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General Comment

Please see attached PDF.

Attachments

20210720_ClearPath Categorical Exclusion Rulemaking Public Comment

CLEARPATH



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July 20, 2021

U.S. Nuclear Regulatory Commission
Washington, DC 20555

Subject: ClearPath Comments on Proposed Rule, “Categorical Exclusions From Environmental Review” [Regulation Identifier Number RIN-3150-AK54; Docket ID NRC-2018-0300]

Dear U.S. Nuclear Regulatory Commission Staff:

Thank you for the opportunity to provide comments on the Nuclear Regulatory Commission’s (NRC) Advanced Notice of Proposed Rulemaking (ANPR) titled “Categorical Exclusions From Environmental Review” (86 Fed. Reg. 24514).

ClearPath is a 501(c)(3) organization whose mission is to develop and advance policies that accelerate breakthrough innovations that reduce emissions in the energy and industrial sectors. ClearPath develops cutting-edge policy solutions on clean energy and industrial innovation, and collaborates with public and private sector stakeholders on innovations in nuclear energy, carbon capture, hydropower, natural gas, geothermal, energy storage, and heavy industry to enable private-sector deployment of critical technologies. ClearPath does not receive funding from industry.

The United States can only build new clean energy projects and reduce carbon emissions as fast as we can responsibly and efficiently permit the projects to do so. Modernizing the federal permitting process, such as through the optimal use of Categorical Exclusions (CATEXs) for actions that are known to have negligible environmental impact, is one of the most significant actions regulators can take to support the transition to cleaner energy sources. Unfortunately, the most impactful and important energy projects, such as the construction and operation of nuclear power plants, often are the most overburdened and slowed by inefficient permitting requirements. This delays the realization of the associated environmental and economic benefits that improve Americans’ quality of life. Therefore, removing unnecessary barriers to nuclear energy is essential to meeting U.S. national security objectives, reliable electricity needs, and global emission reduction objectives.

CATEXs help facilitate the NRC staff’s implementation of the National Environmental Policy Act (NEPA) by ensuring that both NRC staff and industry resources are focused on actions that may have a detrimental environmental impact instead of on actions that have no significant impact. Regularly reviewing and updating 10 CFR 51.22 allows the agency to incorporate lessons

learned from previous federal actions that did not have significant environmental impacts and ensure that the agency is aligned with the Council on Environmental Quality's (CEQ) best practices.

Recently, a group of policymakers, experts, and practitioners convened by the Aspen Institute released a report, "Building Cleaner, Faster," which addresses the need to streamline current environmental review and permitting processes to enable the buildout of decarbonization infrastructure with the scale, speed, and predictability required.¹ The NRC should use the results of this report to develop CATEXs. Among other topics, the report recommends that immediate approvals be granted for projects where environmental impacts are well understood, either due to the nature and/or location of the project. For nuclear energy, this could include CATEXs for:

- Projects where the opportunity for greenhouse gas abatement is the highest and other potential environmental impacts are well understood and documented.
- Projects such as those that deliver substantial net climate and environment benefits by replacing existing infrastructure with new infrastructure which has less impact than what is already permitted (such as repowering a decommissioning coal-fired power plant with an advanced nuclear reactor).
- Pre-qualified locations where projects are expected to have no significant environmental impacts on the location (such as brownfield locations that have been cleared for redevelopment or former military bases).
- Projects that will provide an economically and/or environmentally disadvantaged area with significant investment, job, and health benefits to the site and its surroundings (such as Opportunity Zone locations) and are expected to have no significant environmental impacts on the location.

During the NRC staff's public meeting on the CATEX ANPR,² the staff sought input regarding the proposed rulemaking. However, many of the potential rulemaking changes were focused on topics like decommissioning. As ClearPath supports making changes that can improve NRC's oversight across a reactor's entire lifecycle, we recommend the NRC ensure that the CATEX rulemaking considers all stages of a reactor's lifecycle — from site selection and preparation to construction, operations and decommissioning.

At the recent public meeting on June 16th, 2021, a member of the public asked if the NRC staff are considering incorporating CATEX from other federal agencies that may also be useful for the NRC. The staff replied that they are not considering the practices of other federal agencies on CATEX, even though the last time the NRC revised 10 CFR 51.22 was in 2010 — more than a decade ago. Considering the CATEX created by other federal agencies would align the NRC with the CEQ's July 2020 final rule, "Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act,"³ which states:

¹ <https://www.aspeninstitute.org/publications/building-cleaner-faster-report/>

² 6/16/2021 Public Meeting on Advance Notice of Proposed Rulemaking on Categorical Exclusions from Environmental Review Meeting Notice ADAMS Accession No. ML21155A233; Meeting Slides ADAMS Accession No. ML21145A153; Meeting Summary ADAMS Accession No. ML21132A060

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<https://www.federalregister.gov/documents/2020/07/16/2020-15179/update-to-the-regulations-implementing-the-procedural-provisions-of-the-national-environmental>

“In developing their procedures, agencies should strive to identify and apply efficiencies, such as use of applicable categorical exclusions, adoption of prior NEPA analyses, and incorporation by reference to prior relevant Federal, State, Tribal, and local analyses, wherever practicable.”

Therefore, the NRC staff should leverage other agencies’ CATEXs when considering ANPR Question 1: “Are there licensing and regulatory actions that do not or have not resulted in environmental impacts that the NRC should consider as a categorical exclusion?” ClearPath believes that using this rulemaking as an opportunity to innovate and incorporate other agencies’ applicable best practices would allow the staff to improve the NRC’s environmental review process and provide greater consistency across the entire federal government. This would also be aligned with the NRC’s Principles of Good Regulation.

In accordance with 10 CFR 51.20 the NRC currently requires an Environmental Impact Assessment (EIS) for many actions. By requiring an EIS for certain actions no matter their environmental impact, the NRC is disincentivizing industry to leverage and benefit from operating experience as well as established best practices or mitigation measures that minimize environmental impacts. For this rulemaking, the staff should comprehensively review all actions that did not - and are not expected to - result in an environmental impact for consideration as CATEX. Furthermore, the staff should consider topics that should be CATEX based on performance-based requirements. An example of performance-based requirements that could be used to determine what environmental actions should be considered for a CATEX are listed in 10 CFR 51.22(c)(25)(i)-(v). This approach is similar to the performance-based licensing direction provided to the NRC staff by Congress in the Nuclear Energy Innovation and Modernization Act (NEIMA).⁴ NEIMA seeks to ensure “predictable, efficient, and timely reviews” for advanced reactor license applications. To that end, Congress expects the NRC to take steps to “reduce cumbersome regulatory barriers, expedite the environmental review process, and enable market deployment of innovative nuclear technologies.”⁵

A recent example of the staff considering performance-based requirements instead of prescriptive requirements is the NRC’s ongoing development of a Generic Environmental Impact Statement (GEIS) for advanced reactors. As described in the GEIS Scoping Process Summary Report,⁶ the NRC staff were initially considering having a specific reactor power cut off instead considering the actual environmental impacts. However, as the staff are developing the GEIS they will, to the extent possible, use a performance-based approach to bound the analyses, which focuses the analyses on the actual impacts. While this is a different agency effort, the same reasoning applies here. That is, the staff should consider across all of their environmental review actions where environmental impacts have not occurred or are not expected to occur and consider if an appropriate CATEX should apply. The staff should not simply assume that if an EIS was performed it could not be considered for a CATEX or EA.⁷

⁴ <https://www.congress.gov/bill/115th-congress/senate-bill/512>

⁵ Letter from the Honorable J. Barrasso and M. Braun to K. Svinicki, Chairman, NRC (June 25, 2019) (ADAMS Accession No. ML19176A444).

⁶ ADAMS Accession No. ML20269A317

⁷ ClearPath recognizes that a separate rulemaking effort, such as the broader 10 CFR Part 51 update proposed in SECY-21-0001, is needed to fully implement this approach.

Regulatory requirements focused on performance-based criteria could be applied to a broad set of nuclear facilities and technologies. For example, currently licensing a nuclear power plant requires an EIS. Operating experience gained from research and test reactors could be applied to identify performance-based criteria to determine when the construction and operation of a reactor design result in no significant environmental impact. As multiple companies are developing commercial microreactors, which are of similar size to traditional research and test reactors, and plan on incorporating construction and operating environmental best practices, the staff should consider whether microreactors could be the subject of a CATEX, or at least a mitigated CATEX, based on specific impacts to the environment.⁸

Finally, the staff should consider additional broad recommendations to improve the CATEX process, including changes to this proposed rulemaking. For example, the staff should consider the additional recommendations in the article “Forging a clear path for advanced reactor licensing in the United States: Approaches to streamlining the NRC environmental review process” in the Nuclear Energy Agency’s *Nuclear Law Bulletin*.⁹

Thank you to the staff for their efforts. ClearPath encourages the staff to continue to consider new ways to improve the efficiency and effectiveness of the entire licensing process. Please do not hesitate to reach out for additional information or to discuss this letter.

Sincerely,

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⁸ Similar concept to a mitigated finding of no significant impact (FONSI). See 40 CFR 1501.4(b)(1), “If an extraordinary circumstance is present, the agency nevertheless may categorically exclude the proposed action if the agency determines that there are circumstances that lessen the impacts or other conditions sufficient to avoid significant effects.”

⁹ O’Neill, Martin, “Forging a clear path for advanced reactor licensing in the United States: Approaches to streamlining the NRC environmental review process,” *Nuclear Law Bulletin* No. 105 – Volume 2020/2, <https://www.oecd-nea.org/jcms/pl_58810/nuclear-law-bulletin-no-105-volume-2020/2>