September 17, 2004

Mr. Robert H. Leyse
P.O. Box 2850
Sun Valley, Idaho 83353

Dear Mr. Leyse:

I am responding to your letter of September 2, 2002, which submitted a petition for rulemaking (PRM) to amend regulations and guidance documents pertaining to the performance of heat transfer surfaces in nuclear power plants (NPPs).

Your letter contended that existing regulations, guidance documents, test procedures, computer codes, and licensing and compliance inspection programs do not adequately address the impact of fouling on the performance of all heat transfer surfaces in NPPs.

The Nuclear Regulatory Commission (NRC) published a notice of receipt of PRM-50-78 on October 31, 2002. Four letters of public comment were received on the petition. Two of the letters were from you and the other two opposed the PRM. The commenters noted that current reporting requirements in 10 CFR 50.72 and 50.73 require reporting of any event or condition that would interfere with a safety function needed to shutdown that plant and maintain it in a safe condition, remove residual heat, control radiological material, or mitigate accident consequences. The commenters also noted that these same concerns had been addressed by industry in opposition to two prior PRMs from you: PRM-50-73 and PRM-50-73A. The commenters stated that this new petition (PRM-50-78) provided no additional basis for revising any NRC regulations.

The Commission is denying your petition for rulemaking (PRM-50-78) for the following reasons:

- The petition provided no evidence, and the NRC staff did not identify any data or reports, to indicate that fouling of safety-significant heat exchanger surfaces had degraded performance to the extent that a significant safety problem existed.

- The NRC regulation and oversight of NPPs includes the establishment of regulations, the issuance of operating licenses and technical specifications, and continual inspections and technical reviews of licensee programs and plant performance. When viewed in total, these regulatory requirements and related oversight practices provide confidence in the safety of operating nuclear power plants. NRC's finding that no rulemaking is required is based on the determination that the existing structure of regulations, technical specifications, and licensee programs subject to NRC inspection provides confidence that plant safety features, including heat exchangers, are properly designed and maintained in order to fulfill their intended function.

The NRC staff evaluated your request for rulemaking with respect to the five performance goals set out by the Commission in the Strategic Plan for fiscal years 2004-2009 announced on August 12, 2004. The requested action would not contribute to maintaining safety, or security, would not enhance openness in the NRC regulatory process, would not improve regulatory efficiency and effectiveness, realism or timeliness, and would not contribute to ensuring excellence in carrying out the NRC's strategic objective.

The integration of the various requirements and related NRC oversight functions provides the necessary confidence that systems important to safety such as heat exchangers will perform their intended functions. The addition of specific requirements to a regulation to address heat exchanger performance is not necessary. Further details are discussed in the enclosed Notice of Denial of Petition for Rulemaking, which will be published in the *Federal Register*.

Sincerely,

/RA/
Annette L. Vietti-Cook
Secretary of the Commission

Enclosure:
Federal Register Notice of Denial of
Petition for Rulemaking