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ATTN: Rulemakings and Adjudications Staff

Comments of Public Citizen regarding proposed rulemaking to eliminate NRC evaluation and review of alternative sites, alternative energy sources and the need for power within the aegis of early site permit and license renewal applications.

To Whom It May Concern:

On behalf of Public Citizen, I am submitting comments on the U.S. Nuclear Regulatory Commission (NRC) proposed rule as published in the Federal Register, Sept. 24, 2001, Vol. 66 at pages 48828-48832 regarding changes to the scope and thoroughness of the early site permitting and license renewal processes (10 CFR Parts 2, 50, 51 and 52).

The Nuclear Energy Institute (NEI) is asking the Nuclear Regulatory Commission (NRC) to never, ever again consider alternative sites, alternative sources of power and the need for additional generating capacity when reviewing a relicensing application or early siting permit for a nuclear power plants.

While NEI's nerve in requesting this rulemaking is unquestionably impressive, Public Citizen doesn't think NEI's proposal itself is a very good idea. On the contrary, Public Citizen adamantly opposes the changes to the early site permit and relicensing processes so brazenly requested by nuclear industry. Public Citizen strongly urges the NRC to dig deep and muster up the institutional courage to be a regulator of the nuclear power industry, not a captive of it, and reject NEI's request.

With this request for rulemaking, NEI is asking the NRC to take less information and fewer factors into account before approving a site for a nuclear power plant, or relicensing an existing nuclear facility. Ironic, this, in that the public is currently rather alarmed, and seeking assurances that potential threats to public safety are being analyzed with more thoroughness, not less. Nuclear power plants are dangerous and unsafe and saddle the nation with a thus-far insoluble

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waste problem. Security concerns at nuclear power plants are of increasing importance to the public since Sept. 11, and rightly so. If the NRC is remotely interested in being a regulatory agency that is responsive to the concerns of the public which the agency serves, it will reject the NEI petition that would make it even easier to get a site permit for a nuclear power plant, and even quicker to relicense an existing plant.

Getting necessary federal approval to expand or continue the generation of nuclear power should be impossible, because nuclear power should be phased out. Alas, Public Citizen acknowledges that phasing out nuclear power is not federal policy, yet. So at the very least, in the meantime, getting approval to expand or continue generation of nuclear power shouldn't be easy, as the NEI wishes. It should be hard, as the public expects.

As NRC staffers who have read NEI's rulemaking request have no doubt discerned, NEI's rulemaking petition effectively argues that the NRC has one and only one obligation and responsibility when faced with an application from industry: grease it through, and make it snappy.

Public Citizen, by contrast, is convinced that since Sept. 11, the NRC must be more committed than ever before, and perhaps like never before, to the notion that the agency's first and foremost responsibility is to protect public health and safety. If the nuclear power industry feels inconvenienced by that priority, and finds already watered-down regulatory requirements "unduly burdensome," as NEI puts it in its request, well, tough.

For the federal government to be considering less stringent relicensing and siting requirements for nuclear power at the industry's behest is inconceivable, irresponsible and flat-out wild, particularly at this moment in time. To persist in seeking relief from "unduly burdensome" regulations reflects an industry of staggering if despicable arrogance. Granting the industry's request would reflect a regulatory agency of embarrassing servitude and shameless captivity to the industry it is supposed to regulate, an agency that has discarded even the pretense of putting the public's interest ahead of the nuclear industry's.

Public Citizen implores the NRC to reject the NEI's request for further deregulation of the nuclear power industry.

Additionally, most of the information previously posted on the NRC's web site has been removed, the agency citing security concerns. That action in and of itself underscores the poor timing of considering rulemaking that would ease siting and relicensing requirements. Public Citizen reiterates its call, made in a letter to Chairman Richard Meserve dated Oct. 17, 2001, for all scheduled rulemakings and public meetings to be postponed and comment periods extended to account for the current limits on public access to crucial information.

Public Citizen offers the following more specific comments addressing some but by no means all of the details of NEI's "justification" for rulemaking as published in the Federal Register.

Electricity Restructuring

In arguing for a "circumscribed" relicensing and early site permitting process, the nuclear power industry points to the changing economic structure of the electric power industry.

NEI suggests that under the traditional structure of the utility industry, it was justifiable for the NRC to consider additional generating capacity, alternative sites and alternative sources of energy when reviewing a federal action having to do with siting or licensing a nuclear power plant.

But now the industry claims to be operating in a new "competitive marketplace," and argues that nuclear generating capacity will be built and/or operated not by traditional vertically integrated, regulated utilities but by merchant power companies ruled by irresistible forces of supply and demand. Does a market area need more power? Is nuclear power the best energy source for that market area? Is a proposed site the best place to put a nuclear power plant? Let the market decide, NEI says.

The electric power industry, in fits and starts, has experienced some dramatic structural and economic transformations in recent years. But the effect of that structural change on the nuclear power industry is evidence that the review of alternative sites and energy sources should be of heightened, not diminished, concern to regulators and the public.

Thus far in the nation's restructuring of the electric industry, nuclear power's starring role has been that of an orphaned debt shuffled onto the backs of hapless ratepayers from coast to coast. In California alone, the stranded costs of bad investments in nuclear power prompted utilities to seek, and receive, a bailout estimated at more than \$25 billion, at ratepayer expense, as a condition of "deregulation."

Decades ago, when nuclear power plants were winning site and license approvals, the plants became notorious for extravagant cost overruns. The industry has no contemporary experience building new nuclear power plants. There is no reason to assume that it will be any better at building a plant on budget now than it was in its Disco-era heyday.

And if the experience of electricity restructuring has shown anything thus far, it's that the biggest industrial players will successfully convince state and federal regulators to transfer the cost of bad investments to ratepayers, a "competitive" environment notwithstanding. There is little in the story of electricity restructuring thus far to suggest that ratepayers would ever be protected from cost overruns at a nuclear power plant, or that nuclear power would ever be subjected to the same competitive market forces that apply in varying degrees to other sectors of the economy.

In fact, contrary to NEI assertions, a new generation of nuclear power plants is not contingent on the forces of a newly competitive marketplace. Rather, a new generation of plants will be built only if the same old government-constructed firewalls continue to shield the commercial nuclear power industry from market forces. Hence the industry's powerful desire to see Congress reauthorize the Price-Anderson Act. Price-Anderson allows the industry to operate while purchasing only a sliver of private-sector insurance, and certainly not enough insurance to cover

the incredibly staggering costs that would accompany a nuclear mishap. The vast majority of the insurance coverage is guaranteed by the U.S. taxpayer under the Price-Anderson law. If a nuclear power corporation were forced to pay the massive premiums the insurance industry would charge for complete coverage against a nuclear accident, no nuclear power plant would ever be built, because the nuclear corporation's shareholders would never stand for the expense. In effect, the nuclear industry is backed not by a confidence in the safety of its technology, but by the credit of the U.S. taxpayer.

It is the height of hypocrisy for the nuclear power industry to cite a new competitive environment as a reason for relaxed NRC regulatory review while simultaneously pushing Congress to extend a program that powerfully protects the industry from competition.

Nuclear power's utter failure thus far to seriously compete in the new "competitive" electricity environment makes it more, not less, crucial that all options and alternatives are considered before approving either a license renewal or an early site permit. And the earlier in the process those alternatives are introduced, the better, lest a potential licensee drop millions of dollars on a failed siting and/or relicensing application only to turn around and try to retrieve that money from ratepayers down the road.

The Role of State and Local Governments

NEI touts the role of state governments, arguing that it is not the NRC's responsibility to consider alternative sites, alternative sources of energy or the need for power when reviewing and evaluating an early site permit (ESP) or relicensing application. NEI argues, as an example, that states, not the federal government, issue certificates of convenience and necessity, and so the NRC is out of bounds to consider, say, whether a power plant is needed or not.

NEI goes on to claim that "many states" are worried that federal findings regarding alternative sites, alternative sources of energy or the need for power "would be difficult to rebut."

But NEI cites Footnote 4 to 10 CFR 51.71(e), as follows: "...the consideration of reasonable alternatives to a proposed action involving nuclear power reactors...is intended to assist the NRC in meeting its NEPA obligations *and does not preclude any State authority from 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*" (italics added).

So what's the problem? States already retain the authority to determine the necessity of a power plant—provided the NRC determines that the state should have that option. Assuming the NEI is not suggesting that individual states take on the monitoring and regulation of nuclear power through state programs, *a la* typical state air and water quality programs, Footnote 4 renders NEI's concern about federal decision-makers running roughshod over state regulators something of a straw man.

More perniciously, NEI also asserts that under NEPA the NRC's responsibility is merely "...to

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

Yes, NEPA calls on the NRC to preserve the option of letting a power plant generate deadly waste, suck up taxpayer subsidies and tempt terrorists for a period beyond the original 40-year license life of the plant. But federal law also calls on the NRC to preserve that option only after review and evaluation of plant safety (10 CFR 54) and environmental (10 CFR 51) considerations. Contrary to NEI’s wishful interpretation, federal law does not in fact dictate that the NRC simply go through (fewer and fewer) motions, mumble a passel of rudimentary mumbo-jumbo and wield the inevitable rubber stamp.

In fact, it’s but a small step from NEI’s breathtaking suggestion that the NRC’s mission is merely “to preserve the option of continued operation of the nuclear power plant” to a presumably NEI-maximized logic wherein there is no reason for the NRC to exist at all.

Application of NEPA to the Siting, Construction and Operation of Nuclear Power Plants.

Not only does NEI’s proposal seek to grease the regulatory skids by limiting the scope of NRC analysis. NEI wants to further handcuff the NRC by obtaining assurances that in the instance of new plants, all environmental issues must be resolved and raised during the early site permit proceedings—some of the same proceedings the NEI is currently trying to gut. Granting the industry’s request would preclude consideration of alternative sites, alternative sources of energy or the need for power at any other point in the federal regulatory process. It’s not just that the NEI wants to stack the process for getting an early site permit. The NEI also hopes to turn the site permit into a free pass, a regulatory get-out-of-jail-free card, in case the NRC decides to revisit crucial safety and environmental questions later in the process.

Again, the NRC would be remiss to grant such a sweeping concession to the industry at a time when nuclear power plants are on heightened alert against attack from malevolent forces. Now is not the time for NRC to be limiting the scope of what it may review, and when it may review it.

Definition of the Major Federal Action in ESP and COL Proceedings.

Logic painfully parsed, NEI argues that there is only one decision within the purview of the NRC as the agency reviews and evaluates a permit application, namely, whether it should be approved or not. During none of the NRC’s proceedings, according to NEI, “is the proposed action a matter of 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.”

According to the NEI, none of those considerations are matters of “major federal action,” so the NRC shouldn’t consider them. It’s an absurd argument on its face. After all, deciding if a plant

might leak deadly radioactivity over a major metropolitan area is, by NEI's definition, not a "major federal action," and so safety presumably would not be a factor for NRC review. This portion of NEI's "justification" for rulemaking is particularly bankrupt.

Agency Discretion Under NEPA

NEI states that the NRC "has the authority to determine what matters are pertinent to NEPA evaluation of applications to site and build new nuclear power plants." Broadly, that's true enough--federal agencies are charged with making determinations as to what should and should not be included when reviewing a proposed project or federal action. NEI urges the commission to use its "discretion" to relax the review process.

But that gate swings both ways. Inasmuch as the NRC has discretion to consider or not consider various analytical features of a proposed action, the NRC should use that discretion with an eye toward providing the most rigorous review possible in service of the greater public interest. The NRC should not use its discretion to voluntarily submit to rulemaking that would hamper the commission's ability to examine alternative sites, alternative energy options and whether power from a new or relicensed plant is in fact necessary.

Limits of NRC's Authority

"...(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 recommended by the agency," the NEI says in its petition. "In fact...the applicant would be free to develop a different alternative energy source at another site, which might result in a greater environmental impact than the nuclear power plant originally proposed. In such a case," the NEI continues, "the NRC's denial of the permit or license would, in the name of protecting the environment, actually defeat the purpose of NEPA review."

That's an interesting hypothetical situation. Here's another one.

If the NRC approves a site for a new power plant or the relicensing of an existing plant, and if the plant is attacked by terrorists, and if the terrorists successfully inflict "significant core damage" (about a fifty-fifty proposition, if the NRC's force-on-force tests are any indication), and if as a result radiation makes its way to a major metropolitan area, well, tens and perhaps hundreds of thousands of people could die a slow, painful, agonizing death, the pain of which would be severely compounded by their having to witness comparable pain and suffering inflicted on their children and loved ones.

Talk about defeating the purpose of NEPA review.

NEI is arguing that rejecting a permit or license renewal for a nuclear power plant might, someday, somehow result in some environmental impact or another because the NRC's authority wouldn't extend to other sources of power. It's a reach, a twisted one at that, and the industry's

inclusion of what even for NEI is a grossly specious argument is somewhat puzzling.

Conclusion

NEI is right. Things have changed.

The cost of security at nuclear power facilities is going to skyrocket, and even at that, it will be difficult to grant assurances that the public can be protected from the potential dangers of a successful assault on a nuclear power plant.

Any request by the nuclear power industry for relaxed regulations must be scrutinized very carefully, at any time. However, now in particular, the notion of relaxing the requirements on new plant siting and relicensing—or as NEI puts it, adopting a more “circumscribed understanding” of the process—seems to fly in the face of the very real challenges facing the nation. Moreover, the specific considerations NEI hopes to circumvent—alternatives to nuclear energy—are exactly the considerations that should be foremost in the nation’s energy policy.

At the current time, there is something of newfound hope, perhaps even trust, that the government is genuinely trying to protect the citizenry. To “circumscribe”—or gut, in plain English—siting and licensing requirements for nuclear power plants would be to violate that hope and that trust.

The NRC can best uphold the public’s trust by denying NEI’s rulemaking petition.

Sincerely,

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