

report supporting its ESP application, or deferring the consideration of alternative energy sources to the time that the ESP is referenced in a licensing proceeding. The Commission believes the current regulations already afford the ESP applicant such flexibility, inasmuch as § 52.17(a)(2) states that the environmental report submitted in support of an ESP application must “focus on the environmental effects of construction and operation of a reactor, or reactors \* \* \*.” The environmental report’s discussion of alternative energy sources does not, per se, address the “environmental effects of construction and operation of a reactor,” which is one of the matters which must be addressed in an environmental impact statement (EIS). See 10 CFR 51.71(d); National Environmental Policy Act of 1969 (NEPA), § 102(2)(C) (i), (ii) and (v). Rather, alternative energy sources constitutes part of the discussion of reasonable alternatives to the proposed action, which is required by § 102(2)(C)(iii) of NEPA. See 10 CFR 51.71(e) n.4; 46 FR 39440 (August 3, 1981) (proposed rule eliminating consideration of need for power and alternative energy sources at operating license stage), at 39441 (first column). Accordingly, it is the Commission’s view that § 52.17(a)(2) already provides the ESP applicant the flexibility of choosing to defer consideration of alternative energy sources to the time (if ever) that the ESP is referenced in a combined license or a construction permit application. The proposed rule clarifies that the ESP applicant may either include a discussion of alternative energy sources in its environmental report, or defer consideration of the matter. The Commission proposes to make a conforming amendment to §§ 52.18 and 52.21 to make clear that the NRC’s EIS need not address need for power, or alternative energy sources (and therefore such matters may not be litigated) if the ESP applicant chooses not to address either or both of these matters in its environmental report. The Commission notes that both the environmental report and EIS for an ESP must address the benefits associated with issuance of the ESP (*e.g.*, early resolution of siting issues, early resolution of issues on the environmental impacts of construction and operation of a reactor(s) that fall within the site parameters, and ability of potential nuclear power plant licensees to “bank” sites on which nuclear power plants could be located, without obtaining a full construction permit or combined license). The benefits (and impacts) of issuing an ESP must always

be addressed in the environmental report and EIS for an ESP, regardless of whether the ESP applicant chooses to defer, pursuant to § 52.17(a)(2), consideration of the benefits associated with the construction and operation of a nuclear power plant that may be located at the ESP site. This is because the “benefits \* \* \* of the proposed action” for which the discussion may be deferred under §§ 52.17(a)(2) are the benefits associated with the construction and operation of a nuclear power plant that may be located at the ESP site; the benefits which may be deferred under § 52.17(a)(2) are entirely separate from the benefits of issuing an ESP. To put it another way, the proposed action of issuing an ESP is not the same as the “proposed action” of constructing and operating a nuclear power plant for which the discussion of benefits (including need for power) may be deferred under § 52.17(a)(2)<sup>1</sup>. With this clarification, the Commission does not believe that further changes to the language of §§ 52.17 and 52.18 are necessary.

The proposed rule would amend §§ 52.24 and 52.39 to clarify: (1) The information that the NRC must include in the early site permit when it is issued; (2) the matters accorded finality in any subsequent NRC review and proceeding for an application referencing the early site permit; and (3) the matters that may be challenged in a contention to be resolved in an adjudication, versus those matters that may be raised in a petition to be processed in accord with 10 CFR 2.206. Section 52.21 would be amended to clarify that an application referencing an early site permit must, in addition to showing that the design of the facility falls within the site parameters specified in the early site permit, demonstrate that all terms and conditions of the early site permit have been satisfied. Section 52.24 would also be amended to provide that the early site permit must state the site parameters, as well as the “terms and conditions,” of the early site permit, rather than the “conditions and limitations” as is currently provided. No substantive change in § 52.24 is intended by the proposed amendment; the change is proposed to provide consistency with § 52.39(a)(2) and

<sup>1</sup> The Commission emphasizes that under § 52.17(a)(2), only the discussion of benefits (including need for power) of constructing and operating a nuclear power reactor (or reactors), and the discussion of alternative energy sources, may be deferred. The ER must always address the “environmental impacts of construction and operation of a reactor, or reactors, which have characteristics which fall within the postulated site parameters.”

paragraph (a)(2)(iii) of the current rule, which also refer to “site parameters” and “terms and conditions.”

The proposed rule would add § 52.28 to state that transfer of an early site permit from its existing holder to a new applicant will be processed under 10 CFR 50.80, which contains provisions for transfer of licenses. In a letter dated November 13, 2001 (comment 19), NEI recommended that a new section be added to part 52 to clarify the process for transfer of an early site permit. The Commission has determined that a new section is not necessary because an early site permit is a partial construction permit and, therefore, is considered to be a license under the AEA. The Commission believes that the procedures and criteria for transfer of utilization facility licenses in 10 CFR 50.80 (and the procedures in subpart M of 10 CFR part 2 for the conduct of any hearing) should apply to the transfer of an early site permit.

Section 52.39(a) would be amended to uniformly refer to “terms or conditions” of an early site permit. Section 52.39(a)(1) would also be amended to remove the term, “requirements,” and clarify that the Commission may not change or impose new site characteristics, terms, or conditions on the early site permit, including emergency planning requirements, unless the special backfitting criteria in § 52.39(a)(1) are satisfied. No substantive change is intended by this clarification; the Commission believes that “site characteristics, terms, or conditions” of an early site permit more accurately describe the existing scope of matters subject to the special backfitting criteria in § 52.39(a)(1).

#### Early Site Reviews

The proposed rule would amend certain paragraphs of the current Appendix Q to 10 CFR part 52 (proposed §§ 52.41, 52.43, and 52.47) to clarify that an early site review can also be used in an application for a combined license or a duplicate design license.

#### Standard Design Certifications

The proposed rule would amend the current §§ 52.41 and 52.45 (proposed §§ 52.101 and § 52.105) to clarify that a certified design may be referenced in an application for a duplicate design license, as well as a combined license application, filed under part 52.

The proposed rule would remove the requirements currently located in §§ 52.43(c), 52.45(c), and 52.47(b)(2)(ii) because the Commission has decided not to require a final design approval (FDA) as a prerequisite for certification