

March 7, 2003

Dr. Ronald L. Simard
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1776 I Street, NW, Suite 400
Washington, DC 20006-3708

SUBJECT: RESOLUTION OF EARLY SITE PERMIT TOPIC 18a (ESP-18a), ALTERNATIVE
SITE REVIEWS FOR EARLY SITE PERMITS

Dear Dr. Simard:

The purpose of this letter is to inform you of our understandings and expectations regarding alternative site reviews for early site permit (ESP) applications. This topic, which is identified as ESP-18a on the list of Nuclear Energy Institute (NEI) generic ESP issues, was discussed at public meetings between July 17 and December 5, 2002. Subsequently, NEI documented its position on this topic in a letter dated December 20, 2002. In addition, NEI submitted supplemental comments on petition for rulemaking (PRM) 52-2 on this same subject in a separate letter dated December 18, 2002. Both letters contained essentially the same information, but in the December 18, 2002, letter, NEI requested that the Commission address the issue generically because it has implications beyond ESP applications.

The staff wants to clarify that the understandings and expectations expressed in this letter apply to the three lead ESP applications and not necessarily to future ESP applications. As you are aware, the staff has initiated work to develop the technical bases for possible rulemaking to specifically define the requirements for consideration of alternative sites. This rulemaking activity is expected to account for industry deregulation and restructuring, consider the recent evolution of the siting process, and reduce uncertainty in the licensing process. The staff expects that this activity will reduce unnecessary regulatory burden and introduce more certainty in the alternative site review process. The staff held a January 28, 2003, public workshop as part of this effort to obtain public input in consideration of whether to undertake rulemaking to specifically define the criteria for review of candidate and alternative sites for nuclear power plants (see 67 FR 79165, December 27, 2002). NEI representatives were present at this meeting. Long-term resolution of the matters addressed in your December 20, 2002 letter on ESP-18a will be pursued in this generic effort.

The discussion below is our response to the relevant understandings and expectations identified in your December 20, 2002, letter and is intended to provide guidance to the three lead ESP applications.

NEI Position #1:

“As discussed with the staff on December 5, we conclude that both legal and policy reasons justify the NRC limiting its required NEPA analysis of alternatives to those that are pertinent in the context of the license application before it. For each of the three pilot ESP applicants, the

objective is the approval of an existing site for new nuclear units. Thus, each applicant's NEPA evaluation of alternatives should be limited to consideration of other existing nuclear sites."

Staff Response:

At this point in time, the staff, in general terms, agrees with NEI that the current NEPA case law suggests that a federal agency, acting on a private entity's permitting request, may limit its review of alternatives with due regard for the proposal before it. Nevertheless, the objectives of the action may not be defined so artificially narrow that only one alternative would accomplish the stated goals. See *Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-4, 53 NRC 31, 55 (2001). Therefore, it is the applicant's obligation to demonstrate, in its environmental report, that its bases for limiting its alternative site analysis are reasonable.

NEI Position #2:

"Consistent with a focus on alternatives that would satisfy the applicant's business purpose, only sites in the applicant's region of interest and under its control will be considered. The NEPA requirement for a 'hard look' at alternatives is satisfied by evaluation of the applicant's other existing nuclear sites in the region of interest.

This approach is consistent with existing guidance for review of alternative sites in NUREG-1555, Section 9.3 (III.8), which concerns the special case of existing sites.

Because this issue has implications beyond ESP, the industry requested that the Commission address this issue generically in supplemental comments provided on December 18 on petition for rulemaking PRM-52-2."

Staff Response:

The staff agrees that an ESP applicant need only consider the alternative sites within its region of interest. However, the applicant must demonstrate the reasonableness of confining the region of interest. In cases where the proposed facility would not have a determined service area, the ESP applicant would have to articulate a reasonable means of defining the region of interest.

NEI Position #3:

"Because of the obvious advantages of an existing nuclear site over non-nuclear sites for additional nuclear units, including the pre-existence of essential infrastructure, it is expected that no non-nuclear site would be found to be obviously superior. While not required by NEPA, lead ESP applications will also include a brief discussion that compares the selected site to generic green-field and generic industrial sites that will provide the analytical basis to confirm this presumption."

Staff Response:

The staff understands NEI's position. The superiority of alternative sites in comparison to the proposed site will be addressed on a case by case basis. NUREG-1555, Section 9.3, lays out the staff's methodology for identifying obviously superior alternative sites. The staff expects

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that an ESP applicant's environmental report will set forth the basis for its determination that none of the alternative sites is obviously superior in comparison to the proposed site.

Please contact Nanette Gilles of my staff at 301-415-1180 if you have any questions on this matter.

Sincerely,

/RA/

James E. Lyons, Director
New Reactor Licensing Project Office
Office of Nuclear Reactor Regulation

Project No. 689

cc: See next page

R. Simard

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