

September 26, 2003

Mr. Robert W. Bishop
Vice President and
General Counsel
Nuclear Energy Institute
Suite 400
1776 I Street, NW
Washington, DC 20006-3708

SUBJECT: DENIAL OF PETITION FOR RULEMAKING TO USE INFORMATION FROM
PRIOR LICENSING ACTIONS AS RESOLVED INFORMATION FOR EARLY
SITE PERMIT AND COMBINED LICENSE APPLICATIONS (PRM-52-1)

Dear Mr. Bishop:

I am responding to your letter of July 18, 2001, which submitted a petition for rulemaking on behalf of the Nuclear Energy Institute (NEI). Your petition requested that the NRC amend its regulations to allow applicants seeking an early site permit (ESP) and a combined license (COL) to use existing information from prior licensing actions as resolved information that has been approved by the NRC and has been subject to a public hearing.

A notice of receipt of the petition was published in the *Federal Register* on September 24, 2001 (66 FR 48832). The NRC received letters from 10 commenters. Nine of the 10 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 of the commenters, a member of a public advocacy group, opposed the petition.

As the NRC staff understands your petition, the siting and programmatic information to be used as a basis for evaluating the acceptability of an ESP or COL located on a site for which a construction permit or operating license has been previously issued by the NRC would be established, in part, by the information which the applicant proposes to "incorporate by reference" from the "current licensing basis" for that construction permit or operating license. The applicant would have to supplement the incorporated information per the provisions in your proposal. Information incorporated by reference that does not need to be supplemented per the petition, would be treated as resolved, unless the NRC complies with the Backfit Rule, 10 CFR 50.109. Information incorporated by reference which must be supplemented would be subject to NRC review and approval, and the Backfit Rule would not apply.

The NRC recognizes the advantages of licensing plants in a mature industry environment, rather than an emerging industry as was the case for the majority of the existing plant licenses. For example, referencing already proven programs utilized by a mature industry is much less uncertain than new programs proposed for an emerging industry. To the extent practicable, most of the efficiencies, regulatory stability and predictability which are the object of your proposal can be achieved under existing regulations and the guidance that the Commission has directed the staff to prepare. In addition, several key aspects of the petition are based on a misapplication of the "current licensing basis" concept and the Backfit Rule, and the petition

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does not represent a viable approach for achieving desired efficiencies, regulatory stability and predictability. For these reasons, the Commission is denying the NEI petition.

The denial is discussed in detail in the enclosed notice of Denial of Petition for Rulemaking, which will be published in the *Federal Register*.

Sincerely,

/RA/

Annette Vietti-Cook
Secretary of the Commission

Enclosure: Notice of Denial of
Petition for Rulemaking