality – that the NRC is not considering a proposal that would determine how or where electricity should be generated in the future. In either the ESP or COL proceeding, the NRC is only considering whether a specific application meets NRC regulations – not whether one or more nuclear facilities should, or will, be built.

Given the specific goals of ESP and COL applicants, the NRC should consider only actions, in addition to the implications of the no-action alternative, that serve the applicant's specific goal: to determine whether the application meets all applicable requirements.

Thus, it is unnecessary and inappropriate for the NRC to require applicants to conduct an analysis of alternatives that would not fulfill their specific goal of determining whether the proposed site, and facilities, meet NRC requirements. Similarly, it is unnecessary and inappropriate for the NRC to use its limited resources to evaluate possible alternative sources of electricity, alternative sites, or the need for power.

Further, if the NRC were to deny an application for reasons related to alternative sites or alternative energy sources, the applicant would not be required to use either the alternative site or the alternative energy source. In fact, the applicant would be

free to develop a different alternative energy source at a different site, which may result in greater environmental impact than the proposed nuclear power plant. Such a consequence would be perverse – in the name of protecting the environment, the NRC's denial of the permit or license could lead to a greater environmental impact than the proposed nuclear plant.

In short, the NRC, as part of its NEPA analysis, is not legally obligated, and thus should not attempt, to reach any conclusions related to alternative sites, alternative sources of power, or the need for power. The NRC demonstrated the thoughtful use of its discretion in defining "major federal action" in the license renewal context, with a consequent change in its NEPA analysis. The NRC should similarly exercise that discretion to appropriately circumscribe its NEPA analysis with respect to the implementation of Parts 50 and 52.

III. PROPOSED ACTION

A. 10 CFR Part 52 should be modified as shown in Appendix A to this petition to eliminate the requirements for applicants to submit, and for NRC to review, information on alternative sites.

B. 10 CFR Parts 2, 50 and 51 should be modified as shown in Appendix B to this petition to eliminate requirements for applicants requesting NRC approval to site, build and operate nuclear power plants to submit, and for the NRC to review, information concerning need for power, alternative sources and alternative sites.

IV. CONCLUSION

The NRC should reevaluate its practices in implementing its responsibilities under NEPA. The "major federal action" should be described in terms of evaluating the suitability of the siting, construction and operation of one or more nuclear power plants at a proposed site in accordance with the NRC's responsibilities under the Atomic Energy Act. Given the dictates of NEPA as they apply to the decisions to be made under 10 CFR Parts 50 and 52, the NRC need not, and therefore as a matter of policy should not, conduct any evaluation of alternative sites, alternative energy sources, or need for power. Limited NRC, industry and other stakeholder resources should not be expended on matters that are not pertinent to the NRC's statutory mandates under either the Atomic Energy Act and the National Environmental Policy Act.

Pertinent NRC regulations and practices should be modified accordingly.

APPENDIX A

Proposed Modifications to 10 CFR Part 52

1. 10 CFR 52.17(a)(2) should be amended as follows:

A complete environmental report as required by 10 CFR 51.45 and 51.50 must be included in the application, provided, however, that such environmental report must focus on the environmental effects of construction and operation of a reactor.~~, or reactors, which have characteristics that fall within the postulated site parameters. And provided further that the report need not include an assessment of the benefits (for example, need for power) of the proposed action, but must include an evaluation of alternative sites to determine whether there is any obviously superior alternative to the site proposed.~~

2. 10 CFR 52.18 should be amended as follows:

Applications filed under this subpart will be reviewed according to the applicable standards set out in 10 CFR Part 50 and its appendices and Part 100 as they apply to applications for construction permits for nuclear power plants. In particular, the Commission shall prepare an environmental impact statement during a review of the application, in accordance with applicable provisions of 10 CFR Part 51, provided, however, that the draft and final environmental impact statements prepared by the Commission focus on the environmental effects of construction and operation of a reactor, or reactors, which have characteristics that fall within the postulated site parameters.~~, and provided further that the statements need not include an assessment of the benefits (for example, need for power) of the proposed action, but must include an evaluation of alternative sites to determine whether there is any obviously superior alternative to the site proposed.~~ The Commission shall determine, after consultation with the Federal Emergency Management Agency, whether the information required of the applicant by § 52.17(b)(1) shows that there is no significant impediment to the development of emergency plans, whether any major features of emergency plan submitted by the applicant under § 52.17(b)(2)(i) are acceptable, and whether any emergency plans submitted by the applicant under Section 52.17(b)(2)(ii) provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency.

APPENDIX B

Proposed Modifications to 10 CFR Parts 2, 50 and 51

1. 10 CFR 2.101(a-1)(1) should be amended as follows:

Part one shall include or be accompanied by any information required by §§ 50.34(a)(1) and 50.30(f) of this chapter which relates to the issue(s) of site suitability for which an early review, hearing and partial decision are sought, except that information with respect to operation of the facility at the projected initial power level need not be supplied, and shall include the information required by §§ 50.33 (a) through (e) and 50.37 of this chapter. The information submitted shall also include: (i) Proposed findings on the issues of site suitability on which the applicant has requested review and a statement of the bases or the reasons for those findings, and (ii) a range of postulated facility design and operation parameters that is sufficient to enable the Commission to perform the requested review of site suitability issues under the applicable provisions of parts 50, 51 and 100.~~and (iii) information concerning the applicant's site selection process and long range plans for ultimate development of the site required by § 2.603(b)(1).~~

2. 10 CFR 2.603(b)(1) should be amended as follows:

The Director of Nuclear Reactor Regulation will accept for docketing an application for a construction permit for a utilization facility which is subject to § 51.20(b) of this chapter and is of the type specified in § 50.21(b)(2) or (3) or § 50.22 or is a testing facility where part one of the application as described in § 2.101(a-1) is complete. Part one of any application will not be considered complete unless it contains proposed findings as required by § 2.101(a-1)(1)(i) ~~and unless it describes the applicant's site selection process, specifies the extent to which that process involves the consideration of alternative sites, explains the relationship between that process and the application for early review of site suitability issues, and briefly describes the applicant's long range plans for ultimate development of the site~~. Upon assignment of a docket number, the procedures in § 2.101(a)(3) and (4) relating to formal docketing and the submission and distribution of additional copies of the application shall be followed.

3. 10 CFR 2.605(b)(1) should be deleted in its entirety.

4. 10 CFR Part 50, Appendix Q.2 and 10 CFR Part 52, Appendix Q.2 (which are essentially identical) should be amended as follows:

The submittal for early review of site suitability issue(s) must be made in the same manner and in the same number of copies as provided in §§ 50.4 and 50.30 for license applications. The submittal must include sufficient information concerning a range of postulated facility design and operation parameters to enable the Staff to perform the requested review of site suitability issues. The submittal must contain suggested conclusions on the issues of site suitability submitted for review and must be accompanied by a statement of the bases or the reasons for those conclusions. ~~The submittal must also list, to the extent possible, any long-range objectives for ultimate development of the site, state whether any site selection process was used in preparing the submittal, describe any site selection process used, and explain what consideration, if any, was given to alternative sites.~~

5. 10 CFR Part 50, Appendix Q.7(a) and 10 CFR Part 52, Appendix Q.7(a) (which are identical) should be deleted in their entirety.

6. The following sentence should be added to the end of 10 CFR 51.45(c):

   No discussion of need for power, alternative energy sources, or alternative sites for the facility is required in this report.

7. 10 CFR 51.53(c)(2) should be amended as follows:

   . . . In addition, the applicant shall discuss in this report the environmental impacts of alternatives and any other matters described in § 51.45. The report is not required to include discussion of alternative sites, alternative energy sources, or need for power or the economic costs and economic benefits of the proposed action or of alternatives to the proposed action except insofar as such costs and benefits are either essential for a determination regarding the inclusion of an alternative in the range of alternatives considered or relevant to mitigation. . . .

8. The following sentence should be added after the first sentence of 10 CFR 51.71(d):

   No discussion of need for power, or of alternative energy sources, or of alternative sites for the facility will be included in the draft environmental impact statement.

9. 10 CFR 51.95(c)(2) should be amended as follows:

   The supplemental environmental impact statement for license renewal is not required to include discussion of alternative sites, alternative energy sources, or need for power or the economic costs and economic benefits of the proposed action or of alternatives to the proposed action except insofar as such benefits

and costs are either essential for a determination regarding the inclusion of an alternative in the range of alternatives considered or relevant to mitigation. . . .

10. 10 CFR Part 51, Appendix A.4 should be amended as follows:

Purpose of and need for action.

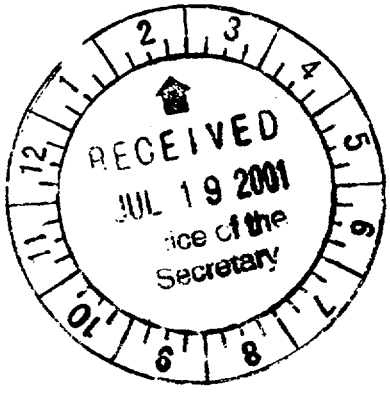
The statement will briefly describe and specify the need for the proposed action. The alternative of no action will be discussed. ~~In the case of nuclear power plant construction or siting, consideration will be given to the potential impact of conservation measures in determining the demand for power and consequent need for additional generating capacity.~~

11. The following sentence should be added to the end of 10 CFR Part 51, Appendix A.5:

The consideration of alternatives will not include an analysis of alternative sites or alternative energy sources.

12. Additionally, conforming changes should be made in 10 CFR 2.101(a)(3)(ii) and 10 CFR 51.71 footnote 4.

13. Finally, NRC Regulatory Guide 4.2 and NUREG-1555 should be modified to reflect the Commission's determination that alternative sites, alternative sources of energy, and need for power are not to be evaluated under 10 CFR Part 51 provisions pertaining to the siting, construction and operation of new nuclear power plants.


RECEIVED
JUL 19 2001
ice of the
Secretary