

Briefing on Waste Confidence Rulemaking

Presentation Before the Full Commission
Nuclear Regulatory Commission
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Three Primary Points

- NRDC and NRC have different understandings of National Environmental Policy Act (NEPA) obligations.
- NRC's failure to formulate and compare distinct and environmentally meaningful alternatives is unlawful.
- NRDC has provided NRC with a way forward, but it entails a wholesale reworking of what the agency has done thus far.

And a fourth point

- None of what said here today is new or adds to the record before the NRC on the Draft Waste Confidence Generic EIS.
- NRDC's December 20, 2013 comments were timely filed and speak for themselves.

Our fundamental disagreement

- NRC thinks the proposed action is whether or not it writes a rule.
- NRDC thinks the proposed action is the continued licensing of nuclear power plants that produce nuclear waste that must be stored and managed, possibly indefinitely, pending final disposal.
- And we think the Court agreed with us.

NRC's Proposed Action

- Page 1-5. *“Proposed Federal Action*. The Commission proposes to issue a revised Rule, 10 CFR 51.23, that generically addresses the environmental impacts of continued storage. This revision would adopt into regulation the environmental impact analyses in this draft GEIS.

NRC's Purpose & Need

- The NRC continues:
- Page 1-6. “The purpose and need for the proposed action are threefold:
 - (1) to improve the efficiency of the NRC’s licensing process by generically addressing the environmental impacts of continued storage;
 - (2) to prepare a single document that reflects the NRC’s current understanding of these environmental impacts; and
 - (3) to respond to the issues identified in the remand by the Court in the *New York v. NRC* decision. The NRC intends to codify the results of its analyses in this draft GEIS at 10 CFR 51.23. NRC licensing proceedings for nuclear reactors and ISFSIs will continue to rely on the generic determination in 10 CFR 51.23 to satisfy obligations under NEPA with respect to the environmental impacts of continued storage.”

NRC's Alternatives

- Page 1-6. Alternatives. “The NRC could pursue several alternatives, other than the proposed action, to address the environmental impacts of continued storage in its licensing actions.
 - First, the NRC could take no action and address the environmental impacts from continued storage in each of its nuclear power plant and ISFSI initial licensing and license renewal proceedings.
 - Second, the NRC could develop a GEIS without incorporating the results into a rule. This approach would allow the NRC to adopt these draft GEIS findings into environmental reviews for future licensing activities, but without the binding effect of a rule.
 - Third, the Commission could issue a policy statement. The policy statement would not bind licensees and applicants like a rule, but it would provide notice of the Commission’s intent to incorporate the findings of the GEIS into environmental reviews for future licensing activities.”

What Actually Happened Here?

- By statute, a “major federal action” warranting preparation of an EIS is one “significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C).
- NRC has performed the minor bureaucratic act of selecting among four alternative pathways for completing NEPA documentation on continued spent fuel storage.
- Such an act does not, in and of itself, rise to the level of a “major federal action significantly affecting the quality of the human environment,” and therefore it cannot legitimately serve as the appropriate decision analysis framework for a Draft GEIS.

What Happened?, cont'd.

- We know of no comparable instance in which a Federal Agency proposing a major federal action – much less one responding to specific NEPA direction from a Federal Court – has sought to substitute a *cost-benefit comparison of alternative procedural pathways for NEPA analysis* in place of the required substantive and searching *environmental impact comparison of reasonable alternatives* required under NEPA.

NRDC's Understanding of What Went Wrong with NRC's Federal Action

- The Draft GEIS misconstrues NRC's NEPA obligation to properly define the nature and scope of the “major federal action” – in this instance a rulemaking – that NRC proposes as a fundamental predicate to all pending and future licensing actions authorizing the production and storage of spent nuclear fuel.
- In so doing, the Draft GEIS ignores the DC Circuit's unambiguous language vacating *en toto* the Commission's 2010 iterations of the WCD and TSR – “we are invalidating the Commission's conclusions as a whole.” *New York et al. v. NRC*, 681 F.3d 471, at 482.

NRDC's Suggested Framing

- A legally compliant definition of a proposed action:
- *The NRC proposes to reinstate, as a pre-determined stage of its individual licensing actions for nuclear reactors and Independent Spent Fuel Storage Installations, a binding rule that generically considers, and determines for the purposes of future licensing, reasonably foreseeable and cumulative environmental impacts of continuing to store on the surface of the earth for extended periods, including indefinitely, all spent fuel previously generated and requiring storage pursuant to past Commission licensing actions, and any spent fuel that would be generated pursuant to pending and reasonably foreseeable licensing actions the Commission may undertake in the future.*

NEPA Implications of a Lawful Framing of the Major Federal Action

- A Draft GEIS must analyze the environmental consequences of reasonable alternatives for actually *implementing* continued storage of spent fuel the Commission may authorize in future commercial power reactor and spent fuel facility licensing actions.
- A NEPA compliant analysis must embrace a range of reasonable surface storage alternatives with greater or lesser environmental impacts, over a relevant range of time periods extending from an initial 20-year license renewal to indefinite storage. For more distant time periods, the analysis must consider the consequences for the human and natural environment in the absence of institutional controls.

Implications Under NEPA, cont'd.

- NRDC's suggestion considers "real environmental issues" *in the context of* "reasonable alternatives to proposed actions that would avoid or minimize adverse impacts," and compares the *environmental* costs and benefits of meaningful alternatives.
- Contrast this with NRC's approach – an approach which fails to comply with NEPA's basic requirements and *delivers the absurd result of performing NEPA analysis on ways to carry out NEPA analysis.*

NRDC Provided Matrix of Meaningful Alternatives to Consider

- Relevant timescales
- Alternative Storage Modes & Configurations
(Spent Fuel Pools with At-Reactor Dry Storage)
- Safety-Relevant Classes of Spent Fuel Requiring Continued Storage
- Storage Cask Technology Options
- Reliance vs. Erosion of Institutional Controls as a Function of Time

NRDC's Suggested Reasonable Alternatives for Consideration

- “No Action”: continued storage of SNF discharges “baked-in” under *existing* licenses
- RA #1: “License Extension Only” (based on current SFP/ISFI licenses)
- RA # 2: Store SNF from current licensed & proposed reactors with COLs received by 12-31-2030
- RA # 3: Constant Nuclear Market Share Scenario
- RA# 4: Nuclear “Major Growth” Scenario

What Should Happen Now?

- As per the Court's direction, NRC must:
- 1) properly identify the major federal action necessitating an environmental impact statement;
- 2) evaluate the environmental effects of failing to secure permanent storage, with associated alternatives and mitigation strategies; and
- 3) properly examine future dangers and key consequences with respect to spent fuel pool fires and leaks.
- NRC failed to perform each of these actions.

What Next? cont'd.

- Therefore, the NRC should
- (1) withdraw this first draft and the proposed rule; and
- (2) commence work on a draft EIS that complies with federal law.
- The agency must present reasonable alternatives and subject them to NEPA's "hard look requirements" and rely on reasonable projections, forecasts and assumptions to formulate its alternatives and examine their reasonably foreseeable environmental impacts.

END

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