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PETITION FILE PRM 52-1

(66 FR 48832)



Nuclear Energy Institute

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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

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Senior Director, Business
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November 8, 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

Subject: *Federal Register* Notice 66 FR 48832, September 24, 2001, Notice of Receipt of Petitions for Rulemaking, Docket Numbers PRM-52-1 and PRM-52-2

Dear Ms. Vietti-Cook:

The Nuclear Energy Institute (NEI)¹ is submitting these comments on behalf of the nuclear energy industry in response to the subject *Federal Register* notice. In two separate submittals on July 18, 2001, NEI petitioned the NRC for the rule changes that are the subject of this notice. The proposals are intended to improve the focus and efficiency of the 10 CFR Part 52 early site permit (ESP) and combined license (COL) processes.

The first petition (Docket No. PRM-52-1) seeks to modify Part 52 to avoid duplicative NRC reviews of valid, existing site/facility information that was previously approved by the NRC and subject to public hearing. The petition asks that the proposed Part 52 changes be merged into the Part 52 update rulemaking now underway.

¹ NEI is the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include all utilities licensed to operate commercial nuclear power plants in the United States, nuclear plants designers, major architect/engineering firms, fuel fabrication facilities, materials licensees, and other organizations and individuals involved in the nuclear energy industry.

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The second petition (Docket No. PRM-52-2) requests that Part 52 requirements to consider alternate sites in ESP applications and NRC reviews thereof be eliminated. This petition also asks NRC to revise Part 51 to reflect that NRC review of alternatives under NEPA need not, and thus should not, consider need for power, alternate sources or alternate sites, as these matters are best determined by state and local governments, the applicant and the marketplace. The petition asks that the proposed Part 52 changes be merged into the Part 52 update rulemaking now underway. The petition also asks that the Commission initiate a rulemaking to amend Part 51 and related provisions in Parts 2 and 50.

The petitions provide a thorough discussion of the need and basis for the proposed rule changes. For convenience, the enclosure provides a summary of this discussion.

The petitions, if granted, would improve the safety focus of siting and licensing reviews and more wisely use the resources of licensees in preparing applications and of NRC in reviewing them. With the first ESP applications to be submitted to NRC in the 2002 - 2003 time frame, the NRC needs to expedite action on the proposed process enhancements in order to achieve these beneficial effects. We recommend the following specific actions.

First, the NRC should expedite action on the petitions and integrate the proposals to modify Part 52 into the upcoming Part 52 notice of proposed rulemaking (NOPR). This is important to avoid the need for later re-noticing of the rule and to provide stakeholders with the opportunity to assess the proposals in conjunction with the broader update of Part 52.

SECY-01-0188 identifies both the industry petition to eliminate future NRC consideration of alternate sites, alternative sources and need for power (PRM-52-2), and the staff's own Part 51 alternative site rulemaking. While clearly related, we note that SECY paper regards these as separate activities. Our limited understanding of the staff's initiative suggests that the staff approach could take NRC siting requirements in the opposite direction from that proposed by the industry based on overarching trends in the electric utility industry. Commission policy guidance is urgently needed to determine the proper direction of NRC siting requirements and to initiate necessary changes to Part 52 and other regulations.

Second, because Part 52 is the centerpiece of the regulatory infrastructure for new plants, the NRC should expedite the schedule for the pending Part 52 rulemaking. The date for the NOPR has slipped once again to April 2002. We urge that this date not slip any further and that comments received on the NOPR be expeditiously

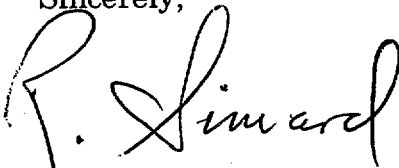
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handled so that the rulemaking can be completed in 2002 to support preparation of applicant submittals.

Third, to clarify the required NRC review of alternatives under NEPA, the NRC should promptly initiate a rulemaking proceeding to amend Part 51 and make conforming changes to Parts 2 and 50. To support the near term preparation of applicant submittals, this rulemaking should be initiated as soon as possible.

If you have any questions about the enclosure or the expected schedule for the submittal of applications that will require resolution of the issues in the enclosure, please contact me (202-739-8128 or rls@nei.org) or Russ Bell (202-739-8087 or rjb@nei.org).

Sincerely,

A handwritten signature in black ink, appearing to read "R. Simard". The signature is fluid and cursive, with a large initial "R" and a long, sweeping underline.

Ron Simard

Enclosure

c: James E. Lyons, NRC

Summary of Need and Basis for Industry Rulemaking Petitions to Improve New Plant Licensing Processes

Petition PRM-52-1 would add new Sections 52.16 and 52.80 to Part 52

- The first applications for early site permits and combined licenses under Part 52 are expected to involve existing nuclear plant sites that can support additional units. To avoid needless expenditure of NRC and licensee resources, existing previously reviewed and approved information should be able to be incorporated by reference and should be treated as resolved. However, that information would be required to be augmented by, and NRC would review:
 - Significant new safety or environmental information that materially affects the ability of the site to support the proposed additional facility
 - Information on the cumulative radiological and environmental impacts of the existing facility and the additional facility as described in the ESP application
 - An analysis of the potential safety impacts of the existing facility on the facility described in the ESP application
 - An analysis of the potential safety impacts of the facility described in the ESP application on the existing facility
 - Information on siting related regulations that became effective after licensing of the existing facility, to the extent such regulations are addressed in the current licensing basis
- This scope of NRC review is consistent with Chairman Meserve's statement in his February 28, 2001, letter to Sen. Domenici 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."
- This scope of NRC review is also consistent with existing NRC guidance in Appendix A to the Environmental Standard Review Plan (NUREG-1555), which states that "tiering should be considered in the case of an application for a CP, ESP, or COL for a new plant at an existing nuclear facility."
- In a staff requirements memorandum dated February 13, 2001, the Commission placed emphasis on identifying regulatory process improvements for future plants. Early site permitting and combined licensing would be more focused and efficient with the proposed provisions, conserving both licensee and NRC resources. This is because review would focus on the incremental impact of the new unit and not on valid information for an existing site or facility.

- The proposed regulations would promote standardization of programs and procedures and a consistent licensing basis for all units at a site.
- Proposed Sections 52.16 and 52.80 are important to licensees because they will make the preparation and review of ESP and COL applications more efficient by (1) reducing the number and scope of issues requiring consideration, and (2) focusing attention in the public hearing on matters that have not been previously addressed and decided in other proceedings. Reducing licensing costs and time-to-market for new nuclear plants is an important factor in business decisions to go forward with new nuclear projects.
- The industry proposal is consistent with the National Environmental Protection Act and numerous NRC precedents in Part 50, Part 52, Part 54 (license renewal) where efficiency is enhanced through avoidance of duplicative reviews.

Petition PRM-52-2 would eliminate outdated NRC review of alternative sites, alternative generating sources and need for power

- Dramatic changes in the electric power industry toward a restructured, competitive electricity marketplace and the prospect of new nuclear plant orders highlight the need for the NRC to reconsider how it implements its responsibilities under the National Environmental Protection Act (NEPA).
- The industry proposal is consistent with NEPA, which requires consideration of alternatives, but does not specifically require the NRC to consider alternative sites, alternative generating sources and need for power. Although the NRC has historically conducted these reviews, they are not required by NEPA.
- Adoption of the industry proposal would clarify that the NRC obligation and objective in either early site permit or combined license reviews is to determine whether specific applications (e.g., for a particular site) meet all applicable safety and environmental requirements. Alternatives to be considered under NEPA should be limited to those that are within the context of that specific objective (i.e., alternative approaches for meeting applicable requirements).
- In particular, the NRC should not use its limited resources on reviewing alternative sites and generating sources and need for power. As stated by Chairman Meserve in his February 28, 2001, letter to Sen. Domenici, need for power and alternative source reviews are "distant from NRC's mission." We agree strongly with the Chairman that these matters "are fundamentally market decisions in deregulated markets and are the business of state public utility commissions in regulated markets. In neither case does the NRC possess the information and experience of the public utility commissions or the markets and accordingly, this NRC review should be eliminated." By the same reasoning, NRC review of alternate sites should likewise be eliminated.
- The elimination of these NRC reviews is responsive to the Commission interest in identifying opportunities to improve regulatory processes for new plants, as expressed in a February 13, 2001, staff requirements memorandum.
- Eliminating these NRC reviews is important to licensees because it will make the preparation and review of ESP and COL applications more efficient by relieving the need for applicants to submit, and for NRC to review, information on need for power and alternatives to the proposed action (i.e., alternative sites and sources). Moreover, doing so will focus the attention of the applicant, NRC and public on the safety and environmental impact of the specific activity proposed by the applicant—not on matters determined by other processes or outside the NRC's mandate and expertise.