

Letter to Petitioner

Attachment 2

Mr. Robert W. Bishop  
Vice President and  
General Council  
Nuclear Energy Institute  
Suite 400  
1776 I Street, NW  
Washington, DC 20006-3708

SUBJECT: PETITION FOR RULEMAKING TO USE INFORMATION FROM PRIOR  
LICENSING ACTIONS AS RESOLVED INFORMATION FOR EARLY SITE  
PERMIT AND COMBINED LICENSE APPLICATIONS (PRM-52-1)

Dear Mr. Bishop:

I am responding to your letter of July 18, 2001, which submitted a petition for rulemaking on behalf of the Nuclear Energy Institute (NEI). Your petitioner requested that the NRC amend its regulations to allow applicants seeking an early site permit (ESP) and a combined license (COL) to use existing information from prior licensing actions as resolved information that has been approved by the NRC and has been subject to a public hearing.

A notice of receipt of the petition was published in the *Federal Register* on September 24, 2001 (66 FR 48832). The NRC received letters from 10 commenters. Nine of the 10 commenters were in favor of the petition. Seven of the favorable letters were from nuclear utilities, one was from a vendor, and one was from the petitioner. One of the commenters, a member of a public advocacy group, opposed the petition.

As the NRC staff understands your petition, the regulatory requirements and siting and programmatic information to be used as a basis for evaluating the acceptability of an ESP or COL located on a site for which a construction permit or operating license has been previously issued by the NRC would be established, in part, by the regulatory requirements and information which the applicant proposes to "incorporate by reference" from the "current licensing basis" for that construction permit or operating license. The applicant would have to supplement the incorporated information per the provisions in your proposal. Regulatory requirements and information incorporated by reference that do not need to be supplemented per the petition, would be treated as resolved, unless the NRC complies with the Backfit Rule, 10 CFR 50.109. Regulatory requirements and information incorporated by reference which must be supplemented would be subject to NRC review and approval, and the Backfit Rule would not apply.

The NRC denies your petition for the following reasons. Incorporation by reference of information which is relevant and material to the ESP and COL applications is already permitted by current NRC regulations. The fundamental objective of your proposal—resolution of issues in an ESP or a COL proceeding—appears to be based upon the misapplication of "current licensing basis" and backfitting. Furthermore, your proposal would not significantly narrow the

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scope of the ESP or COL application. Nor would the proposal significantly reduce the scope of issues that must be reviewed and addressed by the NRC or the scope of matters that may be raised in a hearing.

The denial is discussed in detail in the enclosed notice of Denial of Petition for Rulemaking, which will be published in the *Federal Register*.

Sincerely,

Annette Vietti-Cook  
Secretary of the Commission

Enclosure: Notice of Denial of  
Petition for Rulemaking

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Annette Vietti-Cook  
Secretary of the Commission

Enclosure: Notice of Denial of  
Petition for Rulemaking

**ACCESSION NUMBER: ML022250414** \*See previous concurrence

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