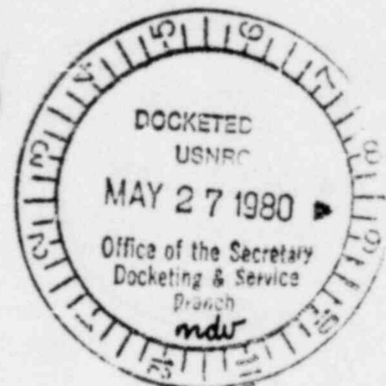
400 Chestnut Street Tower II

May 19, 1980

DOCKET NUMBER PROPOSED RULE PR-2, 30, 40, 50, 51, 70, 110 (18)
(45 FR 13739)




Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Attention: Docketing and Service Branch

Dear Sir:

In accordance with the March 3, 1980, Federal Register notice (45 FR 13739-13766), the Tennessee Valley Authority (TVA) is pleased to provide comments on the proposed amendments to 10 CFR Parts 2, 30, 40, 50, 51, 70, and 110, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions and Related Conforming Amendments."

The Nuclear Regulatory Commission (NRC) notice states that the Commission will study how to apply 40 CFR 1502.14(b), 1502.22(a), 1502.22(b), and 1508.18 (1979). Section 1502.14(b) deals with detailed consideration of alternatives in an EIS. NRC correctly points out that reconnaissance level information is adequate to make reasoned decisions among alternative sites, and in other choices among alternatives, detailed studies are often unnecessary to reasoned decisionmaking. In our view, the CEQ regulations should not be interpreted to be inconsistent with NRC's current practice. Section 1502.14 clearly recognizes that the level of information necessary to decisions among alternatives will vary from case to case. Thus, Section 1502.14(a) states that the EIS shall, ". . . for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated." Similarly, Section 1502.14(b) addresses the treatment of "each alternative considered in detail." We believe the CEQ regulations should be read in light of the judicially accepted rule of reason in NEPA application and that those regulations should not be read to require study of alternatives in greater depth than necessary to a reasoned decision.

NRC's question regarding Section 1502.22(a) also appears to be founded on an unreasonable reading of the regulation. The regulation requires information to be included in an EIS if "the information relevant to adverse impacts is essential to a reasoned choice . . . and the overall costs of obtaining it are not exorbitant." "Essential" is defined by Webster's New World Dictionary of the American Language (2d ed. 1972) as "3. absolutely necessary; indispensable; requisite." "Exorbitant" is defined as "going beyond what is reasonable, just, proper, usual, etc." In our view, here too the CEQ regulations merely incorporate a reasonableness rule, and any rational adoption of the rule by NRC would merely reflect NRC's current practice of requiring applicants to supply information determined by NRC to be necessary to decisionmaking.

Acknowledged by card. 5/27/80. mdv.

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As with Sections 1502.22(a) or 1502.14(b), NRC's reading of Section 1502.22(b) is not reasonable. It is true that NRC regulations exempt Class 9 accidents from consideration in an EIS and the CEQ regulations appear to require a discussion of such accidents to the extent necessary to a reasoned decision. However, a reasonable application of the regulation would not require exhaustive analyses of such accidents. We believe that the essence of an acceptable analysis is contained in the Reactor Safety Study.

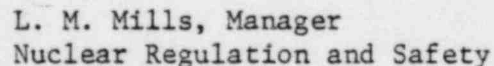
In dealing with Section 1508.18, the NRC states that "it is unclear whether this provision would require NRC staff to prepare environmental impact statements for such actions as denials of petitions . . . which claim significant ongoing environmental harm." The answer to this question is that an EIS is required respecting a major Federal action only if it will significantly affect the quality of the human environment. The determination of whether there is a significant effect on the quality of the human environment is to be made by the NRC, not by a petitioner. In the majority of cases the impacts of licensed activities will have been analyzed in an EIS and no additional EIS will be necessary.

Accordingly, we believe that the NRC can implement these CEQ regulations without unduly affecting its licensing activities.

We appreciate the opportunity to comment on the proposed amendments to 10 CFR Parts 2, 30, 40, 50, 51, 70, and 110.

Very truly yours,

TENNESSEE VALLEY AUTHORITY



L. M. Mills, Manager
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