

POLICY ISSUE
(Notation Vote)

January 23, 2015

SECY-15-0012

FOR: The Commissioners

FROM: Mark A. Satorius
Executive Director for Operations

SUBJECT: DENIAL OF PETITIONS FOR RULEMAKING REQUESTING TO RESCIND
REGULATIONS THAT MAKE GENERIC DETERMINATIONS ABOUT THE
ENVIRONMENTAL IMPACTS OF SEVERE REACTOR ACCIDENTS AND
ACCIDENTS ARISING FROM THE ONSITE STORAGE OF SPENT FUEL
(PRM-51-14 THRU PRM-51-28)

PURPOSE:

To obtain Commission approval to deny 15 petitions for rulemaking (PRMs) submitted by various petitioners (petitioners).

BACKGROUND:

The petitioners filed the PRMs in August 2011 in response to the U.S. Nuclear Regulatory Commission's (NRC) publication of the "Recommendations for Enhancing Reactor Safety in the 21st Century, The Near-Term Task Force Review of Insights from the Fukushima Dai-ichi Accident" (Near-Term Task Force Report (NTTF report)) dated July 12, 2011, available in the Agencywide Documents Access and Management System (ADAMS) under Accession No. ML111861807. The petitioners also requested a suspension of ongoing reactor licensing proceedings. The Commission denied the suspension of reactor licensing proceedings in an Order dated September 9, 2011 (CLI-11-05).

The petitioners request that the NRC rescind the regulations in Part 51 of Title 10 of the *Code of Federal Regulations* (10 CFR) to the extent that they make generic determinations about the

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environmental impacts of severe reactor and spent fuel pool accidents. Specifically, the petitions request that the NRC amend 10 CFR 51.45, 51.53, 51.95, and Table B-1 to appendix B to subpart A of 10 CFR part 51.

The NRC published a notice of receipt in the *Federal Register* on November 10, 2011 (76 FR 70067). The NRC did not seek public comment on the PRMs because the petitions were put into abeyance to await Commission direction on the NTTF report. In October 2013, the staff determined that there was sufficient information available to take the PRMs out of abeyance.

The table below lists the PRMs that the staff included in this review:

TITLE	ACCESSION NO.
PRM 51-14 submitted by Gene Stilp, on behalf of Taxpayers and Ratepayers United (Bell Bend- COL), August 11, 2011	ML112430559
PRM 51-15 submitted by Diane Curran, on behalf of San Luis Obispo Mothers for Peace (Diablo Canyon- LR), August 11, 2011	ML11236A322
PRM 51-16 submitted by Diane Curran, on behalf of Southern Alliance for Clean Energy (Watts Bar- OL), August 11, 2011	ML11223A291
PRM 51-17 submitted by Mindy Goldstein, on behalf of Center for a Sustainable Coast, Georgia Women's Action for New Directions f/k/a/ Atlanta Women's Action for New Directions, and Southern Alliance for Clean Energy (Vogtle- COL), August 11, 2011	ML11223A043
PRM 51-18 submitted by Mindy Goldstein, on behalf of Southern Alliance for Clean Energy, National Parks Conservation Association, Dan Kipnis, and Mark Oncavage (Turkey Point- COL), August 11, 2011	ML11223A044
PRM 51-19 submitted by Deborah Brancato, on behalf of Riverkeeper, Inc. & Hudson River Sloop Clearwater, Inc. (Indian Point- LR), August 11, 2011	ML11229A712
PRM 51-20 submitted by Paul Gunter, on behalf of Beyond Nuclear, Seacoast Anti-Pollution League and Sierra Club of New Hampshire (Seabrook- LR), August 11, 2011	ML11223A371
PRM 51-21 submitted by Michael Mariotte, on behalf of Nuclear Information and Resource Service, Beyond Nuclear, Public Citizen, and SOMDCARES (Calvert Cliffs- COL), August 11, 2011	ML11223A344
PRM 51-22 submitted by Raymond Shadis, on behalf of Friends of the Coast and New England Coalition (Seabrook- LR), August 11, 2011	ML11223A465
PRM 51-23 submitted by Robert V. Eye, on behalf of Intervenors in South Texas Project Nuclear Operating Co., Application for Units 3 and 4 Combined Operating License (South Texas- COL), August 11, 2011	ML11223A472

PRM 51-24 submitted by Robert V. Eye, on behalf of Intervenors in Luminant Generation Company, LCC, Application for Comanche Peak Nuclear Power Plant Combined License (Comanche Peak- COL), August 11, 2011	ML11223A477
PRM 51-25 submitted by Mary Olson, on behalf of the Ecology Party of Florida, Nuclear Information (Levy- COL), August 11, 2011	ML11224A074
PRM 51-26 submitted by Terry Lodge, on behalf of Beyond Nuclear, Citizens Environment Alliance of Southwestern Ontario, Don't Waste Michigan, and the Green Party of Ohio (Davis-Besse - LR), August 11, 2011	ML112450527
PRM 51-27 submitted by Terry Lodge, on behalf of Beyond Nuclear, Citizens for Alternatives to Chemical Contamination, Citizens Environmental Alliance of Southwestern Ontario, Don't Waste Michigan, Sierra Club, Keith Gunter, Edward McArdle, Henry Newman, Derek Coronado, Sandra Bihn, Harold L. Stokes, Michael J. Keegan, Richard Coronado, George Steinman, Marilyn R. Timmer, Leonard Mandeville, Frank Mantei, Marcee Meyers, and Shirley Steinman (Fermi- COL), August 11, 2011	ML112450528
PRM 51-28 submitted by Barry White, on behalf of Citizens Allied for Safe Energy, Inc (Turkey Point- COL), August 11, 2011	ML11224A232

DISCUSSION:

Petitioners' Requests

The petitioners requested that the NRC rescind certain regulations in 10 CFR Part 51 to the extent that such regulations make generic determinations about the environmental impacts of severe reactor and spent fuel pool accidents for power reactor license renewal actions. The NRC's regulations in 10 CFR Part 51 implement the NRC's obligations under the National Environmental Policy Act (NEPA). The petitioners asserted that the recommendations of the NTTF report constitute "new and significant" information under NEPA. The petitioners identified the following regulations: 10 CFR 51.45, 51.53, 51.95, and Table B-1 in Appendix B to Subpart A of 10 CFR Part 51 (Table B-1). The only regulations in 10 CFR Part 51 that make generic environmental determinations are those that concern environmental reviews for power reactor license renewals; the petitioners did not identify any environmental review provisions for new reactor applications.

The generic determinations of concern to the petitioners are listed in Table B-1 under the issue headings "Severe accidents" and "Onsite storage of spent nuclear fuel." The other regulations identified by the petitioners relate indirectly to these generic conclusions (e.g., 10 CFR 51.53(c), which sets forth the criteria for the license renewal applicant's environmental report). These Table B-1 generic determinations are derived from the findings of NUREG-1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants" (GEIS), which was initially issued in June 1996 and updated in June 2013. The staff reaffirmed that the generic

determinations of the “Severe accidents” and “Onsite storage of spent nuclear fuel” issues in the June 2013 update. The issuance of the GEIS and its update were reflected in NRC rulemakings—Table B-1 was promulgated in 1996 and amended in 2013.

As these generic determinations are codified in the NRC regulation Table B-1, intervenors are generally prohibited from challenging them in NRC adjudicatory proceedings by operation of 10 CFR 2.335(a). Section 2.335 provides for certain exceptions to this general prohibition. Thus, the petitioners request the rescission of the generic findings in table B-1, so that they can challenge the NRC environmental impact findings now encompassed in the table B-1 issues, “Severe accidents” and “Onsite storage of spent nuclear fuel,” in future license renewal proceedings.

Under applicable NEPA case law, the standard for determining whether information is “new and significant” is that the information must present “a seriously different picture of the environmental impact of the proposed project from what was previously envisioned.” *Union Electric Company d/b/a Ameren Missouri (Callaway Plant, Unit 2), et al*, CLI-11-5, 74 NRC 141, 167-68 (2011). As described in the enclosed *Federal Register* notice, the staff has concluded that the NTTF report recommendations do not constitute new and significant information, and that there is no basis to consider the petitioners’ request in rulemaking.

The arguments raised in the 15 petitions are similar to those raised by the Commonwealth of Massachusetts in a previous petition for rulemaking filed in 2006 (PRM-51-10, ADAMS Accession No. ML062640409), and a petition filed by the State of California in 2007 (PRM-51-12, ADAMS Accession No. ML070811132). These petitions asserted that various studies showed that the NRC incorrectly characterized the environmental impacts of high-density spent fuel storage as “insignificant” in the GEIS and requested that the NRC revoke its generic conclusion in Table B-1 concerning onsite spent fuel storage. The NRC denied these petitions on August 8, 2008 (73 FR 46204). The NRC’s denials of the PRM-51-10 and PRM-51-12 petitions were upheld in court. *New York v. U.S. Nuclear Regulatory Commission*, 589 F.3d 551 (2nd Cir. 2009).

In addition, some petitioners also filed requests to suspend ongoing reactor licensing in site-specific licensing proceedings. The Commission denied these requests in an Order dated September 9, 2011 (CLI-11-05).

RECOMMENDATION:

The staff recommends that the Commission deny these 15 PRMs because the staff finds no basis to change the NRC’s generic conclusions in Table B-1 concerning the environmental impacts of the “Severe accidents” and “Onsite storage of spent nuclear fuel” issues. The enclosed *Federal Register* notice provides a detailed response to the assertions made in the 15 PRMs.

The staff requests the Commission’s approval to publish the *Federal Register* notice (Enclosure 1) denying the 15 PRMs. The enclosed letters for signature by the Secretary of the Commission (Enclosure 2) informs the petitioners of the Commission’s decision to deny the petitions. The staff will inform the appropriate Congressional committees.

RESOURCES:

Denial of these petitions will not affect budgeted resource needs.

COORDINATION:

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

/RA by Michael Weber for/

Mark A. Satorious
Executive Director
for Operations

Enclosures:

1. *Federal Register* notice
2. Letters to the Petitioners

The Commissioners

5

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ADAMS Accession Nos: PKG: ML14267A001; **SECY Paper:** ML14267A002; **FRN:** ML14267A003;
LTR to Petitioners: ML14267A005; **Cong Letters:** ML14267A006 *via e-mail

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