

PRM-51-13  
(75FR16360)



NUCLEAR ENERGY INSTITUTE

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DOCKETED  
USNRC

June 2, 2010 (3:30pm)

Steven P. Kraft  
SENIOR DIRECTOR  
USED FUEL MANAGEMENT

June 2, 2010

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

Ms. Annette L. Vietti-Cook  
Secretary  
U.S. Nuclear Regulatory Commission  
Mail Stop 0-16C1  
Washington, DC 20555-0001

**ATTN:** Rulemaking and Adjudications Staff

**Subject:** Nuclear Energy Institute Comments on U.S. Nuclear Regulatory Commission Petition for Rulemaking: Notice of Receipt *Dan Kane; Receipt of Petition for Rulemaking 75 Fed. Reg. 16,360* (April 1, 2010); Docket No. PRM-51-13

**Project Number: 689**

Dear Ms. Vietti-Cook:

The Nuclear Energy Institute (NEI),<sup>1</sup> on behalf of the nuclear energy industry, hereby submits comments concerning the subject "Notice of Receipt Dan Kane; Receipt of Petition for Rulemaking." NEI's response is essentially twofold. First, as discussed below, any consideration of the impact of administration policy concerning Yucca Mountain on waste confidence undertaken in response to the petition should be conducted as part of the Commission's ongoing waste confidence proceeding. Second, as is also discussed below, the referenced rulemaking petition should be denied to the extent it seeks the revocation of U.S. Nuclear Regulatory Commission (NRC) regulations, cessation of new plant licensing, and phase-out of existing operating plants.

By his petition, dated February 2, 2010, Mr. Dan Kane seeks various actions. Petitioner has concluded that the current administration's proposed decision to no longer fund Yucca Mountain now places the possible construction and licensing of a permanent repository for spent nuclear fuel

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

Template = SECY-067

DS10

from U.S. nuclear power facilities in jeopardy. Petitioner requests that the NRC cease licensing new nuclear power plants and begin an orderly phase-out of existing operating plants. Petitioner also requests that §51.23 of the NRC's regulations, "Temporary storage of spent fuel after cessation of reactor operation – generic determination of no significant environmental impact," be revoked. Petitioner has also concluded that the NRC needs to strengthen current regulations by adding additional requirements that address the political considerations of siting a mined geologic repository.

On October 9, 2008, however, the Commission initiated the ongoing waste confidence rulemaking. See 73 *Fed. Reg.* 59,547. See also 73 *Fed. Reg.* 59,551 ("Waste Confidence Decision Update"). Any consideration of provisions of NRC regulations referred to in the petition should appropriately be considered as part of the pending proceeding.

In that connection, the waste confidence rulemaking, in fact, already addresses the issues raised in the petition. To begin with, one basic premise of the analysis accompanying the rulemaking is that the Yucca Mountain project fails. Then, utilizing a "target date approach," the rulemaking considers the factors—including the necessary political and social acceptance—pertinent to locating and developing an alternate repository. Based on an analysis of the record, the NRC staff has concluded, *inter alia*, that there is reasonable assurance that sufficient mined geologic repository capacity will be available within 50-60 years beyond the licensed life for operation (which may include the term of a revised or renewed license) of any reactor to dispose of the commercial high-level waste (HLW) and spent fuel originating in such reactor and generated up to that time. See: *e.g.*, SECY-09-0090, "Final Update of the Commission's Waste Confidence Decision," pp. 29-42, 74-97 (Jun. 15, 2009). Thus, any consideration undertaken in response to the petition of administration policy regarding Yucca Mountain on the matter of waste confidence can and should take place within the context of the existing rulemaking record, where the issue has already been addressed.

Secondly, once a matter is being evaluated generically within the context of a rulemaking proceeding, separate consideration of the issue on individual dockets is inappropriate. See: *e.g.*, 72 *Fed. Reg.* 32,139, 32,143 ("Draft Statement of Policy on Conduct of New Reactor Licensing Proceedings," referring to the "longstanding [Commission] precedent that 'licensing boards should not accept in individual license proceedings contentions which are (or are about to become) the subject of general rule making by the Commission'" (citation omitted)). Accordingly, petitioner's request for cessation of new plant licensing and phase-out of currently operating plants should be denied.


Ms. Annette L. Vietti-Cook

June 2, 2010

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In sum, any consideration of recent developments involving the Yucca Mountain project undertaken in response to the petition should be conducted as part of the pending waste confidence rulemaking, and the proceeding should be brought to a prompt conclusion. Otherwise, the petition should be denied.

Sincerely,

A handwritten signature in black ink, appearing to read "SP Kraft".

Steven P. Kraft

c: Mr. Michael F. Weber, EDO, NRC  
Ms. Catherine Haney, NMSS, NRC

## Rulemaking Comments

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**From:** REED, Joseph [jsr@nei.org] on behalf of KRAFT, Steven [spk@nei.org]  
**Sent:** Wednesday, June 02, 2010 11:26 AM  
**Subject:** Nuclear Energy Institute Comments on U.S. Nuclear Regulatory Commission Petition for Rulemaking: Notice of Receipt Dan Kane; Receipt of Petition for Rulemaking 75 Fed. Reg. 16,360 (April 1, 2010); Docket No. PRM-51-13  
**Attachments:** 06-02-10\_NRC\_NEI Comments on Petition for Rulemaking - Dan Kane.pdf

June 2, 2010

Ms. Annette L. Vietti-Cook  
Secretary  
U.S. Nuclear Regulatory Commission  
Mail Stop 0-16C1  
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By his petition, dated February 2, 2010, Mr. Dan Kane seeks various actions. Petitioner has concluded that the current administration's proposed decision to no longer fund Yucca Mountain now places the possible construction and licensing of a permanent repository for spent nuclear fuel from U.S. nuclear power facilities in jeopardy. Petitioner requests that the NRC cease licensing new nuclear power plants and begin an orderly phase-out of existing operating plants. Petitioner also requests that §51.23 of the NRC's regulations, "Temporary storage of spent fuel after cessation of reactor operation – generic determination of no significant environmental impact," be revoked. Petitioner has also concluded that the NRC needs to strengthen current regulations by adding additional requirements that address the political considerations of siting a mined geologic repository.

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Sincerely,

Steven P. Kraft  
Senior Director  
Used Fuel Management

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nuclear. clean air energy.

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with mapi; Wed, 2 Jun 2010 11:26:21 -0400

From: "KRAFT, Steven" <spk@nei.org>

Sender: "REED, Joseph" <jsr@nei.org>

Date: Wed, 2 Jun 2010 11:26:07 -0400

Subject: Nuclear Energy Institute Comments on U.S. Nuclear Regulatory  
Commission Petition for Rulemaking: Notice of Receipt Dan Kane; Receipt of  
Petition for Rulemaking 75 Fed. Reg. 16,360 (April 1, 2010); Docket No.  
PRM-51-13

Thread-Topic: Nuclear Energy Institute Comments on U.S. Nuclear Regulatory  
Commission Petition for Rulemaking: Notice of Receipt Dan Kane; Receipt of  
Petition for Rulemaking 75 Fed. Reg. 16,360 (April 1, 2010); Docket No.  
PRM-51-13

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