

RULEMAKING ISSUE NOTATION VOTE

January 14, 2002

SECY-02-0009

FOR: The Commissioners

FROM: William D. Travers
Executive Director for Operations

SUBJECT: DENIAL OF PETITION FOR RULEMAKING (PRM-60-2/60-2A) - THE STATES
OF NEVADA AND MINNESOTA

PURPOSE:

To obtain Commission approval to deny PRM-60-2/60-2A.

BACKGROUND:

In the September 7, 2001, Staff Requirements Memorandum to SECY-01-0127, Draft Final Rule: 10 CFR Part 63, "Disposal of High-Level Radioactive Waste in a Proposed Geologic Repository at Yucca Mountain, Nevada," the Commission directed the staff to publish a Federal Register notice to close out action on the petition for rulemaking PRM-60-2/60-2A, and to inform the affected States.

By letters dated January 30, 1985, and September 30, 1985, the States of Nevada and Minnesota submitted a petition for rulemaking, and a subsequent amendment (PRM-60-2 and PRM-60-2A), requesting that the U. S. Nuclear Regulatory Commission (NRC) amend its regulations governing the implementation of certain generally-applicable environmental standards for high-level radioactive waste (HLW) that had been proposed by the U. S. Environmental Protection Agency (EPA) in 1982. Subsequently, in PRM-60-2A, the petitioners amended their original petition after EPA issued final standards in 1985. PRM-60-2 and 60-2A are provided as Attachments 1 and 2.

Notices of receipt of the petition, and the amendment, were published in the Federal Register on April 30, 1985 (50 FR 18627), and December 19, 1985 (50 FR 51701), respectively, with the

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comment periods ending July 1, 1985, and February 18, 1986. The NRC received eight comment letters on the petition and amendment from seven commenters (one commenter providing comments on both PRM-60-2 and 60-2A). Of the seven commenters, five were from States and two were from representatives of the nuclear power industry. The State commenters supported the petition, whereas the industry commenters opposed it.

In the notice of the amended petition, the NRC noted that rulemaking actions currently underway, when finalized, would address the concerns expressed by petitioners. The actions included proposed amendments to 10 CFR Part 60 to eliminate inconsistencies between NRC's generic regulations and EPA's 1985 standards, and proposed amendments to 10 CFR Part 51 on the adoption of DOE's Final Environmental Impact Statement (FEIS). On July 3, 1989 (54 FR 27864), the NRC published a final rule, "NEPA Review Procedures for Geologic Repositories for High-Level Waste." In that rulemaking, the NRC denied the portion of the amended petition proposing specific regulations to govern the process for adopting DOE's FEIS.

Subsequently, two events occurred which substantially altered the legal landscape of the Government's program for the disposal of HLW. These events resulted in the Commission's withdrawal of its proposed amendments to conform Part 60 to EPA's 1985 standards (63 FR 66498; December 2, 1998). First, in 1987, Congress amended the Nuclear Waste Policy Act of 1982 (NWPA) in the Nuclear Waste Policy Amendments Act (Public Law 100-203), to provide, among other things, that only the site at Yucca Mountain, Nevada, (YM) would be characterized for possible selection as a geologic repository. Second, in the Energy Policy Act of 1992 (Public Law 102-486), Congress required that EPA issue public health and environmental radiation protection standards that would apply solely to the YM site and that NRC modify its technical requirements and criteria to be consistent with the EPA standards. Pursuant to these statutory changes, the EPA issued its final standards applicable to YM in a new 40 CFR Part 197 on June 13, 2001 (66 FR 32074) and the NRC issued its final conforming requirements in a new 10 CFR Part 63 on November 2, 2001 (66 FR 55732). In its rulemaking, the NRC also amended Part 60 to make it clear that this part only applies to the licensing of repositories at sites other than Yucca Mountain.

DISCUSSION:

During development of Part 63, the staff considered the concerns raised by the petitioners and supporting rationale, and public comments. However, the Commission decided not to revise, at this time, the generic regulations dealing with disposal of HLW in 10 CFR Part 60, which is the subject of the amended petition. Therefore, for the reasons set forth in a draft Federal Register notice addressing the petitioner's requested actions (Attachment 3), the staff recommends denial of the petition.

COORDINATION:

The Office of the General Counsel has no legal objection to the denial of this petition.

RECOMMENDATIONS:

That the Commission:

1. Approve the denial of the petition for rulemaking and publication of the Federal Register notice announcing the denial;
2. Inform appropriate Congressional committees; and
3. Note that a letter is attached for the Secretary's signature (Attachment 4), informing the petitioners of the Commission's decision to deny the petition.

/RA/

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for Operations

Attachments:

1. Petition from States of Nevada and Minnesota (PRM-60-2)
2. Amended petition from States of Nevada and Minnesota (PRM-60-2A)
3. Federal Register Notice
4. Letter to the Petitioner

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*See previous concurrence

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