

collected throughout the period of operation of the facility, the type of data that has been collected in many cases has been reduced to a limited set necessary to support emergency action determinations. Also, as a technical matter, data collected to support the original findings may not be representative of current meteorological conditions at the proposed site. Localized changes such as changes in land use, the erection of new structures and the removal of existing structures, have the capability to significantly alter the previous characterization of the site's meteorology. These changes in local conditions may not be reflected in the licensing basis for the plant, inasmuch as they are unnecessary to support emergency action determinations. Furthermore, the meteorological data previously collected to support the existing facility's design may be insufficient to characterize the release characteristics unique to the specific design (or the envelope of designs) that may be built under the ESP. For example, the NRC guidance contains different consequence analyses, viz., elevated release versus ground-level release (and therefore the meteorological data necessary to support such analyses), depending upon whether the facility is a boiling water reactor or a pressurized water reactor. The application and review effort would only increase if the ESP was for an alternate location on the site. The distance between the existing licensed facility (or footprint for a facility that was authorized but not constructed) and the proposed facility may result in sufficient terrain differences or orientation differences to call into question the applicability of the meteorological data collected at the existing facility to a facility that may be constructed under the proposed ESP.

In summary, prior NRC findings with respect to the characteristics of a site and compliance with the then-current regulatory requirements with respect to an existing facility, updated in accordance with existing requirements and practices, does not ensure that the data is sufficiently accurate and comprehensive to support a current ESP siting determination. Thus, the petitioner's proposal to extend the concept of a "current licensing basis" in the manner contemplated by its proposed § 52.16 is technically inappropriate.

The NRC also believes that the petitioner's proposal would essentially extend the Backfit Rule to situations for which the policies underlying the Backfit Rule are not applicable. The Backfit Rule was intended to address a

licensee's expectation of regulatory stability. A licensee expects that the terms and conditions of the licensee's authority under a license will not be changed after the NRC has issued the license, except as permitted in the Backfit Rule. The Backfit Rule established regulatory criteria to be used by the NRC in evaluating the application to existing facilities of proposed new and changed regulatory requirements and changes in NRC interpretations and findings with respect to compliance with those requirements.

An ESP applicant, albeit one that already possesses a construction permit or operating license at the site for which an ESP is being sought, has no regulatory expectation that the NRC's determination of whether the application complies with applicable regulatory standards would be constrained by the "current licensing basis" for the earlier-issued construction permit or operating license at the site. An ESP application, submitted years after the issuance of the construction permit or license for an existing facility on the site, cannot reasonably be viewed as implicating the "regulatory stability" concept underlying the current Backfit Rule. The NRC further notes that the petitioner's proposal would also permit an ESP applicant that does not have a construction permit or license at the site to reference and treat as resolved the "current licensing basis" of another licensee's facility located at the proposed ESP site. Again, under current regulatory practice the ESP applicant does not have any reasonable expectation of regulatory stability with respect to its new application, inasmuch as the NRC has not taken any licensing action for the ESP applicant with respect to a facility located at that site.

Summary of Denial of Petitioner's ESP Proposal

In summary, most of the efficiencies and regulatory stability and predictability which are the object of the petitioner's proposal can be achieved under existing regulations and the guidance that the Commission has directed the staff to prepare. In addition, key aspects of the petition are based on a misapplication of the "current licensing basis" concept and the Backfit Rule, and the petition does not represent a viable approach for achieving the desired efficiencies. For these reasons, the Commission is denying the ESP proposal as set forth in the petition.

Combined Licenses

According to the petitioner's proposal, a COL applicant for a facility to be located at a site with a currently licensed facility³ and a COL applicant who holds a facility license at another site, may incorporate by reference the siting information described in proposed § 52.16 from the "current licensing basis" of the currently licensed facility. The incorporation would be subject to the requirements in proposed § 52.16. *See* proposed § 52.80(a). In addition, a COL applicant for a facility to be located at a site where the COL applicant currently holds a facility license, and a COL applicant who holds a facility license at another site, may incorporate by reference the information required to address certain NRC requirements. These "programmatic requirements," which are delineated in proposed § 52.80(b), include: (1) Emergency preparedness plans under § 50.33(g) and compliance with the emergency preparedness provisions of 10 CFR part 50, appendix E; (2) physical security plans under 10 CFR 50.34(c) and safeguard contingency plans under § 50.34(d); (3) the quality assurance (QA) program under § 50.34(f)(3)(iii); and (4) the managerial plan for design and construction activities under § 50.34(f)(3)(vii). The COL applicant would have to supplement the incorporated information to the extent that there are new regulations. *See* proposed § 52.80(b)(1).

The bases for evaluating the acceptability of the COL application would be established, in part, by the siting and programmatic information for which the applicant proposes to incorporate by reference from the "current licensing basis" of an existing licensed facility located at the same site or another site owned or operated by the COL applicant. *See* proposed § 52.80(b). The information incorporated by reference that need not be supplemented in accordance with § 52.16(b) or (c), or § 52.80(b)(1), would be treated as resolved, unless the NRC complies with the Backfit Rule. *See* proposed § 52.16(d). The information incorporated by reference that must be supplemented under § 52.16(b) or (c), or § 52.80(b)(1) would be subject to NRC review and approval, and the Backfit Rule would not apply.

³ The petitioner's proposal would, by its terms, permit an applicant to seek a COL at a site with a facility whose license is not held by the applicant.