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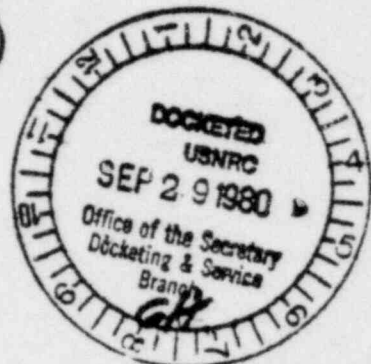
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34

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September 29, 1980

Mr. Samuel J. Chilk
Secretary of the Commission
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Attention: Docketing and Service Branch

Dear Mr. Chilk:

In response to the Commission's request for public comments on 10 CFR Parts 50, 51 and 100 concerning an Advance Notice of Rule-making on Revisions to Reactor Siting Criteria, attached is the position of EEI on behalf of its membership. We appreciate the opportunity to provide you with our thoughts on this subject and your consideration of them.

Sincerely yours,

John J. Kearney
John J. Kearney

JJK:jsd
Attachment

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UNITED STATES OF AMERICA
BEFORE THE
NUCLEAR REGULATORY COMMISSION

Advance Notice)	10 CFR Parts 50, 51 and
of Rulemaking: Revision)	100 (45 Fed. Reg. 50350
of Reactor Siting Criteria)	July 29, 1980)

The Edison Electric Institute (EEI) the national association of the investor-owned electric utility industry submits these comments in response to The Advance Notice of Rulemaking which was issued by the Nuclear Regulatory Commission (NRC) on July 29, 1980, 45 Fed. Reg. 50350. Comments were requested on seven of nine recommendations contained in the "Report of the Siting Policy Task Force," NUREG-0625, August 1979, as well as alternative approaches described in the notice.

The EEI member companies serve 99 percent of all customers of the investor-owned segment of the industry and 77.5 percent of all users of electricity in the United States. A number of EEI's members operate nuclear power reactors, have plants under construction and are considering possible future additional nuclear power plants.

I. Introduction

EEI appreciates the initial effort by the NRC staff to consolidate the Commission's past siting policy and practices. However, we have strong concerns regarding the basic goals for revising the policy and practices. We see no clear purpose for a comprehensive rule on this subject other than a response to the directive in Section 108 of the FY1980 Act to establish demographic requirements for siting future nuclear power reactors; i.e., reactors for which an application for a construction permit will be filed after October 1, 1979.

Based upon our reading of NUREG-0625 and related material, we conclude that the current Part 100 regulation on siting has stood the test of time, and includes a proper balancing of remote siting and appropriate engineering design with the encouragement of flexible approaches to early siting and plant design.

EEI supports the comments being provided to NRC by the Atomic Industrial Forum on this Advance Notice of Rulemaking. These address in detail the various recommendations and alternatives in the Advance Notice as well as the conceptual goals used in developing NUREG-0625. Our general comments address two areas of overall concern and our "Specific Comments" section highlights EEI's views on those items and questions raised in the Advance Notice.

II. General Comments

A. Changes in the Commission's Siting Policy and Practices Should be Preceded by the Establishment of Safety Goals and the Resolution of the Degraded Core Rulemaking

Any changes in the Commission's siting policy and practices should be preceded by the establishment of safety goals and the resolution of the degraded core rulemaking.

EEI appreciates that this Advance Notice is part of a series of NRC rulemakings related to upgrading the NRC regulations to provide additional increments of protection for the public health and safety in the event of a nuclear accident. EEI offered comments on the revisions to NRC's emergency planning regulations and on FEMA's proposed rule relating to the FEMA mechanism for administering its review of state and local radiological emergency plans. EEI also discussed the emergency planning issues with the Advisory

Committee on Reactor Safeguards and participated in a discussion with NRC Commissioners on emergency planning on June 25, 1980. In each instance, we expressed serious concern about the need to coordinate carefully and sequentially the NRC and other Federal agency rulemakings related to defining the probability of and mitigating the possible future nuclear accidents consequences.

We also intend to review and participate in forthcoming NRC regulatory actions relating to degraded core issues and safety goals. In preparation for these and earlier NRC actions, such as emergency planning, we concluded that the sequence of NRC and other Federal agency regulatory proposals was incorrect and that well defined and quantified nuclear power reactor safety goals and a final determination of the probability and consequence of degraded core cooling events should precede any substantive changes in other NRC or other Federal agency regulations which are conditioned by these other determinations. The current siting policy and practice proposals are among such determinations.

B. Generic Regulations on Reactor Siting to be Developed in the Forthcoming Rulemaking Should Apply Only to Applicants Who File For Construction Permits After October 1, 1979.

EI is concerned about a statement that appears in the Supplementary Information section of the Advance Notice in the Federal Register which relates to the scope of the proposed new siting policies regulations. We request the NRC to address the problem specifically in its next public statement on this rulemaking.

As noted previously, EI recognizes the instant Advance Notice is motivated in part by the congressional mandate for modifying the present siting policy for future facilities, as

reflected in Section 108 of the FY1980 Authorization Act. Section 108(b) of the Act plainly states that the "...regulations promulgated under this section shall not apply to any facility for which an application for a construction permit was filed on or before October 1, 1979." The plain meaning of this language and its legislative history clearly demonstrate the Congress intended the application of revised siting regulations to apply prospectively only to utilization facilities for which a construction permit application was filed after October 1, 1979. ^{1/} The Advance Notice shows the NRC recognizes this limitation on the scope of the siting rulemaking.

The point of potential concern arises from the statement; "Nevertheless the question arises as to whether additional safety features and changed operating procedures should be required for plants licensed on sites that do not meet the new criteria." 45

^{1/} A recent D.C. Circuit Court decision has reaffirmed a principle of statutory construction, (as stated in the Supreme Court's *Trans Alaska Pipeline* case of 1978, and earlier decisions, (citations omitted)) and ruled that "A court interpreting a statute is bound by the 'literal or usual meaning of its words' unless this would lead to 'absurd results . . . or would thwart the obvious purpose of the statute.'" National Small Shipments v. Civil Aeronautics Bd., 618 F.2d 819,827 (D.C. Cir., 1980). An agency should be bound by this same principle when interpreting an Act.

The clear intent of Congress reflected in the Act's language is bolstered by the legislative history which reflects compromises reached between the House and Senate on the scope of the siting rules. One compromise was inclusion of the October 1, 1979 cut-off date in Section 108(b): "The Conference agreement also establishes October 1, 1979, as the date after which all applications filed for an NRC construction permit for a utilization facility must comply with the new siting regulations. This provision would exempt from the new siting regulations the proposed nuclear power plants with construction permit applications now pending before the Commission." Conference Report on the NRC Authorization Act, H.R. Rep. No. 1070, 96th Cong., 2nd Sess. 24 (1980).

Fed. Reg. at 50350. Reading this in the context of the subsequent discussion regarding NRC's case-by-case safety review at existing facilities, we are confident that NRC does not intend to judge the safety of existing facilities by new generic siting requirements developed in the instant rulemaking. To do otherwise would exceed the legal authority conferred by Section 108 of the FY1980 Authorization Act. To make the applicability of the new siting regulations abundantly clear, we recommend that the rules contain an applicability section which would provide that the siting regulations are not applicable "to any facility for which an application for a construction permit was filed on or before October 1, 1979."

III. Specific Comments

As noted above, EEI endorses the comments submitted by AIF on this Advance Notice of Rulemaking. The following comments are provided to complement the more detailed input NRC received on this matter from the Atomic Industrial Forum.

Item A - Response to Task Force Conceptual Goals

Siting as a factor in the defense-in-depth philosophy must be considered in the NRC evaluation. While it may be desirable to make some changes in the siting regulations for future applicants, there does not appear to be a defensible need for significant changes in the current siting regulations. The current regulations include a balanced view of engineering safety features, environmental impacts and socio-economic factors for site selection and this properly balanced review process should be retained.

Response to Additional Questions:

Plant specific design features should be used to compensate for unfavorable site characteristics.

Acceptable risk considerations should be included and based on established safety goals as well as comparative risks from other energy sources. The risk should be based primarily on a balanced consideration of the overall risk to the exposed population as well as the risk to the maximally exposed individuals.

A basic position should provide nationally uniform safety goals and risk acceptance. However, site acceptability may be regionally varying to assure the ability to satisfy the congressional mandate that no region be excluded from the use of nuclear power.

Item B - Task Force Recommendation 1
(NUREG-0625, pages 46-50 and 64-65)

Alternative B is preferred to Alternative A with consideration given to a provision of two thresholds for each parameter. The rigid limits suggested in Alternative A do not provide the bases for performing a balanced review of all factors that contribute to determining and achieving overall public safety.

Response to Additional Questions:

A uniform minimum exclusion distance should not be established and the exclusion distance should be based on design basis accidents.

Different demographic characteristics of regions should be recognized for the density/distribution limit. A single limit should not be established for the entire country.

Criteria for population densities should be applied only to population projections that can be reasonably forecast at the time of site approval.

A regionally differentiated population density approach should be used and a region should be recognized as a candidate service area that may be smaller than a utility's service area.

The graduated, regionally dependent approach provided in NUREG-0625 appears to be reasonable and a lower (de minimis) threshold should be identified.

Item C - Task Force Recommendation 2
(NUREG-0625, pages 51-52)

Alternative B which uses a "three-tier" approach is preferred over Alternative A for the consideration of potential hazards of other man-made activities or natural characteristics. A separate set of thresholds for each category using the "three-tier" approach is appropriate but should be established only after a methodology for the development of the criteria for setting such thresholds is published and reviewed in detail.

Response to Additional Questions:

Criteria should be established for specifying standoff distances for various categories and they should address the potential impacts of such hazards on the safety of the proposed nuclear plant.

The list of categories is appropriate. However, other nuclear facilities should not be considered in setting the criteria for standoff distance.

Item D - Task Force Recommendation 3
(NUREG-0625, page 53)

The vagueness of the standard "reasonable assurance" makes this recommendation difficult to implement. A more explicit wording should be provided for this area as recommended by the ACRS.

This recommendation is intrinsically tied to other NRC rulemakings on safety goals and degraded core and should be addressed after these primary rulemaking proceedings have been completed.

Item E - Task Force Recommendation 4

No comments provided.

Item F - Task Force Recommendation 5
(NUREG-0625, pages 55-56)

This recommendation interjects potential problems associated with Federal/State responsibilities and authorities. A more explicit wording should be provided that recognizes the authorities of the locality and provides guidance for evaluating offsite developments. The proposed requirement that NRC inform local authorities and the Federal agencies of the basis for determining the acceptability of a site is appropriate.

Response to Additional Questions:

Based on the history of PL 96-295, it does not appear practical to expect additional legislative authority in this area. Commission reviews of surrounding population change after a plant begins operation should consider a balanced evaluation of safety goals, emergency planning and engineered safety features.

Item G - Task Force Recommendation 6
(NUREG-0625, pages 57-59)

The current approach relative to site selection from a safety viewpoint should be continued and engineered safety features should be employed to achieve overall site acceptability. Safety issues are to be fully examined for a primary site during the licensing process. However, the NEPA alternative site reviews should not include an evaluation of the safety issues for every site considered.

Response to Additional Questions:

Compensating engineering features should be considered in the evaluation of the primary site.

Site characteristics which can only be assessed with great uncertainty should not be considered in the site approval decision.

Item H - Task Force Recommendation 7
(NUREG-0625, page 60)

The site approval should be established at the earliest decision point possible and this decision should not be reopened in the licensing process unless new significant information is presented that is important for site reconsideration.

A binding site approval decision should be provided as early as possible but not later than at the time of issuance of a construction permit.

Item I - Task Force Recommendation 8
(NUREG-0625, pages 61-62)

The Commission should retain the flexibility to address site disapproval by state agencies on a case-by-case basis and not permit a state veto to control decisions important to national interests, such as the safety aspects of nuclear power.

Item J - Task Force Recommendation 9

No comments provided.

IV. Conclusion

As indicated above, we believe that the use of Part 100 has withstood the test of time and the current practice of site selection properly protects the health and safety of the public. Simply because there has been controversy over siting and engineering design policies in the past, based upon perceived risks rather than

real consequences, is not a valid reason to modify sound siting and engineering design practices. We believe the proper use of the defense-in-depth design features in relation to siting characteristics does represent the original intent of Part 100 in achieving safe siting decisions. We continue to believe that flexibility in siting nuclear power reactors is both essential to finding and documenting the best possible site for a particular reactor design as well as maintaining proper electrical service to our customers within utility candidate siting areas. The utility industry regularly has made every effort to select sites with a minimum of unfavorable characteristics that could impact negatively upon public health and safety during normal operation and during emergencies. The question of further reducing residual individual or societal risk through rigid conservatism in siting criteria alone will not be answered affirmatively until the risks are adequately quantified to begin with in Commission determinations on safety goals and accident considerations. Any decisions on a new siting policy should be based on the decisions of these other proceedings.

Finally we wish to underscore the confusion that is generated by conflicting statements in the Advance Notice concerning the scope of the forthcoming siting regulations. An express statement by the NRC on this issue is necessary to allay our fears that the Commission has misinterpreted the extent of their authority granted them by Congress under the FY1980 Authorization Act. Our interpretation of the Act is that the Commission may not as a matter of law extend the new siting regulations developed pursuant to the

Authorization Act to existing facilities, reactors under construction, or reactors for which Construction Permit applications were pending as of October 1, 1979.