

POLICY ISSUE
(Notation Vote)

October 28, 2015

SECY-15-0136

FOR: The Commissioners

FROM: Victor M. McCree
Executive Director for Operations

SUBJECT: DENIAL OF PETITIONS FOR RULEMAKING REQUESTING TO RESCIND REGULATIONS THAT MAKE GENERIC DETERMINATIONS REGARDING THE ENVIRONMENTAL IMPACTS OF SPENT FUEL STORAGE AND DISPOSAL WHEN CONSIDERING NUCLEAR POWER REACTOR LICENSE APPLICATIONS (PRM-51-30 AND PRM-51-31; NRC-2014-0014 AND NRC-2014-0055)

PURPOSE:

To obtain Commission approval to deny two petitions for rulemaking (PRMs) submitted by Diane Curran on behalf of 34 environmental organizations (the petitioners).

BACKGROUND:

The petitioners filed the first of their two petitions on December 20, 2013, as a part of their comments on the U.S. Nuclear Regulatory Commission's (NRC) proposed continued storage rule (formerly known as the Waste Confidence Decision and Rule) and that rule's associated generic environmental impact statement (GEIS).¹ This petition was docketed as PRM-51-30. The petitioners filed a corrected version of the first petition on January 7, 2014 (Accession No. ML14029A124 in the NRC's Agencywide Documents Access and Management System (ADAMS)). The petitioners filed their second petition on February 18, 2014 (ADAMS Accession No. ML14071A382).

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¹ The proposed rule was published on September 13, 2013 (78 FR 56776), and the final rule was published on September 19, 2014 (79 FR 56238)

The second petition was docketed as PRM-51-31. The petitioners subsequently submitted an “amended petition” for rulemaking (pertaining to PRM-51-31) on June 26, 2014 (ADAMS Accession No. ML14177A660), seeking to add to the record of the February 18, 2014, petition, “the observations made by Chairman Macfarlane in her dissenting comments” on COMSECY-13-0030, “Staff Evaluation and Recommendation for Japan Lessons Learned Tier 3 Issue on Expedited Transfer of Spent Fuel” (November 12, 2013).

The petitioners also requested a suspension of ongoing reactor licensing proceedings. The Commission denied the suspension of reactor licensing proceedings in an Order dated July 20, 2014 (CLI-14-07).

The NRC published a notice of receipt in the *Federal Register* (FR) for PRM-51-30 on April 21, 2014 (79 FR 22055), and a notice of receipt for PRM-51-31 on May 1, 2014 (79 FR 24595). The NRC issued a notice covering the petitioners’ amendment of PRM-51-31 to include Chairman Macfarlane’s dissenting comments on COMSECY-13-0030 (79 FR 42989, July 24, 2014). The NRC did not request public comment on PRM-51-30, or PRM-51-31, because the NRC determined it had sufficient information for review and the issues were thoroughly vetted in the NRC’s disposition of previous, similar petitions for rulemaking.

DISCUSSION:

The first petition PRM-51-30 asserted that: (1) NRC’s environmental review regulations are “balkanized;” (2) Table S-3, (set forth in 10 CFR 51.51) has been repudiated; (3) Table S-3 and Table B-1 are inconsistent with each other; (4) there is no impact significance determination for “offsite spent fuel disposal” in Table B-1; (5) license renewal applicants in Title 10 of the *Code of Federal Regulations* (10 CFR) Section 51.53(c) and NRC staff in 10 CFR 51.71(d) are excused from addressing spent fuel storage impacts in license renewal environmental reviews; (6) the need for power is excluded in license renewal environmental reviews and economic costs of spent fuel storage and disposal are not incorporated into reactor cost-benefit analyses; and (7) in commenting upon the NRC’s proposed Continued Storage rule (78 FR 56776, September 13, 2013), the NRC’s proposal to remove the “reasonable assurance” statement from 10 CFR 51.23(a) was improper.

The second petition, PRM-51-31, asserted that the staff’s findings in both NUREG-2161, “Consequence Study of a Beyond-Design-Basis Earthquake Affecting the Spent Fuel Pool for a U.S. Mark I Boiling Water Reactor” (October 9, 2013) and COMSECY-13-0030 constituted “new and significant information.” The petitioners also requested that the NRC “duly modify NRC’s regulations that make or rely on findings regarding the environmental impacts of spent fuel storage during reactor operation, including Table B-1 and all regulations approving standardized reactor designs.” The petitioners asserted that former Chairman Macfarlane’s comments on COMSECY-13-0030, supports their view that COMSECY-13-0030 constitutes new and significant information.

In addition, the petitioners filed a request to suspend ongoing reactor licensing. The Commission denied these requests in an Order dated July 20, 2014 (CLI-14-07). The petitioners made a series of other non-rulemaking requests, such as re-noticing for public comment the 2013 update of the License Renewal GEIS and all EISs for new reactor applications. Those non-rulemaking requests are addressed in the letter to the petitioners, which is attached as an enclosure to this paper.

The NRC staff determined that the current technical basis for the generic environmental impacts of spent fuel storage findings for license renewal, and NRC regulations approving standardized designs for new reactors, remains sound and that the petitioners did not provide a sufficient basis to amend NRC regulations. In addition, recent spent fuel studies (including COMSECY-13-0030 and NUREG-2161) continue to support the findings of the License Renewal GEIS. Though the studies may contain “new” information, the information is not “significant.” Moreover, the former Chairman’s dissenting vote does not constitute a basis to consider the petitioners’ requests in rulemaking. In this regard, the other four NRC Commissioners at that time, as set forth in SRM-COMSECY-13-0030, “Staff Requirements – COMSECY-13-0030 – Staff Evaluation and Recommendation for Japan Lessons-Learned Tier 3 Issue on Expedited Transfer of Spent Fuel,” dated May 23, 2014, determined that no further generic assessments concerning the expedited transfer of spent fuel to dry cask storage need to be pursued (ADAMS Accession No. ML14143A360).

RECOMMENDATION:

The NRC staff recommends that the Commission deny PRM-51-30 and PRM-51-31 because the staff finds no basis to revise any of the NRC regulations identified by the petitioners. The enclosed *Federal Register* notice (FRN) provides a detailed response to the assertions made in the two PRMs.

The staff requests the Commission’s approval to publish the FRN (Enclosure 1) denying the two PRMs. The enclosed letter for signature by the Secretary of the Commission (Enclosure 2) inform the petitioners of the Commission’s decision to deny the petitions. The staff will inform the appropriate Congressional committees.

RESOURCES:

Denial of these petitions will not affect budgeted resource needs.

The Commissioners

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COORDINATION:

The Office of the General Counsel has reviewed this package and has no legal objection. The Office of Administration has reviewed and concurred on this paper.

/RA/

Victor M. McCree
Executive Director
for Operations

Enclosures:

1. *Federal Register* notice
2. Letter to the Petitioners

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Enclosures:

1. *Federal Register* notice
2. Letter to the Petitioners

ADAMS Accession No: ML15135A405 (Pkg.); ML15135A466 (SECY Paper); ML15139A182 (FRN);
ML15139A194 (Letter to Petitioner) * concurrence via email

OFFICE	NRR/DPR/PRMB/PM	NRR/DPR/PRMB/LD	NRR/DPR/PRMB/RS	NRR/DPR/PRMB/BC	NMSS/DSFM/D	NRR/DLR/D	NRR/JLD/D
NAME	JTobin	EOesterle	GLappert	TInverso	MLombard*	CMiller*	JDavis*
DATE	5/20/2015	5/28/15	5/28/15	5/29/15	7/30/15	7/30/15	7/30/15
OFFICE	NRR/DPR/DD	NRR/DPR/D	NMSS/MSTR/D	ADM/DAS/RAD/BC*	OGC/GCLR/RMR*	NRR/D	EDO
NAME	AMohseni	LKokajko	JPiccone*	CBladey	APessin	WDean	VMcCree
DATE	7/16/15	7/22/15	7/30/15	8/17/15	9/17/15	10/06/15	10/28/15

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