

crucial” (in the words of a commenter) because a State decisionmaker may no longer conduct need for power assessments. The Commission emphasizes, however, that while a discussion of need for power is required, the Commission is not looking for burdensome attempts by the applicant to precisely identify future market conditions and energy demand, or to develop detailed analyses of system generating assets, costs of production, capital replacement ratios, and the like in order to establish with certainty that the construction and operation of a nuclear power plant is the most economical alternative for generation of power. *See LES*, 47 NRC at 88, 94.

With regard to the petitioner’s discussion of the relevance of the NRC’s actions under NEPA in nuclear power plant license renewal, the Commission notes that the significant environmental impacts associated with the siting and construction of a nuclear power plant have already occurred by the time a licensee is seeking a renewed license. The Commission has determined that it is not necessary to consider the need for power during post-construction licensing (issuing and renewing operating licenses). Also, in 10 CFR 51.95(c)(4), the Commission narrowed the NRC’s determination for license renewal to “whether or not the adverse environmental impacts of license renewal are so great that preserving the option of license renewal for energy planning decisionmakers would be unreasonable.” By contrast, in the case of construction of a new nuclear power plant, the NRC must assess the need for power to accurately characterize the cost (*i.e.*, environmental impact) and benefits associated with the proposed action. For these reasons, the license renewal example is not relevant to consideration of need for power issues in new reactor licensing processes.

The petitioner contended that at the time the original licensing decisions and judicial interpretations of NEPA were being made and the NRC was developing a position on its responsibilities under NEPA, the typical applicant for a nuclear power plant was an electric utility regulated by a State public utility commission. By contrast, the petitioner argued that future nuclear power plants will, in all likelihood, be constructed and operated by an unregulated “merchant generator,” that will not build and operate a plant unless it believes that there is a need for power or that the facility will generate electricity at a lower cost than the competing facilities. Thus, it would not appear to be burdensome to state the

need for the proposed facility. Further, even if this assertion is true, the Commission does not believe that the petitioner’s prediction provides a judicially recognized basis for avoiding an agency-prepared determination of the benefits of a proposed action. The petitioner failed to cite any recent judicial decisions which interpret NEPA which hold (or otherwise suggest) that a Federal agency, acting on a project proposal presented by a private sponsor or applicant, need not conduct an independent review of the need for the project, but may simply accept the applicant’s assertion with respect to need. In any event, there is no reason to believe that the traditional utility model will disappear. Thus, at most, the petitioner’s argument would call for a supplement to the requirements of 10 CFR part 51 to address nuclear power plants built by unregulated, non-electric utility entities, rather than the wholesale elimination of NRC requirements to consider the need for power.

The petitioner has also not shown that other Federal licensing agencies, acting on power generation projects sponsored by private entities, have changed their practices with respect to considering the need for power in preparing EISs supporting their approval decisions. The NRC is also not aware of any such change in agencies’ practices.

In conclusion, the petitioner has not demonstrated that consideration of the need for power is no longer a necessary part of the Commission’s NEPA obligations for reactor licensing decisions.⁵ The need for power must be addressed in connection with new power plant construction so that the NRC may weigh the likely benefits (*e.g.*, electrical power) against the environmental impacts of constructing and operating a nuclear power reactor. The Commission emphasizes, however, that such an assessment should not involve burdensome attempts to precisely identify future conditions. Rather, it should be sufficient to reasonably characterize the costs and benefits associated with proposed licensing actions.

Alternative Energy Sources

It is well established that once the purpose of and need for a proposed

Federal action are understood, the agency is expected to follow a rule of reason in deciding which alternatives are “reasonable” or “feasible.” *See e.g.*, *City of Angoon v. Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) (*per curiam*); *Druid Hills Civic Ass’n v. Federal Highway Admin.*, 772 F.2d 700, 713 (11th Cir. 1985). Moreover, “[t]he goals of an action delimit the universe of the action’s reasonable alternatives.” *Citizens Against Burlington*, 938 F.2d at 195.

Similar to the proposal to eliminate NRC consideration of the need for power, the petitioner’s proposal to eliminate NRC consideration of alternative energy sources is based on the proposition that, under NEPA, a Federal agency need only consider alternatives that will accomplish the applicant’s goal. The Commission agrees with the petitioner’s general proposition that a Federal agency, acting not as a proprietor but to approve a project sponsored by a private entity, should ordinarily “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*, 938 F.2d at 197. Thus, the Commission need only consider alternatives that will bring about the ends of the proposed action, *id.*, *accord*, *City of Grapevine v. DOT*, 17 F.3d 1502, 1506 (D.C. Cir.), *cert. denied*, 513 U.S. 1043 (1994), and need not consider alternatives that do not achieve the purpose and need of the applicant. *See City of Angoon*, 803 F.2d at 1021 (“When the purpose is to accomplish one thing, it makes no sense to consider the alternative ways by which another thing might be achieved.”), *cert. denied*, 484 U.S. 870 (1987). However, the petitioner failed to explain how the Commission could generically determine the purpose and need of all future applicants for CPs and COLs such that consideration of alternative energy sources would be unnecessary for all future applicants. In the absence of a basis for such rulemaking, the Commission concludes that it will continue the NRC’s practice of determining the purpose and need on a case-specific basis. The Commission cautions that when describing the purpose of and need for its proposal, the applicant should not set forth an unreasonably narrow objective of its project, thereby artificially narrowing the scope of alternatives to be considered by the NRC. A Federal agency, acting as a sponsoring agency, would not be permitted to artificially narrow the objective of its action and

⁵ The Commission notes that an applicant for an ESP need not include in its application “an assessment of the benefits (for example, need for power) of the proposed action.” 10 CFR 52.17(a)(2). Instead, the assessment of benefits of constructing and operating a nuclear power reactor on the ESP site may be deferred to the time (if ever) that the ESP is referenced in an application for a part 52 COL or a part 50 CP.