

resources on a failed siting application and subsequently attempt to retrieve its investment from ratepayers.

The commenter also argued that granting the petition would preclude consideration of alternative sites, alternative energy sources, and the need for power at any other point in the Federal regulatory process. The commenter stated that the NRC should use any discretion it has under NEPA to provide the most rigorous review possible in service of the greater public interest. Finally, the commenter stated that the NRC can best uphold the public's trust by denying NEI's petition.

Another commenter representing Greenpeace, a public advocacy group, expressed the general view that the NRC should deny the petition because "to do otherwise will only serve to undermine public confidence in the legitimacy of the NRC and any future reactor licensing process," but did not address any of the specific matters raised in the petition.

Response: Although the NRC does not entirely agree with all of these commenters' arguments for denying the petition, the NRC agrees with their basic premise that the agency should deny the petition and continue to review the need for power and alternative energy sources in order to fulfill its obligations under NEPA. As discussed previously, the petitioner has withdrawn the proposal in its petition with respect to alternative sites; therefore, this Notice does not address the alternative site proposal from that petition.

Reasons for Denial

The petitioner has not demonstrated that applicable law or practice in other Federal agencies has changed in a manner that would lead the Commission to conclude that the NRC should no longer consider the need for power and alternative energy sources as a part of its nuclear power plant licensing proceedings in order to fulfill the agency's obligations under NEPA.

Need for Power

Section 102(2)(C) of NEPA requires that any recommendation for a major Federal action significantly affecting the quality of the human environment include a detailed statement addressing, among other things:

- (i) The environmental impact of the proposed action,
- (ii) Any adverse environmental effects which cannot be avoided should the proposal be implemented,
- (iii) Alternatives to the proposed action. * * *

42 U.S.C. 4332(2)(C).

As part of the NRC's NEPA analysis associated with nuclear power plant licensing,⁴ the agency must include a balancing of costs and benefits. *United States Energy Research and Development Administration* (Clinch River Breeder Reactor Plant), CLI-76-13, 4 NRC 67, 76 (1976) citing *Calvert Cliffs Coordinating Committee, Inc. v. AEC*, 449 F.2d 1109 (D.C. Cir. 1971). Although NEPA does not explicitly mention cost-benefit balancing, judicial interpretations of the statute have established that Federal agencies must balance environmental costs against the anticipated benefits of the action in the EIS. *Louisiana Energy Services, L.P. (LES)* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 88 (1998) citing *Idaho By and Through Idaho Public Utilities Commission v. ICC*, 35 F.3d 585, 595 (D.C. Cir. 1994); *Calvert Cliffs*, 449 F.2d 1109.

The petitioner asserted that its proposal to eliminate NRC consideration of 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 (*i.e.*, the purpose of the proposed project). The Commission agrees with the petitioner's general premise that the NRC may "accord substantial weight to the preferences of the applicant and/or sponsor in the siting and design of the project." *Hydro Resources, Inc.*, CLI-01-4, 53 NRC 31, 55 (2001), citing *Citizens Against Burlington v. Busey*, 938 F.2d 190, 197 (D.C. Cir.), *cert. denied*, 502 U.S. 994 (1991). However, "an agency will not be permitted to narrow the objective of its action artificially and thereby circumvent the requirement that relevant alternatives be considered." *City of New York v. Department of Transportation*, 715 F.2d 732, 743 (1983); *see also, Citizens Against Burlington*, 938 F.2d at 196. In addition, the Commission recognizes that a proposed project may have more than one purpose. The Commission will ordinarily give substantial weight to a properly-supported statement of purpose and need by an applicant and/or sponsor of a proposed project in determining the scope of alternatives to be considered by the NRC.

The cost-benefit discussion also plays an important role in determining the appropriate scope of the NEPA analysis. In the past, the NRC equated the need for power with the benefits of the proposed action. "Need for power" is a

⁴ The act of granting a permit or license for a nuclear power plant qualifies as a major Federal action significantly affecting the quality of the human environment; therefore, NEPA applies to the NRC when it engages in such licensing activity.

shorthand expression for the 'benefit' side of the cost-benefit balance, which NEPA mandates for a proceeding considering the licensing of a nuclear plant." *Public Service Co. of Oklahoma* (Black Fox Station, Units 1 and 2), ALAB-573, 10 NRC 775, 804 (1979) (*quoting Rochester Gas and Electric Corp.* (Sterling Power Project, Nuclear Unit No. 1), ALAB-502, 8 NRC 383, 388 n. 11 (1978) *quoting Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-422, 6 NRC 33, 90 (1977); *see also Kansas Gas and Electric Co.* (Wolf Creek Generating Station, Unit 1), ALAB-462, 7 NRC 320, 327 (1978).

Recently, the Commission has recognized that there may be multiple benefits to a proposed project. In *LES*, the Commission held that the Licensing Board should consider multiple benefits of the proposed uranium enrichment facility—including enhanced competition from another market participant, furtherance of national policy goals, and the creation of an alternative, more energy-efficient technology—when performing the ultimate cost-benefit balancing under NEPA. *LES*, 47 NRC at 89-96. Similarly, the Commission acknowledges that the construction and operation of a nuclear power plant could have multiple benefits such as reducing greenhouse gases and other air pollutants and increasing energy efficiency by retiring older, less efficient sources of power. *See also Niagara Mohawk*, 1 NRC at 353 (noting that "a Licensing Board may also take cognizance of the effect which a shortage of fossil fuel, or a need to divert that fuel to other uses, might have upon demand for non-fossil fueled generating sources"). Therefore, in preparing an EIS for any future nuclear power plant licensing proceeding, the Commission will consider all reasonably foreseeable benefits of the proposed plant.

Consistent with the petitioner's claim, in considering the need for power as part of the NEPA process, the NRC does not supplant the States, which have traditionally been responsible for assessing the need for power generating facilities, their economic feasibility and for regulating rates and services. As the petitioner noted, the NRC has acknowledged the primacy of State regulatory decisions regarding future energy options. However, this acknowledgment does not relieve the NRC from the need to perform a reasonable assessment of the need for power. Moreover, in the non-regulated environment foreseen by the petitioner, NRC consideration of the need for power may become "more, not less,