

POLICY ISSUE
Notation Vote

April 7, 2015

SECY-15-0055

FOR: The Commissioners

FROM: Mark A. Satorius
Executive Director for Operations

SUBJECT: DENIAL OF PETITION FOR RULEMAKING SUBMITTED BY THE
COMMONWEALTH OF MASSACHUSETTS (PRM-51-29)

PURPOSE:

To obtain Commission approval to publish the enclosed *Federal Register* notice (FRN) (Enclosure 1) to deny a petition for rulemaking (PRM), PRM-51-29, submitted by the Commonwealth of Massachusetts (the Commonwealth or the petitioner). This paper does not address any new commitments or resource implications.

DISCUSSION:

The Commonwealth filed the petition on June 2, 2011, with the U.S. Nuclear Regulatory Commission's (NRC) Atomic Safety and Licensing Board (ASLB) as a request for a waiver of the NRC's generic determination regarding spent fuel pool storage impacts for the Pilgrim Nuclear Power Plant license renewal environmental review. The petitioner also requested that, if the Commission rejected the Commonwealth's waiver petition, then the NRC should consider the waiver request to be a petition for rulemaking. On December 13, 2011, the ASLB denied the Commonwealth's waiver petition (Agencywide Documents Access and Management System (ADAMS) Accession No. ML11347A297).

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THE LETTER.**

On March 8, 2012, in a Memorandum and Order, the Commission affirmed the denial of the waiver request, and referred the request as a petition for rulemaking to the NRC staff (ADAMS Accession No. ML12068A187). The NRC staff assigned the petition docket number PRM-51-29. The NRC published a notice of receipt in the *Federal Register* on December 19, 2012 (77 FR 75065). Subsequently, the NRC published an FRN providing supplemental information on December 31, 2012 (77 FR 76952). The NRC did not request public comment on the petition for the following two reasons: 1) sufficient information was available for the NRC staff to form a technical opinion regarding the merits of the petition, and 2) the petition was essentially identical to a petition submitted by the Commonwealth on August 25, 2006 (PRM-51-10, ADAMS Accession No. ML062640409).

Petitioner's Requests

The petitioner requested that the NRC revise its regulations that generically minimize NRC consideration of spent fuel pool storage impacts in license renewal environmental reviews because these regulations incorrectly "classify the environmental impacts of high-density pool storage of spent fuel as insignificant and thereby permit their exclusion from consideration in environmental impact statements for renewal of nuclear power plant operating licenses." Specifically, the petition requests rescission of § 51.71(d) of Title 10 of the *Code of Federal Regulations* (10 CFR), "Draft Environmental Impact Statements—Contents," and 10 CFR Part 51, Subpart A, Appendix B, "Environmental Effect of Renewing the Operating License of a Nuclear Power Plant." The petitioner believes that the NRC should evaluate these impacts on a site-specific basis for each license renewal application.

The petition raised three assertions to support rescinding these regulations:

1. The impacts from the onsite storage of spent fuel are understated in the license renewal Generic Environmental Impact Statement (GEIS) analysis because the impacts caused by the Fukushima Dai-ichi event are higher than what is described in the GEIS.
2. The impacts from the onsite storage of spent fuel are understated in the license renewal GEIS analysis because the mitigation measures implemented after the September 11, 2001 (9/11), terrorist attacks will not mitigate the impacts of spent fuel pool accidents, and they were improperly relied upon in the denial of PRM-51-10 (73 FR 46204).
3. The license renewal GEIS impact analysis must address spent fuel storage impacts on a site-specific, rather than generic basis.

In addition to these issues, the petition included statements that refer specifically to the Pilgrim Nuclear Power Plant license renewal application. For the purposes of the review of PRM-51-29, the issues that the petitioner raised about that specific licensing proceeding were interpreted generically, to the extent practicable. But issues regarding a specific licensing proceeding are beyond the scope of a petition for rulemaking under 10 CFR 2.802; therefore, these statements were not considered further in the NRC's responses to the petition.

Summary of Petition Evaluation

The issues raised in PRM-51-29 are essentially identical to the issues raised in another PRM submitted by the Commonwealth in 2006 (PRM-51-10). The NRC denied PRM-51-10 on August 8, 2008 (73 FR 46204), because it determined that the studies upon which the petitioner relied did not constitute "new and significant information."

The events at the Fukushima Dai-ichi nuclear power plant have informed, and will continue to inform, the NRC's regulation of U.S. nuclear power plants. Building upon the conclusions of the Near-Term Task Force Report, which was established shortly after the accident to identify lessons that should be applied in the U.S., the NRC is actively implementing significant safety enhancements through orders, rulemaking, and other regulatory initiatives.

The petitioner did not provide significant new information from the Fukushima accident in Japan to demonstrate that the post-9/11 enhancements that enable the recovery of lost cooling water in spent fuel pools would be ineffective. Rather, the damage to the Unit 4 spent fuel pool at Fukushima Dai-ichi suggests that, notwithstanding a 9.0 magnitude earthquake, large tsunami, extended loss of offsite power, and a reactor building hydrogen explosion, the fuel remained covered with water and was essentially undamaged.

The petitioner did not present any new information that would contradict positions taken by the Commission when it established or updated the license renewal rule, nor did the petitioner provide new and significant information to demonstrate that sufficient reason exists to modify the current regulations.

RECOMMENDATION:

The NRC staff recommends that the Commission deny PRM-51-29 because the petitioner: 1) did not present new information that would contradict previous considerations by the Commission when the NRC established 10 CFR 51.71 in 1985 and later revised it in 1996 and 2007; 2) did not present new information that would contradict previous judgments by the Commission when the NRC established Appendix B to Subpart A of 10 CFR Part 51 in 1996 and later revised in 1997, 1999, 2001, and 2013; and 3) did not provide any new and significant information that would lead the NRC to modify its current regulations. Detailed responses to the three issues raised in the petition are included in the draft FRN, attached as Enclosure 1.

The NRC staff requests the Commission's approval to publish the draft FRN denying PRM-51-29. The enclosed letter for signature by the Secretary of the Commission (Enclosure 2) informs the petitioner of the Commission's decision to deny PRM-51-29. The NRC staff would also inform the appropriate Congressional committees of the Commission's decision.

COORDINATION:

The Office of the General Counsel has reviewed this package and has no legal objection to the denial of the petition.

/RA/

Mark A. Satorius
Executive Director
for Operations

Enclosures:

1. Draft *Federal Register* Notice
2. Letter to the Petitioner