

Background

By letter dated July 18, 2001, NEI submitted a petition for rulemaking (PRM) to amend 10 CFR part 52. The petitioner requested that the NRC amend its regulations governing ESP and COL applications at existing reactor sites to make the development and regulatory review of the application more efficient. The petitioner proposes to incorporate by reference and treat as resolved, existing information. By so doing, the petitioner wishes to eliminate the need for what it believes is duplicate applicant preparation and NRC review of existing information relating to a licensed facility that has been previously approved by the NRC and has been subject to a public hearing. The petitioner believes that its proposed amendments would enhance the focus and efficiency of the ESP and COL licensing processes.

A notice of receipt of the petition was published in the **Federal Register** on September 24, 2001 (66 FR 48832). The comment period closed on November 8, 2001. The NRC received letters from ten commenters. Nine of the ten commenters were in favor of the petition. Seven of the favorable letters were from nuclear utilities, one was from a vendor, and one was from the petitioner. One commenter, a member of a public advocacy group, opposed the petition. The comments are discussed in this document.

Separately, the NRC is currently conducting rulemaking to amend 10 CFR Part 52. This rulemaking activity addresses lessons learned during previous design certification reviews and addresses certain elements of the ESP, design certification, and COL review processes. NEI requested in its July 18, 2001, letter forwarding the petition that this petition be incorporated into the ongoing rulemaking effort. The Commission has decided further consideration of the petition during the part 52 rulemaking is not necessary, but the Commission will consider any relevant proposals to increase efficiencies, regulatory stability and predictability for part 52 regulatory processes that may be submitted during the public comment period on the proposed Part 52 rule.

The Petition

The petitioner expects that existing licensees will order new nuclear power reactors in the future and that many of the new reactors will be located on sites of currently operating plants. Additionally, the petitioner anticipates that the new reactors will rely on a number of the operational programs

currently being used by the existing licensees. The petitioner believes that its proposed §§ 52.16 and 52.80 should be added to part 52 to allow the use of existing information as a baseline and to limit the review and opportunity for a hearing to the consideration of changed circumstances, such as new regulations and significant new information, to improve the efficiency of the ESP and COL licensing processes. In its July 18, 2001, letter forwarding the petition, the petitioner requested that the proposed amendments be included in the part 52 rulemaking now in progress.

The petitioner notes that Subpart A of Part 52 contains provisions governing issuance of ESPs. The petitioner proposes that a new § 52.16 be added to Subpart A to allow an ESP applicant to incorporate, by reference, all or portions of the "current licensing basis" for an existing reactor site to the extent that it is valid and applicable to one or more additional nuclear power plants that "fit within the ESP envelope." The proposed § 52.16 also would require that any information incorporated by reference be augmented to include:

1. Significant new safety or environmental information that materially affects the ability of the site to support the proposed additional nuclear facility;
2. Information regarding the cumulative radiological and environmental impacts of the existing facility and the facility as described in the ESP application;
3. An analysis of the potential safety impacts of the existing facility on the suitability of the site for the facility as described in the ESP application;
4. An analysis of the potential safety impacts on the existing facility from the facility as described in the ESP application; and
5. Information that addresses regulations applicable to siting issues that became effective after licensing of the current facility to the extent that these regulations are not addressed in the current licensing basis.

The petitioner states that under proposed § 52.16, the NRC would treat those matters incorporated by reference as resolved, except to the extent that those matters are subject to augmentation with the new information described above. The petitioner also states that this section would allow the NRC to impose a change in the application with respect to the information incorporated by reference to the extent that the change satisfies the principles underlying the Backfit Rule in 10 CFR 50.109. The petitioner believes that in preparing the environmental impact statement (EIS)

for the ESP, the NRC should adopt the applicable portions of the existing EIS for the site, modified or supplemented as necessary to reflect the NRC's review of the new environmental information proposed in § 52.16.

The petitioner notes that subpart C of 10 CFR part 52 contains provisions governing issuance of COLs. The petitioner states that proposed § 52.80, with provisions similar to those proposed in § 52.16, would be added to Subpart C. The petitioner also states that proposed § 52.80 would allow a COL applicant to incorporate by reference programmatic information identified in the "current licensing basis" of an existing licensed facility located at the same site or at a site owned or operated by the same licensee. Programmatic information, as identified by the petitioner, includes, but is not limited to, radiological emergency response plans, organizational structure, administrative controls to assure safe operation, plans for conducting normal operations, physical security plans, and quality assurance programs. The proposed § 52.80 would require this programmatic information to be augmented to include information on regulations that became effective after the existing facility was licensed to the extent that these regulations are not addressed by the current licensing basis for the existing facility. The petitioner states that under this proposed section, the NRC would treat those matters incorporated by reference from the existing facility as resolved, except to the extent that there is new information. The petitioner believes that the NRC could direct that a change be made in the COL application with respect to the information incorporated by reference to the extent that the change satisfies the principles underlying the Backfit Rule, 10 CFR 50.109.

The petitioner states that the proposed amendments would not only be consistent with NRC's mission to ensure adequate protection of the public health and safety, the common defense and security, and the environment, but also would focus NRC reviews on new information and "the incremental impact of an additional unit at an existing site." The petitioner also states that the proposed amendments would enhance the efficiency of the regulatory process, reduce regulatory burden by eliminating duplicate reviews of matters resolved in previous proceedings, and focus agency resources on new and material information and the impact of a potential new plant on the site.