

September 25, 2003

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Nuclear Energy Institute
Suite 400
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SUBJECT: PETITION FOR RULEMAKING (PRM 52-2) REGARDING REVIEW OF NEED
FOR POWER AND ALTERNATIVE ENERGY SOURCES IN NUCLEAR POWER
REACTOR SITING AND LICENSING REVIEWS

Dear Mr. Bishop:

I am responding to the July 18, 2001, petition for rulemaking you filed on behalf of the Nuclear Energy Institute. You requested that the NRC regulations be amended to eliminate the requirement that an early site permit (ESP) applicant include, and the Nuclear Regulatory Commission (NRC) review, alternatives to the site proposed in an ESP application. You further requested that the NRC initiate a rulemaking to remove requirements in Parts 2, 50, and 51 that applicants and licensees analyze and the NRC evaluate alternative sites, alternative sources of energy, and the need for power with respect to the siting, construction, and operation of nuclear power plants.

The NRC published a notice of receipt of the petition and request for comment in the September 24, 2001, issue of the *Federal Register* (66 FRN 48828). Subsequently, the NRC heard from 12 commenters. On December 18, 2002, you sent the NRC a letter on the subject "Petition for Rulemaking PRM 52-2, Supplemental Comments." In the letter, you stated that a number of developments had caused you to recommend a different approach for addressing alternative sites than that presented in your petition of July 18, 2001. You indicated that, based upon a legal analysis attached to your letter, the modifications to 10 CFR Part 52, Subpart A, that were proposed in your petition should not be adopted. You stated that alternative sites should be evaluated, but that, where the applicant has evaluated alternative sites, the NRC should limit its analysis of alternatives to those that are pertinent in the context of the license application before it. Your legal analysis also set forth several additional propositions. The Commission has decided to treat your December 18, 2002 letter as a partial withdrawal of your petition with respect to the matter of alternative sites.

In the petition, you stated that the need for the proposed changes is a direct outgrowth of the dramatic changes that have occurred in the electric power industry, most notably the passage of the Energy Policy Act of 1992 and the resultant actions by the Federal Energy Regulatory Commission to impose open access transmission requirements on electricity transmission providers. You stated that these changes have fundamentally altered both the marketplace for electricity and the makeup of electricity generating companies, and that the regulatory framework that the NRC uses to implement its responsibilities under the National Environmental Policy Act of 1969, as amended, (NEPA) should be revised accordingly. You provided several arguments to support this position.

R. W. Bishop

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The NRC has carefully considered your arguments and concludes that it must continue to consider alternative energy sources and the need for power to fulfill its responsibilities under NEPA for reactor siting and licensing decisions, notwithstanding the legal arguments presented in the petition. Therefore, the NRC will continue to require these reviews in support of plant siting and licensing. Because the Commission considers your December 18, 2002 letter a partial withdrawal of your petition with respect to the matter of alternative sites, this denial does not address either your proposal on alternative sites as described in your petition of July 18, 2001, or your specific propositions on alternative sites as set forth in your December 18, 2002 submission. The NRC's reasoning in this matter is further discussed in the enclosed Notice of Denial of Petition for Rulemaking that will be published in the *Federal Register*.

Sincerely,

/RA/

Annette L. Vietti-Cook
Secretary of the Commission

Enclosure:
Notice of Denial of Petition for Rulemaking