

issues in a licensing proceeding as early as possible, before an applicant commits significant resources. The ESP process in subpart A allows an applicant to “bank” sites and is expected to improve the effectiveness of the nuclear power plant licensing process.

The regulations in 10 CFR parts 2, 50, and 51 referenced by the petitioner relate to requirements for filing and acceptance of licensing applications, review of site suitability issues, environmental reports, and environmental impact statements (EISs).

A notice of receipt of the petition was published in the **Federal Register** on September 24, 2001 (66 FR 48828). The comment period closed on November 8, 2001. The NRC received letters from 12 commenters, 9 of which favored the petition and 3 opposed it. Of the nine letters in favor, seven were from nuclear power plant owners and/or operators, one was from a nuclear steam supply system vendor, and one was from the petitioner. Of the three letters in opposition, two were from representatives of public advocacy groups and the other was from a private citizen. This notice presents a discussion of the comments received.

In its petition, NEI requested that the NRC grant the petition as part of an ongoing NRC rulemaking to update 10 CFR part 52. This rulemaking activity addresses lessons learned during previous design certification reviews and discussions with stakeholders about the ESP, design certification, and COL review processes. As discussed below, the NRC decided to deny this petition. Therefore, further consideration of the petition during the 10 CFR part 52 rulemaking is not necessary.

On December 18, 2002, NEI sent the NRC a letter (ADAMS Accession No. ML023570346) on the subject “Petition for Rulemaking PRM 52-2, Supplemental Comments.” In the letter, NEI stated that a number of developments had caused it to recommend a different approach for addressing alternative sites than that presented in its petition of July 18, 2001, where it had urged the NRC to eliminate consideration of alternative sites from the NRC nuclear power plant siting and licensing processes. NEI further indicated that, based upon a legal analysis attached to the letter, “the modifications to 10 CFR part 52, subpart A, that were proposed in [its petition] should not be adopted.” *Supplemental Comments*, p. 2. The letter stated that alternative sites should continue to be evaluated, but the NRC should limit its analysis of alternatives to those that are pertinent in the context of the license application before it, *i.e.*, to sites that

the applicant has identified as practicable alternatives. In the view of the petitioner, NRC review of the applicant’s chosen alternative sites would be sufficient to satisfy NEPA’s “hard look” requirement.¹ In addition, NEI asserted that where a license applicant has ownership or control of only one site and, because of the nature of its business, has conducted no alternative site analysis, the NRC should only determine “whether the proposed facility could be located on that site in compliance with all pertinent laws and NRC regulations.” *Id.* NEI’s legal analysis set forth several additional propositions. First, where an ESP or COL applicant’s purpose is to build new units at existing nuclear sites, NEPA does not require consideration of locating those units at alternative sites that the applicant does not control. *See ESP-18a: Alternative Site Reviews for Early Site Permit Applicants Using Existing Licensed Sites*, dated November 19, 2002, attached to NEI’s letter of December 18, 2002, pp. 7–8. Second, NEI asserted that non-nuclear sites are unlikely to be obviously superior to an existing nuclear site that has already gone through the NEPA process. NEI believes that the most that NEPA would require is a comparison of a generic “greenfield” site and a generic industrial site to “confirm the absence of any anomalous characteristics that might alter the presumption that no obviously superior site exists.” *Id.*, pp. 8–9.

The Commission has decided to treat NEI’s letter of December 18, 2002, as a partial withdrawal of its petition with respect to the matter of alternative sites. Accordingly, this denial does not address either the petitioner’s proposal on alternative sites as described in its petition of July 18, 2001, or the petitioner’s specific propositions on alternative sites as set forth in the submission of December 18, 2002. However, the remainder of this notice more fully discusses some of the legal decisions cited in NEI’s submission of December 18, 2002.²

¹ NEPA requires any Federal agency considering a major action likely to significantly affect the quality of the human environment to take a “hard look” at the environmental impacts of the proposed action and all reasonable alternatives to it.

² Independent of NEI’s petition for rulemaking, the NRC is considering a rulemaking to address the range of issues associated with the NRC’s consideration of alternative sites in early site permit (ESP), construction permit (CP), and combined license (COL) proceedings. *See* 67 FR 79165 (December 27, 2002). On January 28, 2003, the NRC held a public meeting to discuss these issues and to solicit stakeholder views on potential options that the NRC could pursue. *See Transcript of Meeting: Criteria for Review of Alternative Sites* (“Meeting Transcript,” ADAMS Accession No.

The Petition

The petitioner requested that the Commission initiate a rulemaking to amend 10 CFR part 51 to remove requirements that applicants and licensees analyze, and the NRC evaluate, alternative energy sources and the need for power with respect to the siting, construction, and operation of nuclear power plants. The petitioner stated that the need for these changes is a direct outgrowth of the dramatic changes that have occurred in the electric power industry, most notably the passage of the Energy Policy Act of 1992 and the resultant actions by the Federal Energy Regulatory Commission (FERC) to impose open access transmission requirements on electricity transmission providers. The petitioner stated that these changes have fundamentally altered both the marketplace for electricity and the makeup of electricity generating companies, and that the regulatory framework that the NRC uses to implement its responsibilities under NEPA should be revised accordingly.

NEPA Requirements

The petitioner argued that NEPA requires consideration of “alternatives” to a proposed action but does not specifically require an analysis of alternative energy sources or the need for power. However, the NRC’s implementing regulations in 10 CFR part 51 require that those matters be addressed. General guidance on the environmental reviews that are to be conducted is specified in Regulatory Guide 4.2, “Preparation of Environmental Reports for Nuclear Power Plants” (July 1976) and NUREG-1555, “Environmental Standard Review Plan” (March 2000), which call for a review of alternative energy sources and the need for power. The petitioner believes that the NRC’s regulations and implementing guidance reflect the structure of the 1970s electric utility industry. However, because the electric power industry has experienced dramatic changes since that time, the petitioner believes that the NRC needs to reconsider its implementation of its responsibilities under NEPA. The petitioner also believes that the NRC has the statutory authority to revise its regulations to eliminate NRC review of

ML030570019). At this meeting, NEI presented its views which were consistent with the positions expressed in its December 18, 2002 submission. *See Meeting Transcript*, pp. 60–63, 72–74, 78–80. Accordingly, the Commission will consider NEI’s alternative siting proposal as described in its December 18, 2002 submission in considering whether to proceed with rulemaking addressing alternative sites.