

relative to license renewal is directly applicable. For these reasons, the petitioner concluded that it is not reasonable to believe that a nuclear power plant will be built in today's environment absent a need for power or some other benefit.

Furthermore, the petitioner stated that it is not reasonable to assume that the NRC will be able to identify an alternative energy source that is both feasible and preferable to the choices made by a merchant generator. Because the consideration of alternatives under NEPA is subject to a rule of reason, the petitioner believes that NEPA does not compel the NRC to consider these factors in today's environment. Even if other sources are available—perhaps even preferable in some respects to the applicant's proposal—the petitioner stated that the NRC lacks the authority to compel the applicant to use the alternative source. Therefore, the petitioner concluded that, because NRC consideration of alternative energy sources and the need for power is not required under NEPA, denial of a permit or license for reasons related to these matters is inappropriate.

The petitioner argued that, in the context of an ESP, the proposed major Federal action is to grant a permit for a site for one or more nuclear power plants. To actually build and operate one or more nuclear plants, an applicant must also obtain a COL. In a COL proceeding, the proposed major Federal action is the approval to build and subsequently operate a particular nuclear plant at a specified site. If the COL references an ESP, the site approval is already established, and the site suitability issue is restricted to whether the proposed nuclear power plant(s) fit(s) within the ESP's siting envelope. If the COL applicant does not reference an ESP, the major Federal action with respect to approving the specified site is the same as for an ESP. The petitioner argued that in each case (ESP or COL, with or without a referenced ESP), the proposed action does not decide if there is a need for power or which of the various possible sources of electric power best meets the needs of the given State or region, provides the most economic electricity to ratepayers, or is environmentally the most benign.

The petitioner stated that its proposal to eliminate the requirement for NRC consideration of alternative energy sources and the need for power is based on the fundamental NEPA principle that an agency need only consider alternatives that will accomplish the applicant's goal. The petitioner argued that, in the context of 10 CFR part 52,

the ESP applicant's goal is to determine whether the proposed site satisfies statutory and NRC regulatory requirements as a suitable location for a nuclear power plant. Similarly, the petitioner stated that the goal of a COL applicant is to determine whether the proposed plant satisfies applicable safety and environmental requirements, including the criteria established in any referenced ESP.

The petitioner further stated that each Federal agency must determine which alternatives are reasonable and should be considered under NEPA. Moreover, the NRC must consider the no-action alternative and actions that could mitigate the environmental impact of the proposed action. According to the petitioner, in addition to the no-action alternative, the NRC must consider only those alternatives that serve the purpose for which an applicant is seeking approval—and there are no alternatives. The petitioner believes that defining the proposed action in this manner reflects reality. Specifically, the NRC is not considering a proposal that would determine how or where electricity should be generated in the future. Rather, in either the ESP or COL proceeding, the NRC is considering only whether a specific application meets NRC regulations, not whether one or more nuclear facilities should, or will, be built.

The petitioner argued that, given the specific goals of ESP and COL applicants, the NRC should consider, in addition to the no-action alternative, only actions that serve the applicant's specific goal to determine whether the application meets all applicable requirements. Thus, the petitioner argued, it is unnecessary and inappropriate for the NRC to require applicants to analyze alternatives that would not fulfill the goal of determining whether the proposed site and facilities meet NRC requirements. Similarly, the petitioner argued, it is unnecessary and inappropriate for the NRC to use its limited resources to evaluate possible alternative energy sources or the need for power. Thus, the petitioner concluded that the NRC, in its NEPA analysis, is not legally obligated and should not attempt to reach any conclusions regarding alternative energy sources or the need for power.

Public Comments on the Petition

The NRC received 12 letters commenting on this petition. Nine commenters favored the petition. Seven of those letters 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 opposed to the petition, two were from representatives of public advocacy groups and the other was from a private citizen.

Comments: The commenters in favor of the petition summarized the arguments in the petition and stated their support for the petitioner's position. The commenters also expressed interest in including the petition in the ongoing 10 CFR part 52 rulemaking activity.

Response: The comments received in favor of the petition provided no additional bases for the petition. Therefore, these comments are addressed by the NRC's reasons for denying the petition, as discussed below.

Comment: A private citizen stated that, instead of further degrading the defense of the United States of America by the actions proposed in the petition, the NRC should additionally require applicants to evaluate the impact of "deep undergrounding" of nuclear power plants.

Response: The NRC believes that the addition of requirements for applicants to evaluate the impact of "deep undergrounding" of nuclear power plants is outside of the scope of the petition. "Deep undergrounding" is a design matter rather than a siting matter.

Comments: A commenter representing Public Citizen, a public advocacy group, stated that NEI is asking the NRC to consider less information and fewer factors before approving a site for a nuclear power plant at a time when the public is seeking assurances that potential threats to public safety are being analyzed with more thoroughness, not less. The commenter further stated that the effect of the dramatic structural and economic transformation in the electric power industry is evidence that the review of alternative sites and energy sources should be of heightened, rather than diminished, concern to regulators and the public. The commenter argued that there is little in the story of electric utility restructuring thus far to suggest that nuclear power would ever be subjected to the same competitive market forces that apply in varying degrees to other sectors of the economy. The commenter stated that failure of nuclear power thus far to seriously compete in the new "competitive" electricity generation environment makes it more, rather than less, crucial to consider all options and alternatives before the NRC approves an ESP. The commenter also stated that the earlier in the process those alternatives are introduced, the better, lest a potential licensee expend considerable