ORAL ARGUMENT NOT YET SCHEDULED
No. 14-1225

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NATURAL RESOURCES DEFENSE COUNCIL, INC.,
Petitioner,
v.

UNITED STATES NUCLEAR REGULATORY COMMISSION and THE UNITED STATES OF AMERICA,
Respondents,

and

EXELON GENERATION COMPANY, LLC,
Intervenor.

On Petition for Review of an Order by the United States Nuclear Regulatory Commission

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

In accordance with Circuit Rule 28(a)(1), respondents United States Nuclear Regulatory Commission and the United States of America ("respondents") submit this Certificate as to parties, rulings, and related cases.

(A) Parties, Intervenors, and *Amici*

The petitioner is Natural Resources Defense Council, Inc. ("NRDC"). The respondents are the United States Nuclear Regulatory Commission ("NRC") and the United States of America. Intervenor on behalf of respondents is Exelon Generation Company, LLC. There are no *amici.*

(B) Rulings Under Review

NRDC's petition for review references the following NRC orders:

1. *Exelon Generation Co., LLC* (Limerick Generating Station, Units 1 and 2), CLI-12-19, 76 NRC 377 (2012);
2. *Exelon Generation Co., LLC* (Limerick Generating Station, Units 1 and 2), CLI-13-07, 78 NRC 199 (2013);
3. *Exelon Generation Co., LLC* (Limerick Generating Station, Units 1 and 2), LBP-14-15 (Oct. 7, 2014); and

4. NRC's orders issuing renewed facility operating license numbers NPF-39 and NPF-85 to Exelon Generation Co., LLC for Limerick Generating Station Units 1 and 2.

(C) Related Cases

This Court's case no. 13-1311 (*NRDC v. NRC*) presented the same merits issues as the instant case. The Court dismissed case no. 13-1311 as moot on November 13, 2014, after NRDC filed its petition for review in the instant case.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

JUDICIAL DECISIONS

*Authorities upon which we chiefly rely are marked with asterisks.

STATUTES

Administrative Procedure Act

Hobbs Act

Atomic Energy Act

National Environmental Policy Act

ADMINISTRATIVE AUTHORITIES

Regulations

NRC ADJUDICATORY DECISIONS

Commission Decisions

Atomic Safety and Licensing Board Decisions

FEDERAL REGISTER NOTICES

MISCELLANEOUS

GLOSSARY

EIS	Environmental Impact Statement
JA	Joint Appendix
NEPA	National Environmental Policy Act
NRC	Nuclear Regulatory Commission
NRDC	Natural Resources Defense Council

JURISDICTIONAL STATEMENT

Petitioner Natural Resources Defense Council ("NRDC") seeks review of Nuclear Regulatory Commission ("NRC") orders associated with NRC's issuance of renewed operating licenses for the Limerick nuclear power plant. This Court has jurisdiction under the Hobbs Act to review a challenge to an NRC final order associated with the renewal of a reactor license, so long as the challenge is filed by a "party aggrieved" within 60 days after the final order's entry.[1] Because NRC denied NRDC's request to intervene in the adjudicatory proceeding for this license renewal action, the final order applicable to NRDC is the October 7, 2014, order ("LBP-14-15") that denied NRDC's final pending intervention request.[2] NRDC's petition was filed within 60 days after NRC entered LBP-14-15. Therefore, this Court has jurisdiction under the Hobbs Act over the petition for review.

NRDC's petition for review also specifically challenges two interlocutory orders (the Commission's CLI-12-19 and CLI-13-07 orders) associated with NRDC's intervention request. In a challenge to a final order under the Hobbs Act, associated interlocutory orders may be reviewed as well.[3] Therefore, this Court's

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[1] 28 U.S.C. §§ 2342(4), 2344; 42 U.S.C. § 2239(a).

[2] *Alaska v. FERC*, 980 F.2d 761, 763 (D.C. Cir. 1992).

[3] *See City of Benton v. NRC*, 136 F.3d 824, 826 (D.C. Cir. 1998); *Alaska v. FERC*, 980 F.2d 761, 765 (D.C. Cir. 1992).

jurisdiction to review final orders includes the authority to review the interlocutory orders cited in NRDC's petition for review.[4]

Respondents do not dispute NRDC's claim of standing.

STATEMENT OF THE ISSUES

1. Whether, in CLI-12-19, NRC reasonably and lawfully construed its regulation at 10 C.F.R. § 51.53(c)(3)(ii)(L) to bar NRDC's proposed contention concerning severe accident mitigation alternatives where such an analysis had already been performed for Limerick when the plant was initially licensed, the regulation requires such an analysis at license renewal only if no mitigation alternatives analysis was performed for the plant when it was previously licensed, and NRC's explanations of the regulation's effect upon issuing it specifically identified Limerick as a plant for which mitigation alternatives would not need to be reassessed for license renewal.

2. Whether, in CLI-13-07, NRC reasonably and lawfully denied NRDC's request for a waiver of § 51.53(c)(3)(ii)(L) based on a finding that NRDC

[4] NRDC's review petition also lists, among the orders to be reviewed, NRC's October 24, 2014, notice of its October 20, 2014, issuance of Limerick's renewed licenses. Because NRDC's attempts to intervene were unsuccessful, NRDC was not a "party," for Hobbs Act purposes, to the final Limerick renewal orders. *See Alaska,* 980 F.2d at 763. Accordingly, NRDC's petition for review does not provide the Court with jurisdiction to review the merits of the October 20, 2014, orders issuing the Limerick renewed licenses. In any event, NRDC's brief does not appear to contemplate a merits review of the October 20 orders themselves.

had not presented issues sufficiently unique to Limerick to merit deviation from the well-settled administrative law principle that generic determinations embodied in agency regulations should be reassessed through rulemaking, not through collateral attacks brought in individual adjudications.

STATEMENT OF THE CASE

I. Nature of the Case

On June 22, 2011, Exelon Generation Company, LLC ("Exelon") filed an application with NRC to renew the initial 40-year operating licenses for Limerick Generating Station, Units 1 and 2 ("Limerick") for an additional 20 years from their current expiration dates of October 26, 2024, and June 22, 2029, respectively.[5] NRDC sought to intervene in the NRC proceedings to litigate various contentions.[6] In its contentions, NRDC asserted, among other things, that the environmental analysis associated with the application failed to comply with the National Environmental Policy Act ("NEPA").[7] NRC denied NRDC's

[5] *See Exelon Generation Co., LLC* (Limerick Generating Station, Units 1 and 2), LBP-12-8, 75 NRC 539, 544 (2012) (JA101-02).

[6] "Contentions," in NRC adjudicatory practice, are claims seeking relief of some form. Any interested person may participate in an NRC adjudicatory proceeding upon a showing of standing and submission of at least one contention that meets admissibility requirements. *See* 10 C.F.R. § 2.309(a), (f); *New Jersey Envtl. Fed'n v. NRC*, 645 F.3d 220, 228-29 (3d Cir. 2011).

[7] 42 U.S.C. § 4321 *et seq.*

intervention request. NRC subsequently issued renewed licenses for Limerick on October 20, 2014.[8] In this Petition for Review, NRDC challenges NRC's denial of NRDC's intervention request with respect to one of NRDC's environmental contentions.[9]

II. NRC's consideration of severe accident mitigation alternatives in the initial licensing of the Limerick plants.

At issue in this case is how NRC considers "severe accident mitigation alternatives" for purposes of its NEPA review in certain license renewal proceedings. A severe accident mitigation alternatives analysis is "a cost-benefit analysis that addresses whether the expense of implementing a mitigation measure not mandated by NRC is outweighed by the expected reduction in environmental cost it would provide in a core damage event."[10] As discussed below, NRC has adopted a rule (10

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[8] *See* Exelon Generation Company, LLC; Limerick Generating Station, Units 1 and 2, License Renewal and Record of Decision; Issuance, 79 Fed. Reg. 63,650 (Oct. 24, 2014) (JA403).

[9] NRDC previously filed another petition for review in this Court regarding this same matter. After NRDC filed its petition in the instant case, the Court dismissed NRDC's first petition as moot. *See* November 13, 2014, *per curiam* order dismissing Case No. 13-1311.

[10] *Massachusetts v. NRC,* 708 F.3d 63, 68 (1st Cir. 2013); *see also* Generic EIS, Supplement 49, Final Report at 5-3 ("Limerick 2014 Supplemental EIS") (JA677); Final Rule, Environmental Review for Renewal of Nuclear Power Plant Operating Licenses, 61 Fed. Reg. 28,467, 28,481 (June 5, 1996) ("1996 Rulemaking") (JA603). In some of the cited materials, severe accident mitigation alternatives are referred to as "SAMAs" or, alternately, when referencing a certain subset of these

(. . . continued)

C.F.R. § 51.53(c)(3)(ii)(L)) governing the consideration of severe accident mitigation alternatives in connection with license renewal applications. The rule provides that additional mitigation alternatives analysis is not required at license renewal for plants for which such an analysis had been performed in connection with prior licensing actions, thus resolving that question generically rather than relying on site-by-site analysis and litigation.

In 1989, in reviewing NRC's grant of an initial operating license for Limerick Unit 1, the United States Court of Appeals for the Third Circuit ruled that NRC's generic Policy Statement on severe accidents did not satisfy NRC's duty under NEPA to give severe accident mitigation alternatives a "hard look." *Limerick Ecology Action, Inc. v. NRC,* 869 F.2d 719, 741 (3d Cir. 1989). NRC subsequently issued a Final Environmental Impact Statement ("EIS") for Limerick Units 1 and 2 that examined mitigation alternatives from two general sources: (1) those alternatives previously evaluated as part of NRC's Containment Improvement Program to determine potential failure modes and related plant improvements as well as the cost-effectiveness of those improvements; and (2)

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alternatives related to plant design, "SAMDAs" ("severe accident mitigation design alternatives").

potential improvements identified through licensee risk analyses for individual plant vulnerabilities to severe accidents.[11]

The same underlying risk assessments have since been performed for all operating plants in the United States, and many have completed mitigation alternatives analyses in connection with NEPA reviews, either at the initial licensing or license renewal phase. These assessments included individual plant examinations to identify "plant vulnerabilities to internally initiated events and . . . externally initiated events" and "consider potential improvements to reduce the frequency or consequences of severe accidents on a plant-specific basis."[12]

For Limerick and certain other plants, NRC performed the severe accident mitigation analysis contemplated by *Limerick Ecology* when the plants were licensed initially. These analyses determined that no physical modifications to the plants would be cost-beneficial. As the Commission subsequently explained:

> [A]n NRC staff consideration of [severe accident mitigation design alternatives] was specifically included in the Final Environmental Impact Statement for the Limerick 1 and 2 and Comanche Peak 1 and 2 operating license reviews, and in the Watts Bar Supplemental Final Environmental Statement for an operating license. The alternatives evaluated in these analyses included the items previously evaluated as part of the [Containment Improvement] Program, as well as improvements identified through other risk studies and analyses. *No*

[11] *See* 1996 Rulemaking, 61 Fed. Reg. at 28,480-81 (JA602-03).

[12] *Id.* at 28,480 (JA602).

physical plant modifications were found to be cost-beneficial in any of these severe accident mitigation considerations. Only plant procedural changes were identified as being cost-beneficial.[13]

III. NRC amends its regulations in 1996 to codify its analysis of environmental impacts for license renewal, including treatment of severe accident mitigation alternatives.

In 1996, NRC amended its NEPA-implementing regulations governing operating license renewal.[14] Under the new approach, some environmental impacts of license renewal were placed in "Category 1," meaning that all aspects of the impact had been analyzed generically, while other impacts were found not to meet all the criteria necessary for full generic treatment, resulting in their assignment to "Category 2."[15] This categorical treatment was codified at 10 C.F.R. Part 51, Appendix B to Subpart A, which adopts NRC's "Generic Environmental Impact Statement for License Renewal of Nuclear Plants," NUREG-1437 (May 1996) ("Generic EIS").[16]

The adoption of this framework directly affects the manner in which information concerning the environmental impacts of license renewal is obtained

[13] *Id.* at 28,481 (emphasis added) (JA603).

[14] *Id.* at 28,467 (JA589).

[15] Of the 92 impact issues in the rule, 68 issues could be adequately addressed in full generically, thus not requiring any plant-specific review. *Id.* at 28,468 (JA590).

[16] *See generally Massachusetts v. NRC,* 708 F.3d 63, 67-68 (1st Cir. 2013); *New Jersey Dep't of Envtl. Prot.* v. *NRC,* 561 F.3d 132, 134-35 (3d Cir. 2009).

and considered. By regulation, each applicant for license renewal must submit an Environmental Report to assist NRC Staff in preparing a plant-specific supplemental EIS for license renewal. In essence, this plant-specific supplemental EIS, combined with the Generic EIS adopted by the 1996 Rulemaking, forms the full EIS for a particular plant's license renewal proceeding. Because the Generic EIS already addresses Category 1 issues in their entirety, license renewal applicants need not analyze Category 1 issues in their Environmental Reports. Instead, NRC Staff may incorporate generic Category 1 findings into the supplemental EIS for each plant seeking license renewal.[17]

Assignment to Category 2, though requiring at least some additional analysis of the impact in site-specific supplemental EISs, does not necessarily require that all issues associated with that impact must be so assessed. Rather, it means only that "one or more of the criteria of Category 1 cannot be met, and [that] therefore additional plant-specific review is required."[18] This can mean different things for different impacts.

With respect to severe accident impacts, NRC determined in the 1996 Rulemaking that the software programs it used to evaluate severe accident risk had

[17] *See* 10 C.F.R. §§ 51.53(c)(3), 51.95(c).

[18] 10 C.F.R. Part 51, App. B, Subpart A, Table B-1 n.2 ("Table B-1") (defining Categories 1 and 2) (JA618).

produced "predictions of risk that are adequate to illustrate the general magnitude and types of risks that may occur from reactor accidents."[19] Based on this analysis, NRC generically determined, in the rule, that "[t]he probability-weighted consequences of atmospheric releases, fallout onto open bodies of water, releases to groundwater, and societal and economic impacts from severe accidents are small for all plants," with the term "small" indicating impacts that are, essentially, not significant.[20]

Despite the "small" impact determination, NRC did not categorize severe accidents as a Category 1 impact. Because NRC concluded that it could not conduct a sufficient generic mitigation alternatives analysis for severe accidents that would cover *all* plants, severe accidents earned a Category 2 designation.[21]

The net result of this mix of generic and site-specific analysis is that, generally speaking, NRC analyzes mitigation alternatives for severe accidents in

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[19] 1996 Rulemaking, 61 Fed. Reg. at 28,480 (JA602).

[20] *See* Table B-1 (Postulated Accidents/Severe Accidents) (JA616). The term "small" describes impacts for which the "environmental effects are not detectable or are so minor that they will neither destabilize nor noticeably alter any important attribute of the resource. For the purposes of assessing radiological impacts, the Commission has concluded that those impacts that do not exceed permissible levels in the Commission's regulations are considered small." *Id.* n.3.

[21] 1996 Rulemaking, 61 Fed. Reg. at 28,481 (JA603); *see also* Table B-1 n.2 (JA618) (listing NRC's criteria for placement in Category 1, which include requirement that mitigation measures for the impact have already been sufficiently analyzed).

site-specific license renewal supplemental EISs, while relying on the Generic EIS for the remaining aspects of the severe accident NEPA analysis. The rules adopted in 1996 did, however, include an explicit caveat to the requirement to conduct site-specific assessments of severe accident mitigation alternatives. Specifically, the requirement applies *only* to those plants "that have not considered such alternatives."[22] Accordingly, a new regulation adopted as part of the 1996 Rulemaking—10 C.F.R. § 51.53(c)(3)(ii)(L)—specified, in defining the required contents of renewal applicant environmental reports, that:

> *If the staff has not previously considered severe accident mitigation alternatives for the applicant's plant in an environmental impact statement or related supplement or in an environmental assessment*, a consideration of alternatives to mitigate severe accidents must be provided.[23]

The 1996 Rulemaking also added to NRC's NEPA regulations a table ("Table B-1") summarizing NRC's Generic EIS conclusions for each impact considered in the generic analysis (whether ultimately placed in Category 1 or Category 2). Consistent with § 51.53(c)(3)(ii)(L), Table B-1 specified that

[22] 61 Fed. Reg. at 28,481, 28,494 (JA603, JA616).

[23] 10 C.F.R. § 51.53(c)(3)(ii)(L) (emphasis added).

"alternatives to mitigate severe accidents must be considered for all plants *that have not considered such alternatives*."[24]

Thus, for plants like Limerick, for which a site-specific analysis of severe accident mitigation alternatives has already been conducted, section 51.53(c)(3)(ii)(L) constitutes a generic determination, made via rulemaking after notice and comment, that reliance on the already completed site-specific analysis is sufficient to address this particular aspect of the overall license renewal NEPA review.[25] Taking a renewed look at the issue is not required.

The Commission explained in the 1996 Rulemaking why it drew the line at one analysis of severe accident mitigation alternatives per plant. Considering the relevant factors, the Commission expected that a single analysis "would uncover most cost-beneficial measures to mitigate both the risk and the effects of severe accidents."[26] This conclusion was based not merely on the expected results of the NEPA mitigation alternatives analyses themselves, but also on various other efforts

[24] Table B-1 (Postulated Accidents/Severe Accidents) (emphasis added) (JA616).

[25] *Exelon Generation Co., LLC* (Limerick Generating Station, Units 1 and 2) CLI-12-19, 76 NRC at 386 (2012) (JA224).

[26] *Exelon Generation Co., LLC* (Limerick Generating Station, Units 1 and 2) CLI-13-07, 78 NRC 199, 210 (2012) (citing 1996 Rulemaking, 61 Fed. Reg. at 28,481 (JA603)) (JA386).

being undertaken outside the NEPA context to address severe accident risks.[27] As the Commission explained, these analyses "essentially constitute[d] a broad search for severe accident mitigation alternatives" and were already leading to "a number of plant procedural or programmatic improvements and some plant modifications that will further reduce the risk of severe accidents."[28]

In other words, a plant's actual adoption of particular mitigation measures prior to seeking license renewal means that such measures would no longer be mitigation "alternatives" (i.e., they would now simply be aspects of the proposed license renewal action, just like any other existing aspect of the plant and its operations). And the reductions in severe accident risk resulting from adopting mitigation measures would tend to diminish the benefits to be derived from any mitigation measures that remain unadopted. The Commission thus forecasted that a second analysis of mitigation alternatives would provide too little value to the environmental analysis, over and above what the first analysis was expected to provide, to be necessary.

Consequently, for a plant such as Limerick for which a mitigation alternatives analysis was previously conducted, NRC regulations allow continued

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[27] 61 Fed. Reg. at 28481 (JA603)

[28] *Id*.

reliance on the previous analysis. With respect to such plants, the one barrier to treatment of severe accidents as a Category 1 impact—the need for further analysis of severe accident mitigation measures—is effectively removed. It was for this reason that, in the proceedings below, the Commission described § 51.53(c)(3)(ii)(L) as representing the "functional equivalent" of a Category 1 designation for severe accident impacts at plants such as Limerick.[29] The only difference between this "functional equivalent" designation and a typical one is that the prior EIS analysis being relied upon in the "functional equivalent" scenario is a prior site-specific analysis, not a prior generic analysis. But in both instances, what directs that further site-specific analysis is not necessary are NRC's NEPA-implementing regulations.

IV. NRDC's contentions relating to consideration of severe accident mitigation alternatives in the Limerick license renewal proceeding.

Given the carve-out from the general rule for plants that previously conducted such an analysis, Exelon's Environmental Report supporting its Limerick license renewal application did not contain a new analysis of mitigation alternatives under NEPA and instead noted that such an analysis had been completed for the initial operating licenses. To support this approach in its Environmental Report, Exelon cited § 51.53(c)(3)(ii)(L), as well as the 1996

[29] CLI-12-19, 76 NRC at 386 (JA225).

Rulemaking's specific mention of Limerick as a plant that, per that rule, could rely at license renewal on its prior analysis of mitigation alternatives.[30] However, to comply with its obligation to consider "new and significant information regarding the environmental impacts of license renewal of which the applicant is aware,"[31] Exelon's Environmental Report also included a detailed consideration of whether Exelon had discovered new information "that would change the generic conclusion codified by the NRC that [Limerick] need not reassess severe accident mitigation alternatives for license renewal."[32] Based on its assessment, Exelon determined that it had discovered no such information.[33]

Following Exelon's submission of its license renewal application, and in response to a notice of opportunity to request a hearing,[34] NRDC filed a Petition to Intervene in the Limerick license renewal proceeding.[35] NRDC proposed four

[30] Environmental Report at 4-49 (JA628).

[31] 10 C.F.R. § 51.53(c)(3)(iv); *see also Marsh v. Oregon Natural Res. Council*, 490 U.S. 360, 373-74 (1989).

[32] Environmental Report at 5-4 to 5-9 (JA632-37).

[33] *Id.* at 5-9 (JA637).

[34] *See* Notice of Acceptance for Docketing of the Application and Notice of Opportunity for Hearing, 76 Fed. Reg. 52,992 (Aug. 24, 2011) (JA664).

[35] NRDC Petition to Intervene (Nov. 22, 2011) (JA22).

NEPA-related contentions for resolution via hearing.[36] Three contentions challenged the Exelon Environmental Report's treatment of severe accident mitigation alternatives, and one challenged its consideration of the "no-action" alternative to the proposed action.[37] NRC Staff and Exelon opposed these contentions as not meeting NRC's requirements for contention admissibility.[38]

The presiding Atomic Safety and Licensing Board ("Board") granted NRDC's request for a hearing and petition to intervene.[39] On various grounds, the Board denied admission of two of NRDC's mitigation alternatives contentions (Contentions 2-E and 3-E) and its no-action alternative contention.[40] However, the Board admitted portions of NRDC's Contention 1-E, in which it contended that

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[36] *See Limerick*, LBP-12-8, 75 NRC 539, 545 (2012) (JA103-04). Environmental contentions are submitted based on an applicant's Environmental Report. 10 C.F.R. § 2.309(f)(2); *see Beyond Nuclear v. NRC,* 704 F.3d 12, 15 (1st Cir. 2013). Those contentions "migrate" to the EIS prepared by the NRC. *See Louisiana Energy Serv., L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 84 (1988) (contentions based on Environmental Report "deemed" challenges to the EIS). Later in the proceeding, NRDC moved to file an additional contention. The Board denied NRDC's motion in LBP-14-15, which terminated NRDC's effort to intervene. *See* LBP-14-15 (JA397-402).

[37] LBP-12-8, 75 NRC at 545 (JA103-04).

[38] *Id.* at 546 (JA104).

[39] *Id.* at 544 (JA102).

[40] *Id*. at 562-70 (JA127-39).

Exelon had ignored "new and significant information" relating to its analysis of mitigation alternatives:

> Applicant's Environmental Report (§ 5.3) erroneously concludes that new information related to its severe accident mitigation design alternatives ("SAMDA") analysis is not significant, in violation of 10 C.F.R. § 51.53(c)(3)(iv), and thus the [Environmental Report] fails to present a legally sufficient analysis in that:
>
> 1. Exelon has omitted from its [Environmental Report] a required analysis of new and significant information regarding potential new severe accident mitigation alternatives previously considered for other [Boiling Water Reactor] Mark II Containment reactors.
>
> 2. Exelon's reliance on data from [Three Mile Island] in its analysis of the significance of new information regarding economic cost risk constitutes an inadequate analysis of new and significant information.[41]

V. Commission review of NRDC's Contention 1-E and subsequent agency proceedings on that contention.

A. The Commission finds that admission of Contention 1-E is barred by regulation but remands to allow NRDC to petition for a rule waiver.

NRC Staff and Exelon appealed the Board's admission of Contention 1-E to the Commission, asserting that the contention impermissibly challenged the exemption in 10 C.F.R. § 51.53(c)(3)(ii)(L) for plants like Limerick from the requirement to consider mitigation alternatives at licensing renewal. In its 2012 decision, CLI-12-19, the Commission agreed, concluding the rule did not require

[41] *Id*. at 561-62, 570-71 (JA127, 140).

Exelon to include in its license renewal Environmental Report consideration of site-specific mitigation alternatives because NRC had previously considered them before issuing the Limerick operating licenses for an initial 40-year term.[42]

The Commission held that the issue "has been resolved by rule."[43] Among other things, the Commission observed that "Limerick is specifically named in the Statement of Considerations [of the 1996 rulemaking that established § 51.53(c)(3)(ii)(L)] as a plant for which [severe accident mitigation alternatives] 'need not be reconsidered . . . for license renewal.'"[44] Noting the resolution of this particular question by rule, the Commission reasoned that the admitted contention, "reduced to its simplest terms, amount[ed] to a challenge" to 10 C.F.R. § 51.53(c)(3)(ii)(L).[45]

In general, NRC regulations may not be challenged in NRC adjudicatory hearings.[46] The Commission recognized in CLI-12-19, however, that, despite generally precluding adjudicatory challenges to issues decided in rulemaking, 10 C.F.R. § 2.335 does permit a party to petition for waiver of a Commission

[42] CLI-12-19, 76 NRC at 386 (JA224-25).

[43] *Id*.

[44] *Id.* at 386 & n.53 (JA225).

[45] *Id.* at 386 (JA224).

[46] 10 C.F.R. § 2.335(a); *see also* CLI-12-19, 76 NRC at 380 (JA215).

regulation. Thus, the Commission explained that a "proper procedural avenue for NRDC to raise its concerns is to seek a waiver of the relevant provision in section 51.53(c)(3)(ii)(L)."[47] The Commission also explained that this approach was consistent with its own prior precedent in other license renewal adjudications.[48] Accordingly, the Commission found that, in the absence of a waiver, the Board erred in admitting NRDC's Contention 1-E for hearing, and the Commission reversed the Board's decision granting NRDC's intervention petition.[49]

Because NRDC had proceeded up to that point as if waiving § 51.53(c)(3)(ii)(L) were unnecessary, the Commission remanded to the Board to afford NRDC an opportunity to file a petition under 10 C.F.R. § 2.335 to demonstrate that its contention satisfied the applicable waiver criteria.[50] The Commission decision also pointed NRDC to the lead NRC case regarding the Commission's "four-factor test" for analyzing rule-waiver petitions.[51]

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[47] CLI-12-19, 76 NRC at 380 (JA215-16).

[48] *See id.* at 383-386 (JA221-24) (discussing a Commission decision associated with the Vermont Yankee and Pilgrim nuclear plant license renewal adjudications, which, as discussed *infra* at pp. 40-42, was subsequently upheld on judicial review in *Massachusetts v. United States*, 522 F.3d 115 (1st Cir. 2008)).

[49] *Id.* at 388-89 (JA229).

[50] *Id.* at 389 (JA229).

[51] *Id.* at 387 n.55 (JA226).

In addition to providing NRDC with the opportunity to seek a waiver of § 51.53(c)(3)(ii)(L), the Commission provided NRDC with a different means of requesting Commission reconsideration of the generic determination that only one severe accident mitigation alternatives analysis is required per plant: "Alternatively," the Commission stated, NRDC "may seek rulemaking to rescind the exception in section 51.53(c)(3)(ii)(L), in accordance with" NRC's rulemaking petition regulation at 10 C.F.R. § 2.802.[52]

B. NRC's consideration of NRDC's waiver petition.

In response to the Commission's decision, NRDC did not file a rulemaking petition, but it did petition to waive the rule. The Board rejected this petition, concluding that § 51.53(c)(3)(ii)(L) could not be waived and referring its ruling to the Commission.[53] In its 2013 decision, CLI-13-07, the Commission affirmed the Board's denial of NRDC's waiver petition on different grounds, ruling that the rule was conceivably waivable but that NRDC had not met NRC's waiver standard.[54]

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[52] *Id.* at 387 (JA226). The Commission further noted that NRDC could also participate "outside of the adjudication by submitting comments on the Staff's draft" Supplemental EIS. *Id.*

[53] *Exelon Generation Co., LLC* (Limerick Generating Station, Units 1 and 2), LBP-13-1, 77 NRC 57 (2013) (JA300).

[54] CLI-13-07, 78 NRC at 206 (JA380).

In particular, the Commission found NRDC's waiver petition insufficient because NRDC did not demonstrate that its claims were unique to Limerick. Rather, the Commission concluded, NRDC's waiver petition "amount[ed] to a general claim that could apply to any license renewal applicant for whom [severe accident mitigation alternatives] already were considered."[55] The waiver sought by NRDC would "swallow the rule," the Commission reasoned, because "NRDC offer[ed] little to show how the information it provide[d] set[] Limerick apart from other plants undergoing license renewal."[56] Specifically, the Commission explained that NRDC's particular assertions—including assertions that new potential mitigation alternatives had emerged since 1989, that a newer analytical methodology had become available since 1989, and that using newer economic cost data could yield different cost-benefit results—did not appear to show that Limerick was a unique case requiring special treatment.[57]

Despite reaching this conclusion, the Commission also acknowledged the obligation under NEPA to take a hard look at potentially new and significant

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[55] *Id.* at 214 (JA391).

[56] *Id.* at 215 (JA393).

[57] *Id.* at 215-16 (JA393-94). Having found that NRDC's petition failed to satisfy the uniqueness requirement, the Commission did not need to, and did not, assess whether NRDC's waiver petition satisfied the other three necessary prongs of the Commission's waiver standard. *Id.* at 214 n.79 (JA391); *see also infra* p. 53 (listing the four requirements).

information regarding already-completed environmental-impact analyses.[58] Accordingly, the Commission directed its staff "to review the significance of any new [severe accident mitigation alternative]-related information in its environmental review of Exelon's license renewal application, including the information presented in NRDC's waiver petition, and to discuss its review in the final supplemental EIS."[59] The Commission did not, however, direct the staff to reach any particular conclusion regarding the significance (or lack thereof) of NRDC's information.[60]

In issuing these instructions, the Commission referenced the page in the *Federal Register* notice for the 1996 Rulemaking that explained how NRC would handle challenges to generic NEPA determinations received via public comments on site-specific supplemental EISs.[61] As that rulemaking explained, the appropriate path forward, in the event NRC Staff agrees with the commenter that the new information is significant enough to require an updated NEPA analysis, would depend on whether the information "is also relevant to other plants (i.e., generic information)" or instead is relevant only "with respect to the particular

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[58] *See Marsh*, 490 U.S. 360 (1989); 10 C.F.R. § 51.95(c)(3).

[59] CLI-13-07, 78 NRC at 217 (JA396).

[60] *See id.* at 216-17 (JA395-96).

[61] *Id.* at 216 n.96 (JA395) (referencing 61 Fed. Reg. at 28,470 (JA592)).

plant."[62] In the former situation, the staff would pursue a rulemaking, accompanied by any necessary steps to coordinate with individual renewal proceedings (i.e., delaying decisions in pending proceedings pending the rulemaking's completion, or suspending the existing rule across the board to allow for site-by-site analysis in supplemental EISs), while in the latter the staff could address the plant-specific information in a site-specific supplemental EIS exclusively.[63]

NRC published a final supplemental EIS for Limerick in August 2014.[64] As explained in detail in that document, NRC's staff reviewed the information NRDC submitted in conjunction with its waiver request and assessed "whether [the] new information provided a seriously different picture of the environmental impact of the proposed project from what was previously envisioned."[65]

In finding the answer to this question to be "no," the staff relied upon, among other things: the various additional severe accident mitigation measures implemented at Limerick in the years since 1989 that reduce the risks that would

[62] 61 Fed. Reg. at 28,470 (JA592).

[63] *Id*.

[64] Limerick 2014 Supplemental EIS (JA667).

[65] *Id.* at 5-25 (JA699); *see also Blue Ridge Envtl. Def. League v. NRC*, 716 F.3d 183, 196 (D.C. Cir. 2013).

potentially be mitigated by additional measures;[66] NRC's post-1989 experience conducting over 75 severe accident mitigation alternatives analyses for other plants' license renewal proceedings;[67] and more recent analyses of severe accident risks at Limerick that found severe accident risk to be an order of magnitude lower than the risk value assigned to Limerick in 1989.[68] In sum, the staff concluded in the Limerick 2014 Supplemental EIS that if the 1989 analysis were updated with new information, "the likelihood of finding cost-effective plant improvements that substantially reduce risk [would be] small."[69] NRC issued renewed licenses for Limerick on October 20, 2014.[70]

SUMMARY OF THE ARGUMENT

The Court should affirm the Commission decisions at issue in this case as a reasonable exercise of NRC discretion in deciding the admissibility of proposed contentions in its adjudicatory hearings. NRC reasonably interpreted the rule at 10 C.F.R. § 51.53(c)(3)(ii)(L) as having the effect the Commission said it would have

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[66] Limerick 2014 Supplemental EIS at 5-4 to 5-9 (JA678-83).

[67] *Id*. at 5-20 to 5-22 (JA694-96).

[68] *Id.* at 5-5, 5-11 (JA679, 685).

[69] *Id.* at 5-25 (JA699). NRDC has not challenged the Limerick 2014 Supplemental EIS here.

[70] *See* Limerick Generating Station, Units 1 and 2, License Renewal and Record of Decision; Issuance, 79 Fed. Reg. 63,650 (Oct. 24, 2014) (JA403).

when it issued the rule: that "severe accident mitigation alternatives need not be reconsidered" in the NEPA analysis for Limerick (and other similarly situated plants) at license renewal. Therefore, the Commission was also reasonable in concluding that NRDC's contention, which asserted that severe accident mitigation alternatives *did* need to be reconsidered for Limerick at license renewal, constituted an attack on § 51.53(c)(3)(ii)(L).

As this Court has recognized, it is "hornbook administrative law" that collateral attacks on agency regulations are impermissible in agency adjudications. Accordingly, NRC regulations at 10 C.F.R. § 2.335 permit such challenges in adjudications only where the challenger demonstrates that special circumstances truly unique to the particular adjudication warrant waiving the rule's applicability to that adjudication. Further, long-established precedent of this Court and the Supreme Court makes clear that a statutory "hearing" requirement, including that contained in the Atomic Energy Act, does not preclude an agency from relying on generic determinations embodied in regulations when deciding individual adjudications. Thus, NRC need not, and generally should not, field adjudicatory challenges on issues that NRC's regulations have, ostensibly, already settled. Rather, the standard way to challenge such generic determinations, and to obtain eventual judicial review on the merits if desired, is to file a petition for rulemaking. In this case, NRDC simply chose not to file one.

To the extent NRDC's brief suggests that NRC must set these basic administrative law principles aside in order to comply with NEPA, case law from this Court and others confirms that NRDC's view is incorrect. As courts have made clear, NRC may permissibly rely on its hearing procedures and standards—including the requirement that an intervenor obtain a rule waiver before challenging an NRC regulation in an individual adjudication—when considering contentions alleging that "new and significant" information requires NRC to revisit an already-completed NEPA analysis.

Nor is there merit to NRDC's suggestions that NRC's approach precludes the agency from considering "new and significant" environmental-impact information, as required by NEPA. NRDC may have been unsuccessful in its attempt to obtain a site-specific adjudicatory hearing, but, as noted above, it has remained free all along to file a rulemaking petition, which could have relied on the same information NRDC presented to support its contention and rule-waiver petition. Further, the less formal avenue of filing comments on the site-specific Limerick 2014 Supplemental EIS, a process that allows any new information that proves significant to be routed to, and addressed in, the appropriate forum (whether it be a generic rulemaking or the site-specific EIS), was also available. Indeed, the Commission, on its own initiative, channeled NRDC's alleged new and significant information into that very process, to ensure no new and significant information

would be missed prior to a final Limerick renewal decision. In the end, the Limerick 2014 Supplemental EIS concluded that NRDC's information was not significant, but the information *was* considered in NRC's NEPA process.

NRC also acted reasonably and lawfully in deciding to deny NRDC's waiver petition. The waiver criterion on which the Commission based its decision (the uniqueness to Limerick of NRDC's concerns about § 51.53(c)(3)(ii)(L)) is a court-endorsed criterion, and the Commission provided a sound explanation for why NRDC's waiver petition failed to meet it. Quite reasonably, the Commission did not view NRDC's information—namely, developments since Limerick's 1989 analysis that seem inevitable given the decades-long time span inherent in the challenged rule's operation—as demonstrating "special circumstances" that set Limerick apart from other plants.

ARGUMENT

I. Standard of Review

This Court's review is pursuant to the Administrative Procedure Act, under which agency orders may not be set aside unless found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."[71] This is a

[71] 5 U.S.C. § 706(2)(A); *Blue Ridge Envtl. Def. League v. NRC,* 716 F.3d 183, 195 (D.C. Cir. 2013); *Massachusetts v. NRC,* 708 F.3d 63, 73 (1st Cir. 2013); *New* (. . . continued)

narrow standard of review, and, given agency expertise, a reviewing court may not substitute its judgment for that of the agency.[72] Rather, the Court owes deference to NRC's decision on how best to comply with NEPA unless it finds a clear error of judgment.[73]

Congress has entrusted NRC with discretion to administer hearings, and the agency's reading of its own statute should be upheld if reasonable.[74] An agency's interpretation of its regulations warrants substantial deference unless "plainly erroneous or inconsistent with the regulation."[75]

Similarly, respecting issues related to the Atomic Energy Act's "hearing" provision in section 189 a., 42 U.S.C. § 2239(a), NRC's interpretation is entitled to

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Jersey Envtl. Fed'n, 645 F.3d at 228, 233; *County of Rockland v. NRC*, 709 F.2d 766, 776 (2d Cir. 1983).

[72] *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 513 (2009); *Duke Power Co. v. NRC,* 770 F.2d 386, 389-90 (4th Cir. 1985).

[73] *Blue Ridge,* 716 F.3d at 195.

[74] *United States v. Eurodif S.A.*, 555 U.S. 305, 316 (2009); *Chevron U.S.A. Inc. v. NRDC*, 467 U.S. 837, 842-43 (1984); *Power Reactor Dev. Co. v. Int'l Union of Elec., Radio & Mach. Workers, AFL-CIO,* 367 U.S. 396, 408 (1961).

[75] *Auer v. Robbins,* 519 U.S. 452, 461 (1997); *Blue Ridge,* 716 F.3d at 195 (given "controlling weight"); *Massachusetts v. NRC,* 708 F.3d at 73.

judicial deference unless it is "precluded" by the statutory text or is "otherwise unreasonable."[76]

Formal agency decisions such as CLI-12-19 and CLI-13-07, issued in adjudications after full briefing, are entitled to substantial deference.[77] Indeed, heightened deference is owed here, given NRC's "expertise both in [nuclear] safety and in deciding the most efficient way to administer its licensing . . . procedures."[78] When reviewing NRC technical judgment, "a reviewing court must generally be at its most deferential."[79] In NRC cases, courts are "particularly reluctant to second-guess agency choices involving scientific disputes that are in the agency's province of expertise."[80]

Contrary to NRDC's assertions (NRDC Br. at 25-26), neither *Adams Fruit Co. v. Barrett*, 494 U.S. 638 (1990), nor *NetCoalition v. SEC*, 715 F.3d 342 (D.C.

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[76] *See Ames Constr. Co. v. FMSHRC,* 676 F.3d 1109, 1112 (D.C. Cir. 2012) (citing *Chevron U.S.A., Inc. v. NRDC,* 467 U.S. at 843).

[77] *See Blue Ridge,* 716 F.3d at 195; *Deukmejian v. NRC,* 751 F.2d 1287, 1294 (D.C. Cir. 1984).

[78] *Collins v. Nat'l Transp. Safety Bd.,* 351 F.3d 1246, 1253 (D.C. Cir. 2003); *Union of Concerned Scientists v. NRC*, 920 F.2d 50, 54-55 (D.C. Cir. 1990).

[79] *Baltimore Gas & Elec. Co. v. NRDC, Inc*., 462 U.S. 87, 103 (1983); *Blue Ridge,* 716 F.3d at 195; *Massachusetts v. NRC,* 708 F.3d at 73 (judicial deference is "particularly marked" for NRC actions); *see also Nuclear Energy Inst., Inc. v. EPA*, 373 F.3d 1251, 1276 (D.C. Cir. 2004).

[80] *New Jersey Envtl. Fed'n,* 645 F.3d at 230 (quoting *New York v. NRC,* 589 F.3d 551, 555 (2d Cir. 2009)).

Cir. 2013), supports the proposition that deference is not warranted here. In *Adams Fruit*, the Supreme Court held that *Chevron* deference was not warranted with respect to an issue that implicated federal court jurisdiction where the courts, and not an agency, were responsible for administering the private right of action at issue.[81] In *NetCoalition*, this Court held that deference was not warranted with respect to an agency's interpretation of a provision expressly governing what types of agency action were reviewable under the Administrative Procedure Act.[82] Neither case supports the proposition advanced by NRDC that an agency's determination of whether a party is entitled to a hearing *under its own regulations* is not entitled to judicial deference.[83]

II. The Commission's decision in CLI-12-19 that litigating NRDC Contention 1-E would require a rule waiver was reasonable given the text and intended effect of 10 C.F.R. § 51.53(c)(3)(ii)(L) and basic tenets of administrative law.

[81] 494 U.S. at 649-50; *see also City of Arlington v. FCC*, 133 S.Ct. 1863, 1871 n.3 (2013) ("*Adams Fruit* stands for the modest proposition that the Judiciary, not any executive agency, determines 'the scope'—including the available remedies—'of judicial power vested by' statutes establishing private rights of action").

[82] *NetCoalition v. SEC*., 715 F.3d at 348-49 (D.C. Cir. 2013).

[83] Further, as discussed below, the pertinent regulations serve merely to point those in NRDC's position towards NRC's rulemaking petition process instead of NRC's adjudicatory hearing process. Because judicial review is available for parties aggrieved by NRC rulemaking petition decisions too, *see* pp. 50-51, *infra*, NRDC is incorrect in asserting (NRDC Br. at 26) that NRC's regulations "strip" away judicial review rights.

A. The Commission reasonably determined that NRDC's proposed severe accident mitigation alternatives contention was barred by regulation.

The Commission reasonably concluded, in CLI-12-19, that admission of NRDC's proposed severe accident mitigation Contention 1-E for hearing could not occur absent a waiver of 10 C.F.R. § 51.53(c)(3)(ii)(L). While, generally speaking, a party may challenge an applicant's Environment Report by alleging that particular new and significant information was ignored or insufficiently discussed,[84] the Commission explained, when issuing section 51.53(c)(3)(ii)(L), that severe accident mitigation measures for plants such as Limerick "need not be reconsidered … for license renewal."[85] Indeed, the 1996 Rulemaking's preamble *specifically mentions Limerick* as an example.[86]

Section 51.53(c)(3)(ii)(L) clearly was intended to have this effect. By its plain text, it draws a line between what the Commission requires in terms of severe accident mitigation alternatives analysis in its license-renewal NEPA reviews and what it does not. The provision is part of a list introduced by § 51.53(c)(3)(ii), the

[84] *See* 10 C.F.R. § 51.53(c)(3)(iv).

[85] 61 Fed. Reg. at 28,481 (JA603). Echoing this point, the Generic EIS, which this same rulemaking adopted, stated, with respect to Limerick and other similar situated plants, that "severe accident mitigation need not be reassessed for these plants for license renewal." Generic EIS at 5-114 (JA582).

[86] 61 Fed. Reg. at 28,481 (JA603).

stated purpose of which is to specify "the required analyses" of Category 2 impacts that renewal applicants must include in their environmental reports. And in defining when analysis of severe accident mitigation alternatives is required, § 51.53(c)(3)(ii)(L) explicitly makes the requirement applicable only "[i]f the [NRC] staff has not previously considered severe accident mitigation alternatives for the applicant's plant in an environmental impact statement or related supplement or in an environmental assessment." Thus, for plants for which a previous NRC NEPA analysis of severe accident mitigation alternatives is available, NRC regulations specify that considering the issue again at license renewal is, literally speaking, *not* a "required analysis."

Accordingly, if the Commission, without waiving 51.53(c)(3)(ii)(L), were to require a renewed look at severe accident mitigation alternatives for such plants at license renewal, that requirement would directly contradict the plain text of its regulations. At a minimum, the Commission's interpretation of its own regulation—i.e., that the rule affirmatively categorizes a second review of severe accident mitigation alternatives something *not* required at license renewal—fits comfortably within the regulation's text, matches the Commission's explanations of the rule's intended effect, and is neither plainly erroneous nor inconsistent with the regulation.

Having addressed the regulation's meaning, the Commission determined that NRDC's mitigation alternatives contention, "reduced to its simplest terms, amount[ed] to a challenge to section 51.53(c)(3)(ii)(L)."[87] As the Commission explained, NRDC asserted that severe accident mitigation alternatives for Limerick require an updated look at license renewal, to account for such factors as additional mitigation measures not analyzed in 1989 as well as newer economic cost data.[88] Because NRDC asserted that the Commission should require something that the Commission's own rules stated would *not* be required, the Commission was clearly reasonable in treating NRDC's contention as an attack on NRC regulations. NRC's hearing regulations expressly provide that such contentions are not permitted in NRC adjudications absent a successful petition to waive the regulation being attacked.[89] Therefore, the Commission reasonably determined that NRDC's contention should not have been admitted for hearing absent a waiver of § 51.53(c)(3)(ii)(L).

This is not to say, as NRDC's brief suggests,[90] that the Commission's application of its rules in this instance somehow prohibited NRDC from obtaining

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[87] CLI-12-19, 76 NRC at 386 (JA224).

[88] *Id.* at 383 (JA219-20); *see also* CLI-13-07, 78 NRC at 215 (JA393-94).

[89] CLI-12-19, 76 NRC at 380 (JA215) (discussing 10 C.F.R. § 2.335).

[90] NRDC Br. at 30.

formal NRC review of its concerns.[91] The Commission ruled that, in addition to the option of petitioning for a rule waiver, NRDC could, either alternatively or in parallel, have requested by rulemaking petition that the Commission change its conclusion concerning the efficacy of a second mitigation alternatives analysis. These options provided NRDC the opportunity to rely on precisely the information it claimed to be "new and significant" to support its position that the Commission's generic determination was either incorrect as a general matter or not properly applied to Limerick. And NRC regulations specifically contemplate not only that interested persons can file a petition for a rulemaking seeking to change an existing regulation,[92] but also that participants in an ongoing licensing proceeding may seek to suspend the proceeding while such a petition is considered.[93]

In short, the Commission has spoken, through a notice-and-comment generic rule concerning a matter squarely within the agency's technical expertise, to precisely the issue that NRDC proposed to litigate. As a result, the Commission reasonably discerned that (absent waiver of that rule) NRDC's contention was a

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[91] Further, as discussed below (pp. 50-51, *infra*), NRC's application of its rules did not foreclose the opportunity for judicial review.

[92] *See* 10 C.F.R. § 2.802.

[93] *Id.* § 2.802(d)*; see also* pp. 21-22, *supra* (describing NRC's process for considering comments on generic NEPA determinations received during site-specific EIS comment period).

backdoor challenge to the agency's rulemaking judgment.[94] The Commission therefore reasonably determined that NRDC's contention flew squarely in the face of the generic conclusion NRC had previously reached—that a second mitigation alternatives analysis is unnecessary where one such analysis has previously been completed for the plant.

B. NRDC does not challenge the Commission's rationale for denying Contention 1-E as barred by regulation but claims an absolute right to a hearing anyway.

1. Controlling case law confirms that NRC's reliance on a prior rulemaking determination in an individual adjudication does not violate the Atomic Energy Act's "hearing" provision.

NRDC largely ignores the Commission's reasoning in denying admission of Contention 1-E. Instead, NRDC's challenge to the Commission's ruling focuses on the materiality of a mitigation alternatives analysis to license renewal. In doing so, NRDC tries to bring itself within the reach of *Union of Concerned Scientists v. NRC,* 735 F.2d 1437 (D.C. Cir. 1984) ("*Union of Concerned Scientists I*"), wherein this Court overturned an NRC regulation that prohibited hearings on an issue

[94] CLI-12-19, 76 NRC at 386 (JA224).

material to reactor licensing but, unlike here, had not resolved that material issue generically.[95]

NRDC notes that "the Commission does not dispute that new and significant information concerning [severe accident mitigation alternatives] is material to the relicensing of" Limerick.[96] Indeed, NRC does not dispute the materiality of mitigation alternatives analyses (or "new and significant" information about them) to licensing decisions. But NRDC's arguments lack merit because this Court's *Union of Concerned Scientists I* decision applies only to the particular type of regulation at issue in that case—one that prohibits hearings on a material issue *without* resolving that issue generically. Where a regulation *does* resolve a material issue generically, precedents of this Court, other circuits, and the Supreme Court make clear that the Atomic Energy Act's "hearing" requirement does not require NRC to reopen the issue for case-by-case litigation in individual licensing adjudications.[97] This Court explained the Supreme Court's longstanding

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[95] *See Union of Concerned Scientists v. NRC,* 735 F.2d 1437, 1439-41 (D.C. Cir. 1984).

[96] NRDC Br. at 25; *see also id.* at 27-28, 31.

[97] *See, e.g.*, *Mobil Oil Expl. & Prod. Se. Inc. v. United Distrib. Cos.*, 498 U.S. 211, 228-29 (1991); *Heckler v. Campbell*, 461 U.S. 458, 467 (1983); *Nuclear Info. Res. Serv. v. NRC*, 969 F.2d 1169, 1175-76 (D.C. Cir. 1992) (en banc); *Massachusetts v. NRC*, 708 F.3d 63, 74 (1st Cir. 2013); *Massachusetts v. United States*, 522 F.3d 115, 127 (1st Cir. 2008).

conclusion on this issue in an *en banc* ruling in *Nuclear Information Resource Service v. NRC*, quoting the Supreme Court's own language:

> Time and again, "[t]he Court has recognized that even where an agency's enabling statute expressly requires it to hold a hearing, the agency may rely on its rulemaking authority to determine issues that do not require case-by-case consideration." . . . "[A] contrary holding would require the agency continually to relitigate issues that may be established fairly and efficiently in a single rulemaking proceeding."[98]

Interpreting *Union of Concerned Scientists I* as recognizing an unassailable right to an evidentiary hearing on issues previously resolved by rulemaking is plainly untenable given longstanding Supreme Court precedent.

Unlike the regulation rejected in *Union of Concerned Scientists I*, the regulation at issue here *does* resolve the material issue generically. By adopting 10 C.F.R. § 51.53(c)(3)(ii)(L), the Commission has generically specified what does, and what does not, need to be done to address severe accident mitigation alternatives in NRC's license renewal NEPA analyses. Where an analysis of severe accident mitigation alternatives has already been completed for a plant in

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[98] *Nuclear Info. Res. Serv.*, 969 F.2d at 1176 (quoting *Mobil Oil Expl. & Prod. Se. Inc. v. United Distrib. Cos.*, 498 U.S. 211, 228 (1991)). NRDC's one mention of *Nuclear Information Resource Service* simply ignores this portion of the decision. *See* NRDC Br. at 49 n.21 and accompanying text. Moreover, given this Court's observation in *Nuclear Information Resource Service* that the Supreme Court has applied this general principle consistently across a range of factual scenarios, NRDC's effort to distinguish the precise facts of the instant case from the precise facts of *Nuclear Information Resource Service* is unpersuasive.

connection with a prior NRC licensing action, the regulation instructs that reanalysis of the issue at license renewal is unnecessary.[99] The regulation's basic function, therefore, is to give direction to license renewal applicants and NRC's own staff reviewers. The regulation, like most NRC regulations, says nothing about hearings. NRC's reliance on a regulation like this one in individual adjudications, in lieu of subjecting the question it resolved to case-by-case reassessment, does not violate the Atomic Energy Act's "hearing" requirement, and *Union of Concerned Scientists I* does not hold otherwise.

To be sure, NRC's regulation at 10 C.F.R. § 2.335 does speak to adjudicatory hearings, by prohibiting hearings (unless a rule waiver is obtained) on issues generically resolved by NRC regulations.[100] However, the bar of § 2.335 against collateral attacks on agency regulations in individual adjudications merely implements a practice that, as discussed above, the Supreme Court and this Court have plainly held is permissible. Indeed, as this Court has pointed out, "it is

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[99] In its arguments, NRDC incorrectly oversimplifies NRC's approach to severe accident mitigation alternatives when stating that mitigation alternatives "were not considered generically in the Generic EIS" and "were not resolved in the Generic EIS." *See* NRDC Br. at 48-49. The precise question at issue in the instant case—whether a *second* analysis of severe accident mitigation alternatives should be required when one has already been completed previously for the plant in question—*was* expressly considered and resolved in the Generic EIS, as well as in the associated rulemaking. *See* pp. 9-13, *supra*.

[100] See 10 C.F.R. § 2.335.

hornbook administrative law that an agency need not—indeed should not—entertain a challenge to a regulation, adopted pursuant to notice and comment, in an adjudication or licensing proceeding."[101] Therefore, *Union of Concerned Scientists I* cannot be read to prevent § 2.335 from operating in conjunction with § 51.53(c)(3)(ii)(L) as it has in this case.

The Commission's conclusion that its "rules do not guarantee a hearing"[102] is consistent with statutory requirements. As this Court explained in *Union of Concerned Scientists v. NRC,* 920 F.2d 50 (D.C. Cir. 1990) ("*Union of Concerned Scientists II*"), Atomic Energy Act section 189 a. (42 U.S.C. § 2239(a)) "does not confer the automatic right of intervention upon anyone."[103] The Court added that "the [Atomic Energy] Act itself nowhere describes the content of a hearing or prescribes the manner in which this 'hearing' is to be run."[104] Nor can such a prescription be derived from NEPA. As the First Circuit recognized in *Beyond Nuclear v. NRC*, "NEPA does not alter the procedures agencies may employ in conducting public hearings."[105]

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[101] *Tribune Co. v. FCC*, 133 F.3d 61, 68 (D.C. Cir. 1998).

[102] CLI-13-07, 78 NRC at 211 (JA387).

[103] 920 F.2d at 55.

[104] *Id.* at 53.

[105] 704 F.3d at 16.

Indeed, even NRDC acknowledges that it must satisfy NRC's threshold hearing requirements in order to obtain a hearing, as NRDC claims only that it "is entitled to a hearing on *admissible* SAMA contentions."[106] NRC's contention admissibility rules include, for example, pleading specificity requirements,[107] a predecessor version of which was upheld by this Court in *Union of Concerned Scientists II*.[108] And, not surprisingly, application of these rules can result in NRC denying hearing requests pertaining to issues material to licensing.[109]

Courts have also consistently upheld, and NRDC does not challenge, the general principle that NRC may utilize rulemaking to make generic determinations regarding particular environmental-impact issues in support of the agency's overall effort to comply with NEPA.[110] Therefore, where NRC finds, for a particular environmental-impact question, that there is sufficient basis to resolve the question generically by rulemaking rather than in site-by-site adjudications, NEPA does not prohibit NRC from doing so.

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[106] NRDC Br. at 31 (emphasis added).

[107] *See* 10 C.F.R. § 2.309(f).

[108] 920 F.2d at 50.

[109] *See generally id*.

[110] *See, e.g.*, *New York v. NRC*, 681 F.3d 471, 480 (D.C. Cir. 2012) (citing *Baltimore Gas & Elec. Co. v. NRC*, 462 U.S. 87, 100 (1983)); NRDC Br. at 8.

Recognition of valid regulatory limitations on the right to a hearing before the NRC provided the basis for the decision of the First Circuit in 2008 in *Massachusetts v. United States*, which involved a materially identical argument raised by a prospective intervenor in an NRC license renewal proceeding. In that case, the First Circuit addressed NRC's denial of a contention, filed by the Commonwealth of Massachusetts, in which Massachusetts claimed that new and significant information arising subsequent to 1996 required revision of NRC's 1996 Rulemaking determination that reactor spent fuel pool environmental impacts during the renewed license period would be "small."[111] As here, NRC had denied Massachusetts's hearing request on the ground that the request challenged an NRC regulation.[112]

The First Circuit upheld NRC's rejection of Massachusetts's request. The court held that "NRC acted reasonably when it invoked a well-established agency rule to reject the Commonwealth's requests to participate as a party in individual re-licensing proceedings to raise" concerns about a generic NRC NEPA determination "and required that the Commonwealth present its concerns in a

[111] *Massachusetts*, 522 F.3d 115.

[112] *See id.* at 123-25.

rulemaking petition."[113] In reaching this holding, the court explained: "The NRC's procedural rules are clear: generic Category 1 issues cannot be litigated in individual licensing adjudications without a waiver."[114]

While NRDC attempts to distinguish *Massachusetts* by tying this waiver requirement to something unique about "Category 1" determinations—such that it would not apply where the issue has not formally earned a "Category 1" label from NRC[115]—the key question is not whether the issue falls into "Category 1" or "Category 2," but, rather, whether the issue has been resolved generically through rulemaking. If there is a regulation in place that already resolves a question and would be applicable to the adjudicatory proceeding, there is no point in holding a hearing on the question; the regulation already answers it. And as discussed in section II.A, *supra*, § 51.53(c)(3)(ii)(L) already answers the questions presented by NRDC's contention 1-E.

Importantly, in *Massachusetts*, the First Circuit also pointed out that "NRC procedures anticipate a situation, such as that alleged here by the Commonwealth, in which a generic finding adopted by agency rule may have become obsolete. In such a situation, the regulations provide channels through which the agency's

[113] *Id.* at 129-30.

[114] *Id.* at 127.

[115] NRDC Br. at 47-49.

expert staff may receive new and significant information."[116] The court then identified the applicant's environmental report, public comments on a draft NRC supplemental EIS, and the rulemaking petition process as available methods to bring such information to NRC's attention regarding NEPA generic determinations.[117] And, of course, the latter two options are precisely the ones that the Commission made available to NRDC notwithstanding the dismissal of its contention.

NRDC argues that the Commission's decision in CLI-13-07 to "refer NRDC's waiver petition to the Staff as additional comments on the Limerick draft supplemental EIS for the Staff's consideration and response" confirms that § 51.53(c)(3)(ii)(L) does not apply to NRDC's contention.[118] However, as the Commission noted in CLI-12-19, NRC has contemplated since making the generic license renewal determinations in 1996 that it would accept public comments in the site-specific EIS comment process even if those comments addressed generic NEPA determinations codified in NRC rules.[119] Moreover, if such a comment does prompt NRC staff to believe that a generic finding needs revision, the

[116] 522 F.3d at 127.

[117] *Id*.

[118] NRDC Br. at 35.

[119] *See* CLI-12-19, 76 NRC at 387 n.57 (JA226-27) (quoting 61 Fed. Reg. at 28,470 (JA592)).

resulting process would be for the staff to channel the matter to the *rulemaking* process for formal reevaluation of the generic finding.[120] Allowing public comments on site-specific EISs to address generic topics covered by regulations is simply a convenient means of promoting a healthy flow of potentially NEPA-relevant information to the agency. Nothing in the Commission order's relatively brief discussion of this referral to the staff indicated a Commission intent to override its nearly two-decade-old policy for how to approach new and significant information applicable to generic NEPA findings.

The 2008 *Massachusetts* decision is not the only case upholding NRC actions similar to the NRC action at issue here. Two other recent cases also rejected challenges by intervenors in NRC adjudications whose attempts to obtain hearings on NEPA contentions based on "new and significant information" were denied for failing to satisfy NRC's threshold pleading requirements. *Massachusetts v. NRC,* 708 F.3d 63 (1st Cir. 2013), was a license renewal case in which the intervenor in the renewal adjudication tried to raise a "new and significant information" contention that the "existing [severe accident mitigation alternatives] analysis in the EIS underestimated core damage frequency by an order

[120] *See* 61 Fed. Reg. at 28,470 (JA592).

of magnitude."[121] In support of this contention, the intervenor sought waiver of the portion of an NRC NEPA regulation that treats the environmental impacts of spent fuel pools as a Category 1 (i.e., generic) issue.

As to the proposed mitigation alternatives contention in *Massachusetts*, the First Circuit ruled that "[t]o obtain a hearing on [a] claim of new and significant information, requesters must meet certain requirements."[122] The Court reviewed NRC's denial of the contention and upheld NRC's application of its rules for contention admissibility and reopening the record.[123] It flatly rejected petitioner's argument that its hearing rights to present the new and significant information "were somehow violated."[124] It pointed out this Court's holding in *Union of Concerned Scientists II* that section 189 a. of the Atomic Energy Act "does not confer the automatic right of intervention upon anyone," adding: "The NRC may certainly impose procedural requirements for obtaining a hearing where the statute provides no additional guidance."[125]

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[121] 708 F.3d at 75.

[122] *Id.* at 69.

[123] *Id.* at 75-78.

[124] *Id.* at 78.

[125] *Id.* (quoting *Union of Concerned Scientists II,* 920 F.2d at 55).

More recently, this Court upheld NRC's decision not to admit for hearing "new and significant information" contentions in *Blue Ridge Environmental Defense League v. NRC,* 716 F.3d 183, 195 (D.C. Cir. 2013). Specifically, this Court ruled that NRC acted reasonably in determining that petitioners "failed to satisfy the contention-specificity requirement of 10 C.F.R. § 2.309(f)(1)."[126]

The *Massachusetts* and *Blue Ridge* cases illustrate that the mere proffer of allegedly new and significant information in a NEPA contention does not guarantee a hearing. Akin to the agency's judicially approved contention-admissibility and record-reopening rules, the prohibition against challenging a rule in an adjudicatory proceeding at 10 C.F.R. § 2.335 is likewise a procedural limitation upon obtaining a hearing. The reasonableness of such a rule is obvious. The agency invests considerable technical and administrative resources in adopting substantive regulations like 10 C.F.R. § 51.53(c)(3)(ii)(L) and thus does not undertake rulemaking ventures lightly. It furthers both fairness and efficiency to require that these generic rules be enforced across the board and that, in the

[126] 716 F.3d at 186, 196-97.

absence of a special-circumstances waiver, claims that are, at bottom, challenges to a generic rule be channeled through the rulemaking process.[127]

2. NRDC's remaining arguments against the Commission's CLI-12-19 decision that litigating NRDC's contention would require a rule waiver also lack merit.

NRDC argues that admission of Contention 1-E is supported by the Commission's commitment during the 1996 Rulemaking to consider "new and significant" information in licensing cases as well as the same requirement under NEPA and NRC's implementing regulations at 10 C.F.R. Part 51.[128] But this NRC commitment did not somehow override NRC's regulation at 10 C.F.R. § 2.335, the effect of which is to direct formal challenges to NRC regulations to the rulemaking petition process rather than the adjudicatory hearing process.

Here, NRC has determined in a notice-and-comment rulemaking that an initial severe accident mitigation alternatives analysis is not likely to be improved upon sufficiently by a subsequent reanalysis so as to be necessary for NEPA compliance. This does not conflict with the general NEPA obligation, reflected in NRC's NEPA regulations (including those referred to in NRDC's brief at p.37), to supplement already-completed NEPA analyses with any new and significant

[127] *See also Massachusetts*, 522 F.3d at 125 (quoting Commission's rationale for favoring rulemaking over plant-by-plant litigation for addressing the adequacy of generic NEPA findings).

[128] NRDC Br. at 35-38.

information; rather, it is a determination by the agency that any new information in this particular area of impact analysis is not, given the range of factors the Commission considered in the notice-and-comment rulemaking, likely to prove significant. If NRDC views this NRC rulemaking determination as incorrect based on new information, it has been free, and remains free, to file a petition for rulemaking seeking revision of the rule. Because NRDC instead sought to challenge the rule in the site-specific Limerick proceeding, the Commission properly determined that NRC regulations at 10 C.F.R. § 2.335 require a rule waiver.

NRDC also quotes from the 1996 license renewal rulemaking to claim that the Commission believed additional severe accident mitigation analysis would be appropriate ten years later.[129] NRDC argues that the Commission "certainly contemplated" that new and significant information would be considered for Limerick's license renewal, given the hiatus between initial licensing and license renewal of greater than ten years. This claim, however, is based upon an implausible reading of the rulemaking. The Commission was clearly explaining, when referring to the 10-year timeframe, how soon it anticipated reconsidering the

[129] NRDC Br. at 36.

various generic conclusions reached in that 1996 rulemaking. The Commission stated:

> After consideration of the changes from the proposed rule to the final rule and further review of the environmental issues, the NRC has concluded that it is adequate *to formally review the rule and the GEIS on a schedule that allows revisions, if required, every 10 years.* The NRC believes that 10 years is a suitable period considering the extent of the review and the limited environmental impacts observed thus far, and given that the changes in the environment around nuclear power plants are gradual and predictable with respect to characteristics important to environmental impact analyses.[130]

With respect to the generic NEPA determination underlying 10 C.F.R. § 51.53(c)(3)(ii)(L), the contemplated review meant reassessing whether that conclusion remained true: that one mitigation alternatives analysis should be required while a second should not. When conducting its first periodic reassessment of the 1996 rule (completed in 2013), NRC did just that, concluding that no changes to § 51.53(c)(3)(ii)(L) were necessary.[131] Naturally, in deciding

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[130] 61 Fed. Reg. at 28,470-71 (emphasis added) (JA592-93).

[131] *See* Final Rule, Revisions to Environmental Review for Renewal of Nuclear Power Plant Operating Licenses, 78 Fed. Reg. 37,282, 37,289-90 (June 20, 2013). Contrary to NRDC's assertion that this generic EIS update "did not mention SAMAs and is irrelevant here" (NRDC Br. at 8 n.1), Appendix E of that generic EIS revision contains a section E.4 entitled "Severe Accident Mitigation Alternatives (SAMAs)." *See* Generic EIS for License Renewal of Nuclear Plants—Final Report (NUREG-1437, Rev. 1), Vol. 3—Appendices at E-43 – E-45, *available at* http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1437/r1/. That section discusses severe accident mitigation alternatives in light of post-1996 developments. Among other things, it

(. . . continued)

generically that a second plant-specific assessment of mitigation alternatives analyses remains unnecessary, the NRC did not deem it necessary to require one for Limerick (or other similarly situated plants).

Finally, NRDC argues that the only interpretation of § 51.53(c)(3)(ii)(L) that would not violate NEPA and the Atomic Energy Act is that the regulation does *not* actually speak to the question pertinent to NRDC's contention—i.e., whether new information regarding severe accident mitigation alternatives at plants like Limerick is significant enough to require a second analysis to supplement or replace the previous analysis.[132] But this argument is inconsistent with the text of § 51.53(c)(3)(ii)(L), which specifically excludes a second mitigation alternatives analysis from the list of "required analyses" at license renewal.[133] In any event, even if the text permitted NRDC's interpretation, there is no reason to afford the regulation a "saving" construction. As discussed at length above, NRC's interpretation of § 51.53(c)(3)(ii)(L) does not conflict with the Atomic Energy Act "hearing" requirement. Further, as also discussed above, NRC's interpretation of

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concludes that such developments "provide[] a strong basis for the Commission's decision to not require applicants to perform an additional [severe accident mitigation alternatives analysis] in a license renewal application if the NRC had previously evaluated one for that plant." *Id.* at E-45.

[132] *See* NRDC Br. at 34-38.

[133] *See* pp. 30-31, *supra*.

the rule does not prevent NRC from receiving and considering new and significant information pertinent to the generic NEPA determination reflected in § 51.53(c)(3)(ii)(L). Therefore, NRC's interpretation does not conflict with NEPA. Accordingly, neither the Atomic Energy Act nor NEPA prevents this Court from affording the usual deference to NRC's interpretation of its own regulations.[134]

NRDC's related claim[135] that NRC's interpretation robs NRDC of judicial review rights also lacks merit. Again, NRDC could have filed a rulemaking petition seeking revision of the pertinent NRC rule. If NRC's resolution of the petition did not satisfy NRDC, NRDC could then have obtained judicial review of NRC's decision on the merits in the court of appeals. This is precisely what Massachusetts did in connection with its "new and significant" information claims that were at issue in the 2008 *Massachusetts v. United States* case discussed above. NRC accepted Massachusetts's rulemaking petition, provided the public an opportunity to comment, and published a decision in the *Federal Register*.[136] NRC's decision denied the petition on the merits, but Massachusetts obtained judicial review (also on the merits) of this denial decision in the United States

[134] *See* pp. 26-28, *supra*.

[135] NRDC Br. at 38.

[136] *See* Denial of Petitions for Rulemaking, 73 Fed. Reg. 46204 (Aug. 8, 2008).

Court of Appeals for the Second Circuit.[137] NRDC could have followed this same path, which would have guaranteed a right to judicial review on the merits if NRC's resolution of the petition did not result in the outcome NRDC wanted. Yet NRDC chose not to file a rulemaking petition, instead relying exclusively on a path disfavored under administrative law: challenging an agency regulation in an individual adjudication.

The very existence of the instant lawsuit also further confirms that NRDC has not been denied rights to judicial review. NRDC is here, in court, with an opportunity to demonstrate that NRC's disposition of its adjudicatory contentions was arbitrary and capricious, an abuse of discretion, or otherwise unlawful under the Administrative Procedure Act. If NRDC were to prevail, NRC would need to proceed consistent with the Court's direction.

In sum, none of NRDC's arguments demonstrates that the Commission acted improperly when determining that NRDC's request for an adjudicatory hearing could not proceed absent a successful waiver petition.

[137] *See New York v. NRC*, 589 F.3d 551 (2d Cir. 2009) (upholding NRC denial of Massachusetts and California rulemaking petitions).

III. The Commission's denial of NRDC's waiver request in CLI-13-07 was reasonable.

A. NRC has established standards governing rule-waiver petitions.

In CLI-12-19, the Commission offered NRDC an opportunity to petition for a waiver.[138] NRDC took up the Commission's offer. To support its waiver request, NRDC alleged that Exelon's Environmental Report: (1) did not consider mitigation alternatives considered for other Mark II boiling water reactors (the Limerick reactor design); (2) used economic cost information from the 1977 Three Mile Island accident rather than information specific to Limerick; and (3) had not used more recently developed techniques for determining whether mitigation alternatives are cost-beneficial (*see supra* at 20).

The Commission reviewed NRDC's waiver request against the criteria of 10 C.F.R. § 2.335. The Commission explained that that provision "provides a limited exception to [its] general prohibition against challenges to NRC rules or regulations in adjudicatory proceedings."[139] A waiver is available only upon a showing that "special circumstances with respect to the subject matter of the

[138] CLI-12-19, 76 NRC at 387-89 (JA226-29).

[139] CLI-13-07, 78 NRC at 206 (JA380).

particular proceeding are such that the application of the rule . . . would not serve the purposes for which . . . [it] was adopted."[140]

Waiver of generally applicable regulations in individual adjudications is designed to be the exception, rather than the rule. After all, a basic purpose of issuing regulations is to resolve certain matters generically.[141] Accordingly, the Commission considers the following four factors in assessing waiver petitions under 10 C.F.R. § 2.335 and requires waiver petitioners to meet "[a]ll four" of them:

> (i) the rule's strict application would not serve the purposes for which it was adopted;
>
> (ii) special circumstances exist that were not considered, either explicitly or by necessary implication, in the rulemaking proceeding leading to the rule sought to be waived;
>
> (iii) those circumstances are unique to the facility rather than common to a large class of facilities; and
>
> (iv) waiver of the regulation is necessary to reach a significant safety problem.[142]

While the first two factors track the text of 10 C.F.R. § 2.335, the third factor reflects NRC's view that only where a waiver request "rests on issues that

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[140] *Id.* at 206-07 (quoting 10 C.F.R. § 2.335(b); brackets in original) (JA381).

[141] *See Nuclear Info. Res. Serv*, 969 F.2d at 1176.

[142] CLI-13-07, 78 NRC at 207-08 (JA382).

are legitimately unique to the proceeding and do not imply broader concerns about the rule's general viability or appropriateness would it make sense to resolve the matter through site-specific adjudication."[143] The fourth factor—showing a significant problem otherwise unaddressed—emphasizes NRC's belief that rulemakings typically years in the works should not be set aside "lightly."[144]

The determinative factor in this case—uniqueness—was recently approved as an appropriate and permissible component of NRC's rule-waiver analysis by the First Circuit in the 2013 *Massachusetts v. NRC* case discussed above—a case that also addressed a request to waive a generic NEPA determination applicable to reactor license renewal.[145] In that case, the First Circuit upheld the Commission's denial of Massachusetts's rule-waiver petition, stating: "In denying Massachusetts's waiver petition, the NRC permissibly reasoned that Massachusetts did not show that the spent fuel pool issues in its contention were unique to Pilgrim. Rather, they applied to all nuclear power plants and would be more appropriately handled through rulemaking."[146]

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[143] *Id.* at 208 (JA383).

[144] *Id.* The Commission explained in CLI-13-07 that although the original formulation of this fourth factor spoke in terms of "safety" problems, the factor could be satisfied by a significant environmental issue as well. *Id.* at 209 (JA384).

[145] *Massachusetts*, 708 F.3d 63.

[146] *Id.* at 74.

B. NRC reasonably construed the waiver factors in denying NRDC's waiver petition.

The Commission reasonably found the third factor of the four-prong waiver standard dispositive of NRDC's waiver claim. NRDC claimed that, absent the information addressed in the contentions barred by section 51.53(c)(3)(ii)(L), the Limerick analysis of mitigation alternatives would be outdated.[147] The Commission, assessing as a general matter whether § 51.53(c)(3)(ii)(L) could potentially be waived, expressly left open the possibility that new and significant information could justify a waiver of section 51.53(c)(3)(ii)(L) if the information were truly "unique" to the plant at issue. But, as the Commission determined, NRDC's particular claims did not appear legitimately "unique to Limerick."[148] The Commission observed that, for most if not all reactor licensees, twenty years or more might pass between initial plant licensing and a license renewal application. This 20-year interval "is inherent in [NRC's] regulatory scheme," because a reactor operating license term is 40 years and a license renewal request may not be submitted more than 20 years before expiration of the license.[149]

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[147] *See* CLI-13-07, 78 NRC at 213-16 (JA390-94).

[148] *Id.* at 214 (JA391).

[149] *Id.* at 214 & n.81 (citing, *inter alia*, 10 C.F.R. § 54.17(c)) (JA391-92).

Addressing the specifics of NRDC's concerns, the Commission found that NRDC's proposed additional mitigation alternatives for Limerick "could be used for any boiling water reactor, not just those [like Limerick] with Mark II containments."[150] Similarly, if the mere emergence of a "newer methodology" for performing mitigation alternatives analyses during the decades-long timeframe inherent in the rule were sufficient to support the rule's waiver, the Commission stated that it could not envision Limerick being the only plant affected.[151] And finally, the Commission found that the mere fact that the economic environment around Limerick may have changed to some extent over two decades did not reveal something "unique" about Limerick.[152]

In light of these considerations, the Commission determined that practically *any* plant seeking a renewed license with an already-completed mitigation alternatives analysis from a previous licensing proceeding in-hand would be open to criticisms comparable to those NRDC raised.[153] Put simply, NRDC's

[150] *Id.* at 215 (JA393).

[151] *Id.*

[152] *Id.* (JA393-94).

[153] *Id.* at 214 (JA391).

information did not show that Limerick presented "*special* circumstances," which is what NRC's waiver regulation requires.[154]

In its challenge to this conclusion, NRDC first argues *not* that NRDC demonstrated the uniqueness of its concerns to Limerick, but rather that the Commission did not truly find a *lack of* uniqueness.[155] Yet, NRC's waiver regulation places the burden on the waiver petitioner to make an affirmative showing that the waiver standards are met.[156] Hence, it was wholly appropriate for the Commission, when resolving the uniqueness question, to note that "NRDC offers little to show how the information it provides sets Limerick apart from other plants undergoing license renewal whose previous [severe accident mitigation alternatives] analyses purportedly also would be in need of updating."[157]

NRDC's task before this Court is to demonstrate that the information it presented to NRC demonstrated so clearly that its concerns were unique to Limerick that the Commission's conclusion to the contrary was arbitrary and capricious. NRDC's arguments in its brief do not even attempt this.

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[154] 10 C.F.R. § 2.335(b) (emphasis added).

[155] *See* NRDC Br. at 43-45.

[156] *See* 10 C.F.R. § 2.335.

[157] CLI-13-07, 78 NRC at 215 (JA393).

Rather, in pointing out the Commission's use of words like "could" and "might,"[158] NRDC simply identifies that the Commission did not take the rather bold step of predicting that comparable challenges *would*, in fact, be brought in future license renewal proceedings for other plants—a fact the Commission could not possibly know for certain.[159] Nonetheless, the Commission did, in its considered judgment, view NRDC's concerns as highly likely to be transferrable to other plants in the future, recognizing them collectively as a "far-reaching challenge" and concluding that granting a rule waiver "based on NRDC's proffered new information alone would create an exception … that would necessarily swallow the rule."[160] The Commission is entitled to deference with respect to determinations such as this one, and particularly so given that it falls within the Commission's area of expertise.[161]

Finally, NRDC errs in arguing (NRDC Br. at 45-46) that *Limerick Ecology* "compels" this Court to hold that the Commission decided the uniqueness question incorrectly. Contrary to NRDC's assertion, the Commission's lack-of-uniqueness

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[158] NRDC Br. at 43-45.

[159] Limerick happens to be the first plant applying for license renewal for which a severe accident mitigation alternatives analysis had already been completed in connection with a previous licensing action. Thus, the Commission was undertaking an inherently predictive exercise.

[160] CLI-13-07, 78 NRC at 214-15 (JA391-93).

[161] *See* p. 28, *supra*.

finding did not "fly in the face" of *Limerick Ecology*. *Limerick Ecology* merely considered the validity of an NRC policy statement excluding mitigation alternatives from consideration in individual licensing cases, and the court—applying no deference to NRC's decision, because it was made via policy statement, rather than rulemaking—determined that the variability among plants that it identified precluded a wholesale conclusion that severe accident mitigation alternatives did not have to be considered on a site-specific basis upon initial licensing.[162] The court's decision did not speak to the entirely separate question that the pertinent aspect of § 51.53(c)(3)(ii)(L) addresses—whether a *second* site-specific mitigation alternatives analysis would reveal new environmental-impact information significant enough to require evaluation under NEPA. Moreover, unlike the situation in *Limerick Ecology*, where the Commission proceeded by policy statement, the Commission answered the particular question at issue here in the course of a rulemaking that conclusively determined this issue and that is entitled to deference.[163] Accordingly, *Limerick Ecology* did not foreclose the approach NRC has taken with respect to second mitigation alternatives analyses.

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[162] *Limerick Ecology*, 869 F.2d at 739.

[163] *Id.* ("To summarize, the policy statement was not a rulemaking and therefore did not absolve the NRC of the required consideration of the environmental effects.").

Further, contrary to NRDC's suggestion that NRC's treatment of second mitigation alternatives analyses per § 51.53(c)(3)(ii)(L) represents an unexplained departure from principles outlined in *Limerick Ecology*,[164] the Commission *did*, in fact, explain why it was taking this approach to severe accident mitigation alternatives. Indeed, the 1996 Generic EIS, immediately after its statement that NRDC quotes in its brief,[165] *expressly summarized the reasoning* behind NRC's regulations requiring only one mitigation alternatives analysis per plant.[166] *Limerick Ecology*, of course, took no position on a Commission rationale expressed seven years after the case was decided.

In the end, to the extent that NRDC has information that bears on the wisdom of NRC's determination, it should petition for a rulemaking. But NRDC cannot claim a legal entitlement to a "special circumstances" waiver of a Commission rule based on considerations that the Commission reasonably found did not show Limerick to be a "special" case.

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[164] *See* NRDC Br. at 9-10.

[165] *See Id.* at 9 (quoting from Generic EIS, Section 5).

[166] *See* Generic EIS at 5-113 to 5-114 (JA581-82); *see also* pp. 11-13, *supra*.

IV. NRC'S DENIAL OF NRDC'S HEARING REQUEST DOES NOT INDICATE THAT NRC'S APPLICATION OF ITS REGULATORY SCHEME TO NRDC'S REQUEST WAS UNLAWFUL

In Section III of its argument, NRDC contends that NRC's application of its regulatory scheme to the NRDC hearing request violates NEPA, the Administrative Procedure Act, and the Atomic Energy Act.[167] NRDC also claims, in a footnote, that NRC's denial of NRDC's hearing request "implicates NRDC's constitutional right to due process," though it states that it is "not necessary for the Court to consider NRDC's constitutional rights."[168] As discussed in previous sections of our Argument, these assertions lack merit, as NRC's approach to NRDC's hearing request comports with well-settled tenets of administrative law. This Court and others have repeatedly recognized the appropriateness of resolving generic issues through rulemaking, even in the face of an asserted statutory right to a hearing. Moreover, Federal Respondents are not arguing that this Court lacks jurisdiction to review NRC's application of its regulations to NRDC in this matter. NRDC's apparent attempt, on page 50 of its brief, to establish that this Court does have authority to conduct such a review thus stands as a rebuttal to an argument that Federal Respondents are not making. Beyond that, Federal Respondents do

[167] NRDC Br. at 47-50.

[168] *Id.* at 50 n.22.

not view section III of NRDC's Argument as containing arguments meaningfully distinguishable from those included in earlier sections of NRDC's brief.

With that said, we reiterate that NRC's regulatory scheme afforded NRDC a full and fair opportunity to present its purportedly "new and significant" information to NRC for its consideration. Though NRDC did not avail itself of the rulemaking-petition option—the standard way to formally challenge an NRC regulation—the Commission pointed NRDC to this option,[169] and nothing prevented NRDC from pursuing it. Further, instead of denying NRDC's hearing request outright in CLI-12-19 for failure to petition for a waiver, the Commission granted NRDC an opportunity to pursue the option if it wished.[170] This permitted NRDC to demonstrate that a site-specific hearing on its contention was warranted even despite the Commission's prior generic resolution of the matter by rule. And when the Commission reasonably found that NRDC had failed to satisfy the necessary standards to obtain a rule waiver, the Commission did not simply terminate the matter there. Rather, the Commission directed NRC's staff to consider NRDC's purportedly "new and significant" information anyway, to assess whether any of it demonstrated a need for further analysis—including whether the

[169] CLI-12-19, 76 NRC at 387 (JA226).

[170] *Id.* at 388 (JA227).

rule at issue warranted reconsideration—in order to comply with NEPA.[171] Thus, contrary to NRDC's assertions, the Commission has considered, and provided NRDC with multiple opportunities to challenge the Commission's conclusions about, the allegedly new and significant information on which NRDC's petition for review is based.

CONCLUSION

For the foregoing reasons, the petition for review should be denied.

[171] NRDC also separately filed comments recommending an updated look at severe accident mitigation alternatives for Limerick in 2011 during the scoping process for the Limerick license renewal EIS. *See* CLI-12-19, 76 NRC at 387 n.57 (JA227).

Respectfully submitted,

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Dated: April 22, 2015

CERTIFICATION OF COMPLIANCE

Pursuant to the Federal Rules of Appellate Procedure and the Local Rules of this Court, the undersigned counsel certifies:

The foregoing Brief of Federal Respondents complies with Fed. R. App. P. 32(a)(7)(B) because this Brief contains 13,195 words, excluding parts exempted by Fed. R. App. P. 32(a)(7)(B)(iii), according to the Microsoft Word 2010 software program with which the Brief was prepared. The foregoing Brief complies with Fed. R. App. P. 32(a)(5) and Fed. R. App. P. 32(a)(6) because it was prepared in proportionally spaced typeface in 14 point Times Roman font using Microsoft Word 2010.

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CERTIFICATE OF SERVICE

I hereby certify that on April 22, 2015, the undersigned counsel for Respondent U.S. Nuclear Regulatory Commission filed the attached Brief of Federal Respondents with the U.S. Court of Appeals for the District of Columbia Circuit by filing the same with the Court's CM/ECF filing system. That method is calculated to serve:

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ADDENDUM

Statutes Cited:

Regulations Cited:

Effective:[See Text Amendments]

United States Code Annotated Currentness
Title 5. Government Organization and Employees (Refs & Annos)
Part I. The Agencies Generally
Chapter 7. Judicial Review (Refs & Annos)

§ 706. Scope of review

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall--

(1) compel agency action unlawfully withheld or unreasonably delayed; and

(2) hold unlawful and set aside agency action, findings, and conclusions found to be--

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(D) without observance of procedure required by law;

(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or

(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

CREDIT(S)

(Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 393.)

Current through P.L. 113-296 (excluding P.L. 113-235, 113-287, and 113-291) approved 12-19-2014

END OF DOCUMENT

Effective: October 6, 2006

United States Code Annotated Currentness
Title 28. Judiciary and Judicial Procedure (Refs & Annos)
Part VI. Particular Proceedings
Chapter 158. Orders of Federal Agencies; Review (Refs & Annos)

§ 2342. Jurisdiction of court of appeals

The court of appeals (other than the United States Court of Appeals for the Federal Circuit) has exclusive jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the validity of--

(1) all final orders of the Federal Communications Commission made reviewable by section 402(a) of title 47;

(2) all final orders of the Secretary of Agriculture made under chapters 9 and 20A of title 7, except orders issued under sections 210(e), 217a, and 499g(a) of title 7;

(3) all rules, regulations, or final orders of--

(A) the Secretary of Transportation issued pursuant to section 50501, 50502, 56101-56104, or 57109 of title 46 or pursuant to part B or C of subtitle IV, subchapter III of chapter 311, chapter 313, or chapter 315 of title 49; and

(B) the Federal Maritime Commission issued pursuant to section 305, 41304, 41308, or 41309 or chapter 421 or 441 of title 46;

(4) all final orders of the Atomic Energy Commission made reviewable by section 2239 of title 42;

(5) all rules, regulations, or final orders of the Surface Transportation Board made reviewable by section 2321 of this title;

(6) all final orders under section 812 of the Fair Housing Act; and

(7) all final agency actions described in section 20114(c) of title 49.

Jurisdiction is invoked by filing a petition as provided by section 2344 of this title.

CREDIT(S)

(Added Pub.L. 89-554, § 4(e), Sept. 6, 1966, 80 Stat. 622; amended Pub.L. 93-584, § 4, Jan. 2, 1975, 88 Stat. 1917; Pub.L. 95-454, Title II, § 206, Oct. 13, 1978, 92 Stat. 1144; Pub.L. 96-454, § 8(b)(2), Oct. 15, 1980, 94 Stat. 2021; Pub.L. 97-164, Title I, § 137, Apr. 2, 1982, 96 Stat. 41; Pub.L. 98-554, Title II, § 227(a)(4), Oct. 30, 1984, 98 Stat. 2852; Pub.L. 99-336, § 5(a), June 19, 1986, 100 Stat. 638; Pub.L. 100-430, § 11(a), Sept. 13,

1988, 102 Stat. 1635; Pub.L. 102-365, § 5(c)(2), Sept. 3, 1992, 106 Stat. 975; Pub.L. 103-272, § 5(h), July 5, 1994, 108 Stat. 1375; Pub.L. 104-88, Title III, § 305(d)(5) to (8), Dec. 29, 1995, 109 Stat. 945; Pub.L. 104-287, § 6(f)(2), Oct. 11, 1996, 110 Stat. 3399; Pub.L. 109-59, Title IV, § 4125(a), Aug. 10, 2005, 119 Stat. 1738; Pub.L. 109-304, § 17(f)(3), Oct. 6, 2006, 120 Stat. 1708.)

1996 Acts. Section 6(f) of Pub.L. 104-287 provided in part that amendments made by such section 6(f) to this section, sections 744 and 797*l* of Title 45, Railroads, and section 30166 of Title 49, Transportation, were effective Dec. 29, 1995.

Current through P.L. 113-296 (excluding P.L. 113-235, 113-287, and 113-291) approved 12-19-2014

END OF DOCUMENT

Effective:[See Text Amendments]

United States Code Annotated Currentness
Title 28. Judiciary and Judicial Procedure (Refs & Annos)
Part VI. Particular Proceedings
Chapter 158. Orders of Federal Agencies; Review (Refs & Annos)

§ 2344. Review of orders; time; notice; contents of petition; service

On the entry of a final order reviewable under this chapter, the agency shall promptly give notice thereof by service or publication in accordance with its rules. Any party aggrieved by the final order may, within 60 days after its entry, file a petition to review the order in the court of appeals wherein venue lies. The action shall be against the United States. The petition shall contain a concise statement of--

(1) the nature of the proceedings as to which review is sought;

(2) the facts on which venue is based;

(3) the grounds on which relief is sought; and

(4) the relief prayed.

The petitioner shall attach to the petition, as exhibits, copies of the order, report, or decision of the agency. The clerk shall serve a true copy of the petition on the agency and on the Attorney General by registered mail, with request for a return receipt.

CREDIT(S)

(Added Pub.L. 89-554, § 4(e), Sept. 6, 1966, 80 Stat. 622.)

Current through P.L. 113-296 (excluding P.L. 113-235, 113-287, and 113-291) approved 12-19-2014

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United States Code Annotated Currentness
Title 42. The Public Health and Welfare
Chapter 23. Development and Control of Atomic Energy (Refs & Annos)
Division a. Atomic Energy
Subchapter XV. Judicial Review and Administrative Procedure (Refs & Annos)
§ 2239. Hearings and judicial review

(a)(1)(A) In any proceeding under this chapter, for the granting, suspending, revoking, or amending of any license or construction permit, or application to transfer control, and in any proceeding for the issuance or modification of rules and regulations dealing with the activities of licensees, and in any proceeding for the payment of compensation, an award or royalties under sections [FN1] 2183, 2187, 2236(c) or 2238 of this title, the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding. The Commission shall hold a hearing after thirty days' notice and publication once in the Federal Register, on each application under section 2133 or 2134(b) of this title for a construction permit for a facility, and on any application under section 2134(c) of this title for a construction permit for a testing facility. In cases where such a construction permit has been issued following the holding of such a hearing, the Commission may, in the absence of a request therefor by any person whose interest may be affected, issue an operating license or an amendment to a construction permit or an amendment to an operating license without a hearing, but upon thirty days' notice and publication once in the Federal Register of its intent to do so. The Commission may dispense with such thirty days' notice and publication with respect to any application for an amendment to a construction permit or an amendment to an operating license upon a determination by the Commission that the amendment involves no significant hazards consideration.

(B)(i) Not less than 180 days before the date scheduled for initial loading of fuel into a plant by a licensee that has been issued a combined construction permit and operating license under section 2235(b) of this title, the Commission shall publish in the Federal Register notice of intended operation. That notice shall provide that any person whose interest may be affected by operation of the plant, may within 60 days request the Commission to hold a hearing on whether the facility as constructed complies, or on completion will comply, with the acceptance criteria of the license.

(ii) A request for hearing under clause (i) shall show, prima facie, that one or more of the acceptance criteria in the combined license have not been, or will not be met, and the specific operational consequences of nonconformance that would be contrary to providing reasonable assurance of adequate protection of the public health and safety.

(iii) After receiving a request for a hearing under clause (i), the Commission expeditiously shall either deny or grant the request. If the request is granted, the Commission shall determine, after considering petitioners' prima

facie showing and any answers thereto, whether during a period of interim operation, there will be reasonable assurance of adequate protection of the public health and safety. If the Commission determines that there is such reasonable assurance, it shall allow operation during an interim period under the combined license.

(iv) The Commission, in its discretion, shall determine appropriate hearing procedures, whether informal or formal adjudicatory, for any hearing under clause (i), and shall state its reasons therefor.

(v) The Commission shall, to the maximum possible extent, render a decision on issues raised by the hearing request within 180 days of the publication of the notice provided by clause (i) or the anticipated date for initial loading of fuel into the reactor, whichever is later. Commencement of operation under a combined license is not subject to subparagraph (A).

(2)(A) The Commission may issue and make immediately effective any amendment to an operating license or any amendment to a combined construction and operating license, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person. Such amendment may be issued and made immediately effective in advance of the holding and completion of any required hearing. In determining under this section whether such amendment involves no significant hazards consideration, the Commission shall consult with the State in which the facility involved is located. In all other respects such amendment shall meet the requirements of this chapter.

(B) The Commission shall periodically (but not less frequently than once every thirty days) publish notice of any amendments issued, or proposed to be issued, as provided in subparagraph (A). Each such notice shall include all amendments issued, or proposed to be issued, since the date of publication of the last such periodic notice. Such notice shall, with respect to each amendment or proposed amendment (i) identify the facility involved; and (ii) provide a brief description of such amendment. Nothing in this subsection shall be construed to delay the effective date of any amendment.

(C) The Commission shall, during the ninety-day period following the effective date of this paragraph, promulgate regulations establishing (i) standards for determining whether any amendment to an operating license or any amendment to a combined construction and operating license involves no significant hazards consideration; (ii) criteria for providing or, in emergency situations, dispensing with prior notice and reasonable opportunity for public comment on any such determination, which criteria shall take into account the exigency of the need for the amendment involved; and (iii) procedures for consultation on any such determination with the State in which the facility involved is located.

(b) The following Commission actions shall be subject to judicial review in the manner prescribed in chapter 158 of Title 28 and chapter 7 of Title 5:

(1) Any final order entered in any proceeding of the kind specified in subsection (a) of this section.

(2) Any final order allowing or prohibiting a facility to begin operating under a combined construction and operating license.

(3) Any final order establishing by regulation standards to govern the Department of Energy's gaseous diffusion uranium enrichment plants, including any such facilities leased to a corporation established under the USEC Privatization Act [42 U.S.C.A. § 2297h et seq.].

(4) Any final determination under section 2297f(c) of this title relating to whether the gaseous diffusion plants, including any such facilities leased to a corporation established under the USEC Privatization Act [42 U.S.C.A. § 2297h et seq.], are in compliance with the Commission's standards governing the gaseous diffusion plants and all applicable laws.

CREDIT(S)

(Aug. 1, 1946, c. 724, Title I, § 189, as added Aug. 30, 1954, c. 1073, § 1, 68 Stat. 955; amended Sept. 2, 1957, Pub.L. 85-256, § 7, 71 Stat. 579; Aug. 29, 1962, Pub.L. 87-615, § 2, 76 Stat. 409; Jan. 4, 1983, Pub.L. 97-415, § 12(a), 96 Stat. 2073; renumbered Title I and amended Oct. 24, 1992, Pub.L. 102-486, Title IX, § 902(a)(8), Title XXVIII, §§ 2802, 2804, 2805, 106 Stat. 2944, 3120, 3121; Apr. 26, 1996, Pub.L. 104-134, Title III, § 3116(c), 110 Stat. 1321-349.)

[FN1] So in original. Probably should be “section”.

Current through P.L. 113-296 (excluding P.L. 113-235, 113-287, and 113-291) approved 12-19-2014

END OF DOCUMENT

Effective: September 4, 2012

Code of Federal Regulations Currentness
Title 10. Energy
Chapter I. Nuclear Regulatory Commission (Refs & Annos)
Part 2. Agency Rules of Practice and Procedure (Refs & Annos)
Subpart C. Rules of General Applicability: Hearing Requests, Petitions to Intervene, Availability of Documents, Selection of Specific Hearing Procedures, Presiding Officer Powers, and General Hearing Management for NRC Adjudicatory Hearings (Refs & Annos)

§ 2.309 Hearing requests, petitions to intervene, requirements for standing, and contentions.

(a) General requirements. Any person whose interest may be affected by a proceeding and who desires to participate as a party must file a written request for hearing and a specification of the contentions which the person seeks to have litigated in the hearing. In a proceeding under 10 CFR 52.103, the Commission, acting as the presiding officer, will grant the request if it determines that the requestor has standing under the provisions of paragraph (d) of this section and has proposed at least one admissible contention that meets the requirements of paragraph (f) of this section. For all other proceedings, except as provided in paragraph (e) of this section, the Commission, presiding officer, or the Atomic Safety and Licensing Board designated to rule on the request for hearing and/or petition for leave to intervene, will grant the request/petition if it determines that the requestor/petitioner has standing under the provisions of paragraph (d) of this section and has proposed at least one admissible contention that meets the requirements of paragraph (f) of this section. In ruling on the request for hearing/petition to intervene submitted by petitioners seeking to intervene in the proceeding on the HLW repository, the Commission, the presiding officer, or the Atomic Safety and Licensing Board shall also consider any failure of the petitioner to participate as a potential party in the pre-license application phase under subpart J of this part in addition to the factors in paragraph (d) of this section. If a request for hearing or petition to intervene is filed in response to any notice of hearing or opportunity for hearing, the applicant/licensee shall be deemed to be a party.

(b) Timing. Unless specified elsewhere in this chapter or otherwise provided by the Commission, the request or petition and the list of contentions must be filed as follows:

(1) In proceedings for the direct or indirect transfer of control of an NRC license when the transfer requires prior approval of the NRC under the Commission's regulations, governing statute, or pursuant to a license condition, twenty (20) days from the date of publication of the notice in the Federal Register.

(2) In proceedings for the initial authorization to construct a high-level radioactive waste geologic repository, and the initial licensee to receive and process high level radioactive waste at a geological repository operations area, thirty (30) days from the date of publication of the notice in the Federal Register.

(3) In proceedings for which a Federal Register notice of agency action is published (other than a proceeding covered by paragraphs (b)(1) or (b)(2) of this section), not later than:

(i) The time specified in any notice of hearing

or notice of proposed action or as provided by the presiding officer or the Atomic Safety and Licensing Board designated to rule on the request and/or petition, which may not be less than sixty (60) days from the date of publication of the notice in the Federal Register; or

(ii) If no period is specified, sixty (60) days from the date of publication of the notice.

(iii) [Reserved by 73 FR 44620]

(4) In proceedings for which a Federal Register notice of agency action is not published, not later than the latest of:

(i) Sixty (60) days after publication of notice on the NRC Web site at http://www.nrc.gov/public-involve/major-actions.html, or

(ii) Sixty (60) days after the requestor receives actual notice of a pending application, but not more than sixty (60) days after agency action on the application.

(c) Filings after the deadline; submission of hearing request, intervention petition, or motion for leave to file new or amended contentions—

(1) Determination by presiding officer. Hearing requests, intervention petitions, and motions for leave to file new or amended contentions filed after the deadline in paragraph (b) of this section will not be entertained absent a determination by the presiding officer that a participant has demonstrated good cause by showing that:

(i) The information upon which the filing is based was not previously available;

(ii) The information upon which the filing is based is materially different from information previously available; and

(iii) The filing has been submitted in a timely fashion based on the availability of the subsequent information.

(2) Applicability of §§ 2.307 and 2.323.

(i) Section 2.307 applies to requests to change a filing deadline (requested before or after that deadline has passed) based on reasons not related to the substance of the filing.

(ii) Section 2.323 does not apply to hearing requests, intervention petitions, or motions for leave to file new or amended contentions filed after the deadline in paragraph (b) of this section.

(3) New petitioner. A hearing request or intervention petition filed after the deadline in paragraph (b) of this section must include a specification of contentions if the petitioner seeks admission as a party, and must also demonstrate that the petitioner meets the applicable standing and contention admissibility requirements in paragraphs (d) and (f) of this section.

(4) Party or participant. A new or amended contention filed by a party or participant to the proceeding must also meet the applicable contention admissibility requirements in paragraph (f) of this section. If the party or participant has already satisfied the requirements for standing under paragraph (d) of this section in the same proceeding in which the new or amended contentions are filed, it does not need to do so again.

(d) Standing.

(1) General requirements. A request for hearing or petition for leave to intervene must state:

(i) The name, address and telephone number of the requestor or petitioner;

(ii) The nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding;

(iii) The nature and extent of the requestor's/petitioner's property, financial or other interest in the proceeding; and

(iv) The possible effect of any decision or order that may be issued in the proceeding on the requestor's/petitioner's interest.

(2) Rulings. In ruling on a request for hearing or petition for leave to intervene, the Commission, the presiding officer, or the Atomic Safety and Licensing Board designated to rule on such requests must determine, among other things, whether the petitioner has an interest affected by the proceeding considering the factors enumerated in paragraph (d)(1) of this section.

(3) Standing in enforcement proceedings. In enforcement proceedings, the licensee or other person against whom the action is taken shall have standing.

(e) Discretionary Intervention. The presiding officer may consider a request for discretionary intervention when at least one requestor/petitioner has established standing and at least one admissible contention has been admitted so that a hearing will be held. A requestor/petitioner may request that his or her petition be granted as a matter of discretion in the event that the petitioner is determined to lack standing to intervene as a matter of right under paragraph (d)(1) of this section. Accordingly, in addition to addressing the factors in paragraph (d)(1) of this section, a petitioner who wishes to seek intervention as a matter of discretion in the event it is determined that standing as a matter of right is not demonstrated shall address the following factors in his/her initial petition, which the Commission, the presiding officer or the Atomic Safety and Licensing Board will consider and balance:

(1) Factors weighing in favor of allowing intervention—

(i) The extent to which the requestor's/petitioner's participation may reasonably be expected to assist in developing a sound record;

(ii) The nature and extent of the requestor's/petitioner's property, financial or other interests in the proceeding; and

(iii) The possible effect of any decision or order that may be issued in the proceeding on the requestor's/petitioner's interest;

(2) Factors weighing against allowing intervention—

(i) The availability of other means whereby the requestor's/petitioner's interest will be protected;

(ii) The extent to which the requestor's/petitioner's interest will be represented by existing parties; and

(iii) The extent to which the re-

questor's/petitioner's participation will inappropriately broaden the issues or delay the proceeding.

(f) Contentions.

(1) A request for hearing or petition for leave to intervene must set forth with particularity the contentions sought to be raised. For each contention, the request or petition must:

(i) Provide a specific statement of the issue of law or fact to be raised or controverted, provided further, that the issue of law or fact to be raised in a request for hearing under 10 CFR 52.103(b) must be directed at demonstrating that one or more of the acceptance criteria in the combined license have not been, or will not be met, and that the specific operational consequences of nonconformance would be contrary to providing reasonable assurance of adequate protection of the public health and safety;

(ii) Provide a brief explanation of the basis for the contention;

(iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;

(iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;

(v) Provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue;

(vi) In a proceeding other than one under 10 CFR 52.103, provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief; and

(vii) In a proceeding under 10 CFR 52.103(b), the information must be sufficient, and include supporting information showing, prima facie, that one or more of the acceptance criteria in the combined license have not been, or will not be met, and that the specific operational consequences of nonconformance would be contrary to providing reasonable assurance of adequate protection of the public health and safety. This information must include the specific portion of the report required by 10 CFR 52.99(c) which the requestor believes is inaccurate, incorrect, and/or incomplete (i.e., fails to contain the necessary information required by § 52.99(c)). If the requestor identifies a specific portion of the § 52.99(c) report as incomplete and the requestor contends that the incomplete portion prevents the requestor from making the necessary prima facie showing, then the requestor must explain why this deficiency prevents the requestor from making the prima facie showing.

(2) Contentions must be based on documents or

other information available at the time the petition is to be filed, such as the application, supporting safety analysis report, environmental report or other supporting document filed by an applicant or licensee, or otherwise available to a petitioner. On issues arising under the National Environmental Policy Act, participants shall file contentions based on the applicant's environmental report. Participants may file new or amended environmental contentions after the deadline in paragraph (b) of this section (e.g., based on a draft or final NRC environmental impact statement, environmental assessment, or any supplements to these documents) if the contention complies with the requirements in paragraph (c) of this section.

(3) If two or more requestors/petitioners seek to co-sponsor a contention, the requestors/petitioners shall jointly designate a representative who shall have the authority to act for the requestors/petitioners with respect to that contention. If a requestor/petitioner seeks to adopt the contention of another sponsoring requestor/petitioner, the requestor/petitioner who seeks to adopt the contention must either agree that the sponsoring requestor/petitioner shall act as the representative with respect to that contention, or jointly designate with the sponsoring requestor/petitioner a representative who shall have the authority to act for the requestors/petitioners with respect to that contention.

(g) Selection of hearing procedures. A request for hearing and/or petition for leave to intervene may, except in a proceeding under 10 CFR 52.103, also address the selection of hearing procedures, taking into account the provisions of § 2.310. If a request/petition relies upon § 2.310(d), the request/petition must demonstrate, by reference to the contention and the bases provided and the specific procedures in subpart G of this part, that resolution of the contention necessitates resolution of material issues of fact which may be best determined through the use of the identified procedures.

(h) Requirements applicable to States, local governmental bodies, and Federally-recognized Indian Tribes seeking party status.

(1) If a State, local governmental body (county, municipality or other subdivision), or Federally-recognized Indian Tribe seeks to participate as a party in a proceeding, it must submit a request for hearing or a petition to intervene containing at least one admissible contention, and must designate a single representative for the hearing. If a request for hearing or petition to intervene is granted, the Commission, the presiding officer or the Atomic Safety and Licensing Board ruling on the request will admit as a party to the proceeding a single designated representative of the State, a single designated representative for each local governmental body (county, municipality or other subdivision), and a single designated representative for each Federally-recognized Indian Tribe. Where a State's constitution provides that both the Governor and another State official or State governmental body may represent the interests of the State in a proceeding, the Governor and the other State official/government body will be considered separate participants.

(2) If the proceeding pertains to a production or utilization facility (as defined in § 50.2 of this chapter) located within the boundaries of the State, local governmental body, or Federally-recognized Indian Tribe seeking to participate as a party, no further demonstration of standing is required. If the production or utilization facility is not located within the boundaries of the State, local governmental body, or Federally-recognized Indian Tribe seeking to participate as a party, the State, local governmental body, or Federally-recognized Indian Tribe also must demonstrate standing.

(3) In any proceeding on an application for a construction authorization for a high-level radioactive waste repository at a geologic repository operations area under parts 60 or 63 of this chapter, or an application for a license to receive and possess high-level radioactive waste at a geologic repository operations area under parts 60 or 63 of this chapter, the Commission shall permit intervention by the State and local governmental body (county, municipality or other subdivision) in which such an area is located and by any affected Federally-recognized Indian Tribe as defined in parts 60 or 63 of this chapter if the requirements of paragraph (f) of this section are satisfied with respect to at least one contention. All other petitions for intervention in any such proceeding must be reviewed under the provisions of paragraphs (a) through (f) of this section.

(i) Answers to hearing requests, intervention petitions, and motions for leave to file new or amended contentions filed after the deadline. Unless otherwise specified by the Commission, the presiding officer, or the Atomic Safety and Licensing Board designated to rule on the request, petition, or motion—

(1) The applicant/licensee, the NRC staff, and other parties to a proceeding may file an answer to a hearing request, intervention petition, or motion for leave to file amended or new contentions filed after the deadline in § 2.309(b) within 25 days after service of the request, petition, or motion. Answers should address, at a minimum, the factors set forth in paragraphs (a) through (h) of this section insofar as these sections apply to the filing that is the subject of the answer.

(2) Except in a proceeding under § 52.103 of this chapter, the participant who filed the hearing request, intervention petition, or motion for leave to file new or amended contentions after the deadline may file a reply to any answer. The reply must be filed within 7 days after service of that answer.

(3) No other written answers or replies will be entertained.

(j) Decision on request/petition.

(1) In all proceedings other than a proceeding under § 52.103 of this chapter, the presiding officer shall issue a decision on each request for hearing or petition to intervene within 45 days of the conclusion of the initial pre-hearing conference or, if no pre-hearing conference is conducted, within 45 days after the filing of answers and replies under paragraph (i) of this section. With respect to a request to admit amended or new contentions, the presiding officer shall issue a decision on each such request within 45 days of the conclusion of any pre-hearing conference that may be conducted regarding the proposed amended or new contentions or, if no pre-hearing conference is conducted, within 45 days after the filing of answers and replies, if any. In the event the presiding officer cannot issue a decision within 45 days, the presiding officer shall issue a notice advising the Commission and the parties, and the notice shall include the expected date of when the decision will issue.

(2) The Commission, acting as the presiding officer, shall expeditiously grant or deny the request for hearing in a proceeding under § 52.103 of this chapter. The Commission's decision may not be the subject of any appeal under § 2.311.

[72 FR 49474, Aug. 28, 2007; 73 FR 44620, July 31, 2008; 77 FR 46591, Aug. 3, 2012]

SOURCE: 27 FR 377, Jan. 13, 1962; 50 FR 41670, Oct. 15, 1985; 51 FR 7764, March 6, 1986; 51 FR 30839, Aug. 29, 1986; 52 FR 36218, Sept. 28, 1987; 52 FR 49369, Dec. 31, 1987; 53 FR 10365, March 31, 1988; 53 FR 31679, Aug. 19, 1988; 53 FR 40022, Oct. 13, 1988; 54 FR 8276, Feb. 28, 1989; 54 FR 27869, July 3, 1989; 56 FR 40684, Aug. 15, 1991; 57 FR 5797, Feb. 18, 1992; 57 FR 18390, April 30, 1992; 58 FR 44611, Aug. 24, 1993; 58 FR 50635, Sept. 28, 1993; 60 FR 20886, April 28, 1995; 60 FR 22491, May 8, 1995; 61 FR 43407, Aug. 22, 1996; 61 FR 53555, Oct. 11, 1996; 62 FR 6668, Feb. 12, 1997; 63 FR 66730, Dec. 3, 1998; 67 FR 57089, Sept. 6, 2002; 67 FR 72091, Dec. 4, 2002; 68 FR 58798, Oct. 10, 2003; 69 FR 2233, Jan. 14, 2004; 69 FR 2236, Jan. 14, 2004; 70 FR 61886, Oct. 27, 2005; 72 FR 49148, Aug. 28, 2007; 73 FR 63566, Oct. 24, 2008; 77 FR 39387, July 3, 2012; 77 FR 39903, July 6, 2012; 77 FR 46587, Aug. 3, 2012; 79 FR 75739, Dec. 19, 2014, unless otherwise noted.

AUTHORITY: Atomic Energy Act secs.161, 181, 191 (42 U.S.C. 2201, 2231, 2241); Energy Reorganization Act sec. 201 (42 U.S.C. 5841); 5 U.S.C. 552; Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note).; Section 2.101 also issued under Atomic Energy Act secs. 53, 62, 63, 81, 103, 104 (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); Nuclear Waste Policy Act sec. 114(f) (42 U.S.C. 10143(f)); National Environmental Policy Act sec. 102 (42 U.S.C. 4332); Energy Reorganization Act sec. 301 (42 U.S.C. 5871).; Sections 2.102, 2.103, 2.104, 2.105, 2.321 also issued under Atomic Energy Act secs. 102, 103, 104, 105, 183i, 189 (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Sections 2.200–2.206 also issued under Atomic Energy Act secs. 161, 186, 234 (42 U.S.C. 2201(b), (i), (o), 2236, 2282); sec. 206 (42 U.S.C. 5846). Section 2.205(j) also issued under Pub.L. 101–410, as amended by section 3100(s), Pub.L. 104–134 (28 U.S.C. 2461 note). Subpart C also issued under Atomic Energy Act sec. 189 (42 U.S.C. 2239). Section 2.301 also issued under 5 U.S.C. 554. Sections 2.343, 2.346, 2.712 also issued under 5 U.S.C. 557. Section 2.340 also issued under Nuclear Waste Policy Act secs. 135, 141, Pub.L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.390 also issued under 5 U.S.C. 552. Sections 2.600–2.606 also issued under sec. 102 (42 U.S.C. 4332). Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553; Atomic Energy Act sec. 29 (42 U.S.C. 2039). Subpart K also issued under Atomic Energy Act sec. 189 (42 U.S.C. 2239); Nuclear Waste Policy Act sec. 134 (42 U.S.C. 10154). Subpart L also issued under Atomic Energy Act sec. 189 (42 U.S.C. 2239). Subpart M also issued under Atomic Energy Act sec. 184, 189 (42 U.S.C. 2234, 2239). Subpart N also issued under Atomic Energy Act sec. 189 (42 U.S.C. 2239)..

10 C. F. R. § 2.309, 10 CFR § 2.309

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Part 2. Agency Rules of Practice and Procedure (Refs & Annos)
Subpart C. Rules of General Applicability: Hearing Requests, Petitions to Intervene, Availability of Documents, Selection of Specific Hearing Procedures, Presiding Officer Powers, and General Hearing Management for NRC Adjudicatory Hearings (Refs & Annos)

§ 2.335 Consideration of Commission rules and regulations in adjudicatory proceedings.

(a) Except as provided in paragraphs (b), (c), and (d) of this section, no rule or regulation of the Commission, or any provision thereof, concerning the licensing of production and utilization facilities, source material, special nuclear material, or byproduct material, is subject to attack by way of discovery, proof, argument, or other means in any adjudicatory proceeding subject to this part.

(b) A participant to an adjudicatory proceeding subject to this part may petition that the application of a specified Commission rule or regulation or any provision thereof, of the type described in paragraph (a) of this section, be waived or an exception be made for the particular proceeding. The sole ground for petition of waiver or exception is that special circumstances with respect to the subject matter of the particular proceeding are such that the application of the rule or regulation (or a provision of it) would not serve the purposes for which the rule or regulation was adopted. The petition must be accompanied by an affidavit that identifies the specific aspect or aspects of the subject matter of the proceeding as to which the application of the rule or regulation (or provision of it) would not serve the purposes for which the rule or regulation was adopted. The affidavit must state with particularity the special circumstances alleged to justify the waiver or exception requested. Any other participant may file a response by counter-affidavit or otherwise.

(c) If, on the basis of the petition, affidavit, and any response permitted under paragraph (b) of this section, the presiding officer determines that the petitioning participant has not made a prima facie showing that the application of the specific Commission rule or regulation (or provision thereof) to a particular aspect or aspects of the subject matter of the proceeding would not serve the purposes for which the rule or regulation was adopted and that application of the rule or regulation should be waived or an exception granted, no evidence may be received on that matter and no discovery, cross examination, or argument directed to the matter will be permitted, and the presiding officer may not further consider the matter.

(d) If, on the basis of the petition, affidavit and any response provided for in paragraph (b) of this section, the presiding officer determines that the prima facie showing required by paragraph (b) of this section has been made, the presiding officer shall, before ruling on the petition, certify the matter directly to the Commission (the matter will be certified to the Commission notwithstanding other provisions on certification in this part) for a determination in the matter of whether the application of the Commission rule or regulation or provision thereof to a particular aspect or aspects of the subject matter of the proceeding, in the context of this section, should be waived or an exception made. The Commission may, among other things, on the basis of the petition, affidavits, and any response, determine

whether the application of the specified rule or regulation (or provision thereof) should be waived or an exception be made. The Commission may direct further proceedings as it considers appropriate to aid its determination.

(e) Whether or not the procedure in paragraph (b) of this section is available, a participant to an initial or renewal licensing proceeding may file a petition for rulemaking under § 2.802.

[77 FR 46593, Aug. 3, 2012]

SOURCE: 27 FR 377, Jan. 13, 1962; 50 FR 41670, Oct. 15, 1985; 51 FR 7764, March 6, 1986; 51 FR 30839, Aug. 29, 1986; 52 FR 36218, Sept. 28, 1987; 52 FR 49369, Dec. 31, 1987; 53 FR 10365, March 31, 1988; 53 FR 31679, Aug. 19, 1988; 53 FR 40022, Oct. 13, 1988; 54 FR 8276, Feb. 28, 1989; 54 FR 27869, July 3, 1989; 56 FR 40684, Aug. 15, 1991; 57 FR 5797, Feb. 18, 1992; 57 FR 18390, April 30, 1992; 58 FR 44611, Aug. 24, 1993; 58 FR 50635, Sept. 28, 1993; 60 FR 20886, April 28, 1995; 60 FR 22491, May 8, 1995; 61 FR 43407, Aug. 22, 1996; 61 FR 53555, Oct. 11, 1996; 62 FR 6668, Feb. 12, 1997; 63 FR 66730, Dec. 3, 1998; 67 FR 57089, Sept. 6, 2002; 67 FR 72091, Dec. 4, 2002; 68 FR 58798, Oct. 10, 2003; 69 FR 2233, Jan. 14, 2004; 69 FR 2236, Jan. 14, 2004; 70 FR 61886, Oct. 27, 2005; 72 FR 49148, Aug. 28, 2007; 73 FR 63566, Oct. 24, 2008; 77 FR 39387, July 3, 2012; 77 FR 39903, July 6, 2012; 77 FR 46587, Aug. 3, 2012; 79 FR 75739, Dec. 19, 2014, unless otherwise noted.

AUTHORITY: Atomic Energy Act secs.161, 181, 191 (42 U.S.C. 2201, 2231, 2241); Energy Reorganization Act sec. 201 (42 U.S.C. 5841); 5 U.S.C. 552; Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note).; Section 2.101 also issued under Atomic Energy Act secs. 53, 62, 63, 81, 103, 104 (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); Nuclear Waste Policy Act sec. 114(f) (42 U.S.C. 10143(f)); National Environmental Policy Act sec. 102 (42 U.S.C. 4332); Energy Reorganization Act sec. 301 (42 U.S.C. 5871).; Sections 2.102, 2.103, 2.104, 2.105, 2.321 also issued under Atomic Energy Act secs. 102, 103, 104, 105, 183i, 189 (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Sections 2.200–2.206 also issued under Atomic Energy Act secs. 161, 186, 234 (42 U.S.C. 2201(b), (i), (o), 2236, 2282); sec. 206 (42 U.S.C. 5846). Section 2.205(j) also issued under Pub.L. 101–410, as amended by section 3100(s), Pub.L. 104–134 (28 U.S.C. 2461 note). Subpart C also issued under Atomic Energy Act sec. 189 (42 U.S.C. 2239). Section 2.301 also issued under 5 U.S.C. 554. Sections 2.343, 2.346, 2.712 also issued under 5 U.S.C. 557. Section 2.340 also issued under Nuclear Waste Policy Act secs. 135, 141, Pub.L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.390 also issued under 5 U.S.C. 552. Sections 2.600–2.606 also issued under sec. 102 (42 U.S.C. 4332). Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553; Atomic Energy Act sec. 29 (42 U.S.C. 2039). Subpart K also issued under Atomic Energy Act sec. 189 (42 U.S.C. 2239); Nuclear Waste Policy Act sec. 134 (42 U.S.C. 10154). Subpart L also issued under Atomic Energy Act sec. 189 (42 U.S.C. 2239). Subpart M also issued under Atomic Energy Act sec. 184, 189 (42 U.S.C. 2234, 2239). Subpart N also issued under Atomic Energy Act sec. 189 (42 U.S.C. 2239)..

10 C. F. R. § 2.335, 10 CFR § 2.335

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END OF DOCUMENT

Effective: September 4, 2012

Code of Federal Regulations Currentness
Title 10. Energy
Chapter I. Nuclear Regulatory Commission (Refs & Annos)
Part 2. Agency Rules of Practice and Procedure (Refs & Annos)
Subpart H. Rule Making
§ 2.802 Petition for rulemaking.

(a) Any interested person may petition the Commission to issue, amend or rescind any regulation. The petition should be addressed to the Secretary, Attention: Rulemakings and Adjudications Staff, and sent either by mail addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; by facsimile; by hand delivery to the NRC's offices at 11555 Rockville Pike, Rockville, Maryland; or, where practicable, by electronic submission, for example, via Electronic Information Exchange, e-mail, or CD–ROM. Electronic submissions must be made in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at http://www.nrc.gov/site-help/e-submittals.html; by e-mail to MSHD.Resource@nrc.gov; or by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The guidance discusses, among other topics, the formats the NRC can accept, the use of electronic signatures, and the treatment of nonpublic information.

(b) A prospective petitioner may consult with the NRC before filing a petition for rulemaking by writing to the Chief, Rulemaking, Directives, and Editing Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. A prospective petitioner also may telephone the Rulemaking, Directives, and Editing Branch on (301) 415–7163, or toll free on (800) 368–5642, or send e-mail to NRCREP@nrc.gov.

(1) In any consultation prior to the filing of a petition for rulemaking, the assistance that may be provided by the NRC staff is limited to—

(i) Describing the procedure and process for filing and responding to a petition for rulemaking;

(ii) Clarifying an existing NRC regulation and the basis for the regulation; and

(iii) Assisting the prospective petitioner to clarify a potential petition so that the Commission is able to understand the nature of the issues of concern to the petitioner.

(2) In any consultation prior to the filing of a petition for rulemaking, in providing the assistance permitted in paragraph (b)(1) of this section, the NRC staff will not draft or develop text or alternative approaches to address matters in the prospective petition for rulemaking.

(c) Each petition filed under this section shall:

(1) Set forth a general solution to the problem or the substance or text of any proposed regulation or amendment, or specify the regulation which is to be revoked or amended;

(2) State clearly and concisely the petitioner's grounds for and interest in the action requested;

(3) Include a statement in support of the petition which shall set forth the specific issues involved, the petitioner's views or arguments with respect to those issues, relevant technical, scientific or other data involved which is reasonably available to the petitioner, and such other pertinent information as the petitioner deems necessary to support the action sought. In support of its petition, petitioner should note any specific cases of which petitioner is aware where the current rule is unduly burdensome, deficient, or needs to be strengthened.

(d) The petitioner may request the Commission to suspend all or any part of any licensing proceeding to which the petitioner is a participant pending disposition of the petition for rulemaking.

(e) If it is determined that the petition includes the information required by paragraph (c) of this section and is complete, the Director, Division of Administrative Services, Office of Administration, or designee, will assign a docket number to the petition, will cause the petition to be formally docketed, and will make a copy of the docketed petition available at the NRC Web site, http://www.nrc.gov. Public comment may be requested by publication of a notice of the docketing of the petition in the Federal Register, or, in appropriate cases, may be invited for the first time upon publication in the Federal Register of a proposed rule developed in response to the petition. Publication will be limited by the requirements of Section 181 of the Atomic Energy Act of 1954, as amended, and may be limited by order of the Commission.

(f) If it is determined by the Executive Director for Operations that the petition does not include the information required by paragraph (c) of this section and is incomplete, the petitioner will be notified of that determination and the respects in which the petition is deficient and will be accorded an opportunity to submit additional data. Ordinarily this determination will be made within 30 days from the date of receipt of the petition by the Office of the Secretary of the Commission. If the petitioner does not submit additional data to correct the deficiency within 90 days from the date of notification to the petitioner that the petition is incomplete, the petition may be returned to the petitioner without prejudice to the right of the petitioner to file a new petition.

(g) The Director, Division of Administrative Services, Office of Administration, will prepare on a semiannual basis a summary of petitions for rulemaking before the Commission, including the status of each petition. A copy of the report will be available for public inspection and copying at the NRC Web site, http://www.nrc.gov, and/or at the NRC Public Document Room.

[44 FR 61322, Oct. 25, 1979, as amended at 46 FR 35487, July 9, 1981; 52 FR 31609, Aug. 21, 1987; 53 FR 43419, Oct. 27, 1988; 53 FR 52993, Dec. 30, 1988; 54 FR 1288, Jan. 12, 1989; 54 FR 53315, Dec. 28, 1989; 56 FR 10360, March 12, 1991; 59 FR 44895, Aug. 31, 1994; 59 FR 60552, Nov. 25, 1994; 62 FR 27495, May 20, 1997; 63 FR 15742, April 1, 1998; 64 FR 48949, Sept. 9, 1999; 67 FR 57089, Sept. 6, 2002; 67 FR 72091, Dec. 4, 2002; 68 FR 58799, Oct. 10, 2003; 73 FR 5717, Jan. 31, 2008; 74 FR 62679, Dec. 1, 2009; 77 FR 46598, Aug. 3, 2012]

SOURCE: 27 FR 377, Jan. 13, 1962; 50 FR 41670, Oct. 15, 1985; 51 FR 7764, March 6, 1986; 51 FR 30839, Aug. 29, 1986; 52 FR 36218, Sept. 28, 1987; 52 FR 49369, Dec. 31, 1987; 53 FR 10365, March 31, 1988; 53 FR 31679, Aug. 19, 1988; 53 FR 40022, Oct. 13, 1988; 54 FR 8276, Feb. 28, 1989; 54 FR 27869, July 3, 1989; 56 FR 40684, Aug. 15, 1991; 57 FR 5797, Feb. 18, 1992; 57 FR 18390, April 30, 1992; 58 FR 44611, Aug. 24, 1993; 58 FR 50635, Sept. 28, 1993; 60 FR 20886, April 28, 1995; 60 FR 22491, May 8, 1995; 61 FR

43407, Aug. 22, 1996; 61 FR 53555, Oct. 11, 1996; 62 FR 6668, Feb. 12, 1997; 63 FR 66730, Dec. 3, 1998; 67 FR 57089, Sept. 6, 2002; 67 FR 72091, Dec. 4, 2002; 68 FR 58798, Oct. 10, 2003; 69 FR 2233, Jan. 14, 2004; 70 FR 61886, Oct. 27, 2005; 72 FR 49148, Aug. 28, 2007; 73 FR 63566, Oct. 24, 2008; 77 FR 39387, July 3, 2012; 77 FR 39903, July 6, 2012; 77 FR 46587, Aug. 3, 2012; 79 FR 75739, Dec. 19, 2014, unless otherwise noted.

AUTHORITY: Atomic Energy Act secs.161, 181, 191 (42 U.S.C. 2201, 2231, 2241); Energy Reorganization Act sec. 201 (42 U.S.C. 5841); 5 U.S.C. 552; Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note).; Section 2.101 also issued under Atomic Energy Act secs. 53, 62, 63, 81, 103, 104 (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); Nuclear Waste Policy Act sec. 114(f) (42 U.S.C. 10143(f)); National Environmental Policy Act sec. 102 (42 U.S.C. 4332); Energy Reorganization Act sec. 301 (42 U.S.C. 5871).; Sections 2.102, 2.103, 2.104, 2.105, 2.321 also issued under Atomic Energy Act secs. 102, 103, 104, 105, 183i, 189 (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Sections 2.200–2.206 also issued under Atomic Energy Act secs. 161, 186, 234 (42 U.S.C. 2201(b), (i), (o), 2236, 2282); sec. 206 (42 U.S.C. 5846). Section 2.205(j) also issued under Pub.L. 101–410, as amended by section 3100(s), Pub.L. 104–134 (28 U.S.C. 2461 note). Subpart C also issued under Atomic Energy Act sec. 189 (42 U.S.C. 2239). Section 2.301 also issued under 5 U.S.C. 554. Sections 2.343, 2.346, 2.712 also issued under 5 U.S.C. 557. Section 2.340 also issued under Nuclear Waste Policy Act secs. 135, 141, Pub.L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.390 also issued under 5 U.S.C. 552. Sections 2.600–2.606 also issued under sec. 102 (42 U.S.C. 4332). Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553; Atomic Energy Act sec. 29 (42 U.S.C. 2039). Subpart K also issued under Atomic Energy Act sec. 189 (42 U.S.C. 2239); Nuclear Waste Policy Act sec. 134 (42 U.S.C. 10154). Subpart L also issued under Atomic Energy Act sec. 189 (42 U.S.C. 2239). Subpart M also issued under Atomic Energy Act sec. 184, 189 (42 U.S.C. 2234, 2239). Subpart N also issued under Atomic Energy Act sec. 189 (42 U.S.C. 2239)..

10 C. F. R. § 2.802, 10 CFR § 2.802

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END OF DOCUMENT

Effective: December 10, 2014

Code of Federal Regulations Currentness
Title 10. Energy
Chapter I. Nuclear Regulatory Commission (Refs & Annos)
Part 51. Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions (Refs & Annos)
Subpart A. National Environmental Policy Act—Regulations Implementing Section 102(2)
Environmental Reports and Information—Requirements Applicable to Applicants and Petitioners for Rulemaking
Environmental Reports—Production and Utilization Facilities

§ 51.53 Postconstruction environmental reports.

(a) General. Any environmental report prepared under the provisions of this section may incorporate by reference any information contained in a prior environmental report or supplement thereto that relates to the production or utilization facility or site, or any information contained in a final environmental document previously prepared by the NRC staff that relates to the production or utilization facility or site. Documents that may be referenced include, but are not limited to, the final environmental impact statement; supplements to the final environmental impact statement, including supplements prepared at the license renewal stage; NRC staff-prepared final generic environmental impact statements; and environmental assessments and records of decisions prepared in connection with the construction permit, operating license, early site permit, combined license and any license amendment for that facility.

(b) Operating license stage. Each applicant for a license to operate a production or utilization facility covered by § 51.20 shall submit with its application a separate document entitled "Supplement to Applicant's Environmental Report—Operating License Stage," which will update "Applicant's Environmental Report—Construction Permit Stage." Unless otherwise required by the Commission, the applicant for an operating license for a nuclear power reactor shall submit this report only in connection with the first licensing action authorizing full-power operation. In this report, the applicant shall discuss the same matters described in §§ 51.45, 51.51, and 51.52, but only to the extent that they differ from those discussed or reflect new information in addition to that discussed in the final environmental impact statement prepared by the Commission in connection with the construction permit. No discussion of need for power, or of alternative energy sources, or of alternative sites for the facility, is required in this report. As stated in § 51.23, no discussion of the environmental impacts of the continued storage of spent fuel is required in this report.

(c) Operating license renewal stage.

(1) Each applicant for renewal of a license to operate a nuclear power plant under part 54 of this chapter shall submit with its application a separate document entitled "Applicant's Environmental Report—Operating License Renewal Stage."

(2) The report must contain a description of the proposed action, including the applicant's plans to modify the facility or its administrative control procedures as described in accordance with § 54.21 of this chapter. This report must describe in detail the affected environment around the plant, the modifications directly affecting the environment or any plant effluents,

and any planned refurbishment activities. In addition, the applicant shall discuss in this report the environmental impacts of alternatives and any other matters described in § 51.45. The report is not required to include discussion of need for power or the economic costs and economic benefits of the proposed action or of alternatives to the proposed action except insofar as such costs and benefits are either essential for a determination regarding the inclusion of an alternative in the range of alternatives considered or relevant to mitigation. The environmental report need not discuss other issues not related to the environmental effects of the proposed action and the alternatives. As stated in § 51.23, no discussion of the environmental impacts of the continued storage of spent fuel is required in this report.

(3) For those applicants seeking an initial renewed license and holding an operating license, construction permit, or combined license as of June 30, 1995, the environmental report shall include the information required in paragraph (c)(2) of this section subject to the following conditions and considerations:

(i) The environmental report for the operating license renewal stage is not required to contain analyses of the environmental impacts of the license renewal issues identified as Category 1 issues in appendix B to subpart A of this part.

(ii) The environmental report must contain analyses of the environmental impacts of the proposed action, including the impacts of refurbishment activities, if any, associated with license renewal and the impacts of operation during the renewal term, for those issues identified as Category 2 issues in appendix B to subpart A of this part. The required analyses are as follows:

(A) If the applicant's plant utilizes cooling towers or cooling ponds and withdraws makeup water from a river, an assessment of the impact of the proposed action on water availability and competing water demands, the flow of the river, and related impacts on stream (aquatic) and riparian (terrestrial) ecological communities must be provided. The applicant shall also provide an assessment of the impacts of the withdrawal of water from the river on alluvial aquifers during low flow.

(B) If the applicant's plant utilizes once-through cooling or cooling pond heat dissipation systems, the applicant shall provide a copy of current Clean Water Act 316(b) determinations and, if necessary, a 316(a) variance in accordance with 40 CFR part 125, or equivalent State permits and supporting documentation. If the applicant cannot provide these documents, it shall assess the impact of the proposed action on fish and shellfish resources resulting from thermal changes and impingement and entrainment.

(C) If the applicant's plant pumps more than 100 gallons (total onsite) of groundwater per minute, an assessment of the impact of the proposed action on groundwater must be provided.

(D) If the applicant's plant is located at an inland site and utilizes cooling ponds, an assessment of the impact of the proposed action on groundwater quality must be provided.

(E) All license renewal applicants shall assess the impact of refurbishment, continued operations, and other license-renewal-related construction activities on import-

ant plant and animal habitats. Additionally, the applicant shall assess the impact of the proposed action on threatened or endangered species in accordance with Federal laws protecting wildlife, including but not limited to, the Endangered Species Act, and essential fish habitat in accordance with the Magnuson–Stevens Fishery Conservation and Management Act.

(F) [Reserved by 78 FR 37316]

(G) If the applicant's plant uses a cooling pond, lake, or canal or discharges into a river, an assessment of the impact of the proposed action on public health from thermophilic organisms in the affected water must be provided.

(H) If the applicant's transmission lines that were constructed for the specific purpose of connecting the plant to the transmission system do not meet the recommendations of the National Electric Safety Code for preventing electric shock from induced currents, an assessment of the impact of the proposed action on the potential shock hazard from the transmission lines must be provided.

(I), (J) [Reserved by 78 FR 37316]

(K) All applicants shall identify any potentially affected historic or archaeological properties and assess whether any of these properties will be affected by future plant operations and any planned refurbishment activities in accordance with the National Historic Preservation Act.

(L) If the staff has not previously considered severe accident mitigation alternatives for the applicant's plant in an environmental impact statement or related supplement or in an environmental assessment, a consideration of alternatives to mitigate severe accidents must be provided.

(M) [Reserved]

(N) Applicants shall provide information on the general demographic composition of minority and low-income populations and communities (by race and ethnicity) residing in the immediate vicinity of the plant that could be affected by the renewal of the plant's operating license, including any planned refurbishment activities, and ongoing and future plant operations.

(O) Applicants shall provide information about other past, present, and reasonably foreseeable future actions occurring in the vicinity of the nuclear plant that may result in a cumulative effect.

(P) An applicant shall assess the impact of any documented inadvertent releases of radionuclides into groundwater. The applicant shall include in its assessment a description of any groundwater protection program used for the surveillance of piping and components containing radioactive liquids for which a pathway to groundwater may exist. The assessment must also include a description of any past inadvertent releases and the projected impact to the environment (e.g., aquifers, rivers, lakes, ponds, ocean) during the license renewal term.

(iii) The report must contain a consideration of alternatives for reducing adverse impacts, as required by § 51.45(c), for all Category 2 li-

cense renewal issues in appendix B to subpart A of this part. No such consideration is required for Category 1 issues in appendix B to subpart A of this part.

(iv) The environmental report must contain any new and significant information regarding the environmental impacts of license renewal of which the applicant is aware.

(d) Postoperating license stage. Each applicant for a license amendment authorizing decommissioning activities for a production or utilization facility either for unrestricted use or based on continuing use restrictions applicable to the site; and each applicant for a license amendment approving a license termination plan or decommissioning plan under § 50.82 of this chapter either for unrestricted use or based on continuing use restrictions applicable to the site; and each applicant for a license or license amendment to store spent fuel at a nuclear power reactor after expiration of the operating license for the nuclear power reactor shall submit with its application a separate document, entitled "Supplement to Applicant's Environmental Report—Post Operating License Stage," which will update "Applicant's Environmental Report—Operating License Stage," as appropriate, to reflect any new information or significant environmental change associated with the applicant's proposed decommissioning activities or with the applicant's proposed activities with respect to the planned storage of spent fuel. As stated in § 51.23, no discussion of the environmental impacts of the continued storage of spent fuel is required in this report. The "Supplement to Applicant's Environmental Report—Post Operating License Stage" may incorporate by reference any information contained in "Applicant's Environmental Report—Construction Permit Stage."

[49 FR 34694, Aug. 31, 1984; 53 FR 24052, June 27, 1988; 61 FR 28487, June 5, 1996; 61 FR 37351, July 18, 1996; 61 FR 39304, July 29, 1996; 61 FR 66542, Dec. 18, 1996; 64 FR 48506, Sept. 3, 1999; 68 FR 58810, Oct. 10, 2003; 72 FR 49513, Aug. 28, 2007; 78 FR 37316, June 20, 2013; 79 FR 56260, Sept. 19, 2014; 79 FR 66604, Nov. 10, 2014]

SOURCE: 39 FR 26279, July 18, 1974; 49 FR 9381 , March 12, 1984; 53 FR 31681, Aug. 19, 1988; 54 FR 27869, July 3, 1989; 57 FR 18391, April 30, 1992; 59 FR 48959, Sept. 23, 1994; 60 FR 22491, May 8, 1995; 65 FR 54950, Sept. 12, 2000; 67 FR 57099, Sept. 6, 2002; 67 FR 72091, Dec. 4, 2002; 68 FR 58810, Oct. 10, 2003; 77 FR 39907, July 6, 2012; 78 FR 37316, June 20, 2013; 78 FR 46256, July 31, 2013; 79 FR 75740, Dec. 19, 2014, unless otherwise noted.

AUTHORITY: Atomic Energy Act sec. 161, 1701 (42 U.S.C. 2201, 2297f); Energy Reorganization Act secs. 201, 202, 211 (42 U.S.C. 5841, 5842, 5851); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note). Subpart A also issued under National Environmental Policy Act secs. 102, 104, 105 (42 U.S.C. 4332, 4334, 4335); Pub.L. 95–604, Title II, 92 Stat. 3033–3041; Atomic Energy Act sec. 193 (42 U.S.C. 2243). Sections 51.20, 51.30, 51.60, 51.80, and 51.97 also issued under Nuclear Waste Policy Act secs. 135, 141, 148 (42 U.S.C. 10155, 10161, 10168). Section 51.22 also issued under Atomic Energy Act sec. 274 (42 U.S.C. 2021) and under Nuclear Waste Policy Act sec. 121 (42 U.S.C. 10141). Sections 51.43, 51.67, and 51.109 also issued under Nuclear Waste Policy Act sec. 114(f) (42 U.S.C. 10134(f)).

10 C. F. R. § 51.53, 10 CFR § 51.53

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Code of Federal Regulations Currentness
Title 10. Energy
Chapter I. Nuclear Regulatory Commission (Refs & Annos)
Part 51. Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions (Refs & Annos)
Subpart A. National Environmental Policy Act—Regulations Implementing Section 102(2)
Environmental Impact Statements
Final Environmental Impact Statements—General Requirements
§ 51.94 Requirement to consider final environmental impact statement.

The final environmental impact statement, together with any comments and any supplement, will accompany the application or petition for rulemaking through, and be considered in, the Commission's decisionmaking process. The final environmental impact statement, together with any comments and any supplement, will be made a part of the record of the appropriate adjudicatory or rulemaking proceeding.

SOURCE: 39 FR 26279, July 18, 1974; 49 FR 9381, March 12, 1984; 53 FR 31681, Aug. 19, 1988; 54 FR 27869, July 3, 1989; 57 FR 18391, April 30, 1992; 59 FR 48959, Sept. 23, 1994; 60 FR 22491, May 8, 1995; 65 FR 54950, Sept. 12, 2000; 67 FR 57099, Sept. 6, 2002; 67 FR 72091, Dec. 4, 2002; 68 FR 58810, Oct. 10, 2003; 77 FR 39907, July 6, 2012; 78 FR 37316, June 20, 2013; 78 FR 46256, July 31, 2013; 79 FR 75740, Dec. 19, 2014, unless otherwise noted.

AUTHORITY: Atomic Energy Act sec. 161, 1701 (42 U.S.C. 2201, 2297f); Energy Reorganization Act secs. 201, 202, 211 (42 U.S.C. 5841, 5842, 5851); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note). Subpart A also issued under National Environmental Policy Act secs. 102, 104, 105 (42 U.S.C. 4332, 4334, 4335); Pub.L. 95–604, Title II, 92 Stat. 3033–3041; Atomic Energy Act sec. 193 (42 U.S.C. 2243). Sections 51.20, 51.30, 51.60, 51.80, and 51.97 also issued under Nuclear Waste Policy Act secs. 135, 141, 148 (42 U.S.C. 10155, 10161, 10168). Section 51.22 also issued under Atomic Energy Act sec. 274 (42 U.S.C. 2021) and under Nuclear Waste Policy Act sec. 121 (42 U.S.C. 10141). Sections 51.43, 51.67, and 51.109 also issued under Nuclear Waste Policy Act sec. 114(f) (42 U.S.C. 10134(f)).

10 C. F. R. § 51.94, 10 CFR § 51.94

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Code of Federal Regulations Currentness
Title 10. Energy
Chapter I. Nuclear Regulatory Commission (Refs & Annos)
Part 51. Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions (Refs & Annos)
Subpart A. National Environmental Policy Act—Regulations Implementing Section 102(2)
Environmental Impact Statements
Final Environmental Impact Statements—Production and Utilization Facilities

§ 51.95 Postconstruction environmental impact statements.

(a) General. Any supplement to a final environmental impact statement or any environmental assessment prepared under the provisions of this section may incorporate by reference any information contained in a final environmental document previously prepared by the NRC staff that relates to the same production or utilization facility. Documents that may be referenced include, but are not limited to, the final environmental impact statement; supplements to the final environmental impact statement, including supplements prepared at the operating license stage; NRC staff-prepared final generic environmental impact statements; environmental assessments and records of decisions prepared in connection with the construction permit, the operating license, the early site permit, or the combined license and any license amendment for that facility. A supplement to a final environmental impact statement will include a request for comments as provided in § 51.73.

(b) Initial operating license stage. In connection with the issuance of an operating license for a production or utilization facility, the NRC staff will prepare a supplement to the final environmental impact statement on the construction permit for that facility, which will update the prior environmental review. The supplement will only cover matters that differ from the final environmental impact statement or that reflect significant new information concerning matters discussed in the final environmental impact statement. Unless otherwise determined by the Commission, a supplement on the operation of a nuclear power plant will not include a discussion of need for power, or of alternative energy sources, or of alternative sites, and will only be prepared in connection with the first licensing action authorizing full-power operation. As stated in § 51.23, the generic impact determinations regarding the continued storage of spent fuel in NUREG–2157 shall be deemed incorporated into the environmental impact statement.

(c) Operating license renewal stage. In connection with the renewal of an operating license or combined license for a nuclear power plant under 10 CFR parts 52 or 54 of this chapter, the Commission shall prepare an environmental impact statement, which is a supplement to the Commission's NUREG–1437, “Generic Environmental Impact Statement for License Renewal of Nuclear Plants” (June 2013), which is available in the NRC's Public Document Room, 11555 Rockville Pike, Rockville, Maryland 20852.

(1) The supplemental environmental impact statement for the operating license renewal stage shall address those issues as required by § 51.71. In addition, the NRC staff must comply with 40 CFR 1506.6(b)(3) in conducting the additional scoping process as required by § 51.71(a).

(2) The supplemental environmental impact

statement for license renewal is not required to include discussion of need for power or the economic costs and economic benefits of the proposed action or of alternatives to the proposed action except insofar as such benefits and costs are either essential for a determination regarding the inclusion of an alternative in the range of alternatives considered or relevant to mitigation. In addition, the supplemental environmental impact statement prepared at the license renewal stage need not discuss other issues not related to the environmental effects of the proposed action and the alternatives. The analysis of alternatives in the supplemental environmental impact statement should be limited to the environmental impacts of such alternatives and should otherwise be prepared in accordance with § 51.71 and appendix A to subpart A of this part. As stated in § 51.23, the generic impact determinations regarding the continued storage of spent fuel in NUREG–2157 shall be deemed incorporated into the supplemental environmental impact statement.

(3) The supplemental environmental impact statement shall be issued as a final impact statement in accordance with §§ 51.91 and 51.93 after considering any significant new information relevant to the proposed action contained in the supplement or incorporated by reference.

(4) The supplemental environmental impact statement must contain the NRC staff's recommendation regarding the environmental acceptability of the license renewal action. In order to make recommendations and reach a final decision on the proposed action, the NRC staff, adjudicatory officers, and Commission shall integrate the conclusions in the generic environmental impact statement for issues designated as Category 1 with information developed for those Category 2 issues applicable to the plant under § 51.53(c)(3)(ii) and any new and significant information. Given this information, the NRC staff, adjudicatory officers, and Commission shall determine whether or not the adverse environmental impacts of license renewal are so great that preserving the option of license renewal for energy planning decisionmakers would be unreasonable.

(d) Postoperating license stage. In connection with the amendment of an operating or combined license authorizing decommissioning activities at a production or utilization facility covered by § 51.20, either for unrestricted use or based on continuing use restrictions applicable to the site, or with the issuance, amendment or renewal of a license to store spent fuel at a nuclear power reactor after expiration of the operating or combined license for the nuclear power reactor, the NRC staff will prepare a supplemental environmental impact statement for the post operating or post combined license stage or an environmental assessment, as appropriate, which will update the prior environmental documentation prepared by the NRC for compliance with NEPA under the provisions of this part. The supplement or assessment may incorporate by reference any information contained in the final environmental impact statement—for the operating or combined license stage, as appropriate, or in the records of decision prepared in connection with the early site permit, construction permit, operating license, or combined license for that facility. The supplement will include a request for comments as provided in § 51.73. As stated in § 51.23, the generic impact determinations regarding the continued storage of spent fuel in NUREG–2157 shall be deemed incorporated into the supplemental environmental impact statement or shall be considered in the environmental assessment, if the impacts of continued storage of spent fuel are applicable to the proposed action.

[49 FR 34695, Aug. 31, 1984; 53 FR 24052, June 27, 1988; 61 FR 28489, June 5, 1996; 61 FR 37351,

July 18, 1996; 61 FR 39304, July 29, 1996; 61 FR 39555, July 30, 1996; 61 FR 66545, Dec. 18, 1996; 72 FR 49516, Aug. 28, 2007; 78 FR 37317, June 20, 2013; 79 FR 56262, Sept. 19, 2014]

SOURCE: 39 FR 26279, July 18, 1974; 49 FR 9381 , March 12, 1984; 53 FR 31681, Aug. 19, 1988; 54 FR 27869, July 3, 1989; 57 FR 18391, April 30, 1992; 59 FR 48959, Sept. 23, 1994; 60 FR 22491, May 8, 1995; 65 FR 54950, Sept. 12, 2000; 67 FR 57099, Sept. 6, 2002; 67 FR 72091, Dec. 4, 2002; 68 FR 58810, Oct. 10, 2003; 77 FR 39907, July 6, 2012; 78 FR 37316, June 20, 2013; 78 FR 46256, July 31, 2013; 79 FR 75740, Dec. 19, 2014, unless otherwise noted.

AUTHORITY: Atomic Energy Act sec. 161, 1701 (42 U.S.C. 2201, 2297f); Energy Reorganization Act secs. 201, 202, 211 (42 U.S.C. 5841, 5842, 5851); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note). Subpart A also issued under National Environmental Policy Act secs. 102, 104, 105 (42 U.S.C. 4332, 4334, 4335); Pub.L. 95–604, Title II, 92 Stat. 3033–3041; Atomic Energy Act sec. 193 (42 U.S.C. 2243). Sections 51.20, 51.30, 51.60, 51.80, and 51.97 also issued under Nuclear Waste Policy Act secs. 135, 141, 148 (42 U.S.C. 10155, 10161, 10168). Section 51.22 also issued under Atomic Energy Act sec. 274 (42 U.S.C. 2021) and under Nuclear Waste Policy Act sec. 121 (42 U.S.C. 10141). Sections 51.43, 51.67, and 51.109 also issued under Nuclear Waste Policy Act sec. 114(f) (42 U.S.C. 10134(f)).

10 C. F. R. § 51.95, 10 CFR § 51.95

Current through April 9, 2015; 80 FR 19036

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when the statement's adequacy is the subject of a judicial action which is not final, the agency shall so specify."

[49 FR 9381, Mar. 12, 1984, as amended at 61 FR 28490, June 5, 1996; 61 FR 66546, Dec. 18, 1996]

APPENDIX B TO SUBPART A OF PART 51—ENVIRONMENTAL EFFECT OF RENEWING THE OPERATING LICENSE OF A NUCLEAR POWER PLANT

The Commission has assessed the environmental impacts associated with granting a renewed operating license for a nuclear power plant to a licensee who holds either an operating license or construction permit as of June 30, 1995. Table B–1 summarizes the Commission's findings on the scope and magnitude of environmental impacts of renewing the operating license for a nuclear power plant as required by section 102(2) of the National Environmental Policy Act of 1969, as amended. Table B–1, subject to an evaluation of those issues identified in Category 2 as requiring further analysis and possible significant new information, represents the analysis of the environmental impacts associated with renewal of any operating license and is to be used in accordance with §51.95(c). On a 10-year cycle, the Commission intends to review the material in this appendix and update it if necessary. A scoping notice must be published in the FEDERAL REGISTER indicating the results of the NRC's review and inviting public comments and proposals for other areas that should be updated.

TABLE B–1—SUMMARY OF FINDINGS ON NEPA ISSUES FOR LICENSE RENEWAL OF NUCLEAR POWER PLANTS [1]

Issue	Category [2]	Finding [3]
Land Use		
Onsite land use	1	SMALL. Changes in onsite land use from continued operations and refurbishment associated with license renewal would be a small fraction of the nuclear power plant site and would involve only land that is controlled by the licensee.
Offsite land use	1	SMALL. Offsite land use would not be affected by continued operations and refurbishment associated with license renewal.
Offsite land use in transmission line right-of-ways (ROWs) [4].	1	SMALL. Use of transmission line ROWs from continued operations and refurbishment associated with license renewal would continue with no change in land use restrictions.
Visual Resources		
Aesthetic impacts	1	SMALL. No important changes to the visual appearance of plant structures or transmission lines are expected from continued operations and refurbishment associated with license renewal.
Air Quality		
Air quality impacts (all plants)	1	SMALL. Air quality impacts from continued operations and refurbishment associated with license renewal are expected to be small at all plants. Emissions resulting from refurbishment activities at locations in or near air quality nonattainment or maintenance areas would be short-lived and would cease after these refurbishment activities are completed. Operating experience has shown that the scale of refurbishment activities has not resulted in exceedance of the *de minimis* thresholds for criteria pollutants, and best management practices including fugitive dust controls and the imposition of permit conditions in State and local air emissions permits would ensure conformance with applicable State or Tribal Implementation Plans. Emissions from emergency diesel generators and fire pumps and routine operations of boilers used for space heating would not be a concern, even for plants located in or adjacent to nonattainment areas. Impacts from cooling tower particulate emissions even under the worst-case situations have been small.
Air quality effects of transmission lines [4].	1	SMALL. Production of ozone and oxides of nitrogen is insignificant and does not contribute measurably to ambient levels of these gases.
Noise		
Noise impacts	1	SMALL. Noise levels would remain below regulatory guidelines for offsite receptors during continued operations and refurbishment associated with license renewal.

TABLE B–1—SUMMARY OF FINDINGS ON NEPA ISSUES FOR LICENSE RENEWAL OF NUCLEAR POWER PLANTS [1]—Continued

Issue	Category [2]	Finding [3]
Geologic Environment		
Geology and soils	1	SMALL. The effect of geologic and soil conditions on plant operations and the impact of continued operations and refurbishment activities on geology and soils would be small for all nuclear power plants and would not change appreciably during the license renewal term.
Surface Water Resources		
Surface water use and quality (non-cooling system impacts).	1	SMALL. Impacts are expected to be small if best management practices are employed to control soil erosion and spills. Surface water use associated with continued operations and refurbishment associated with license renewal would not increase significantly or would be reduced if refurbishment occurs during a plant outage.
Altered current patterns at intake and discharge structures.	1	SMALL. Altered current patterns would be limited to the area in the vicinity of the intake and discharge structures. These impacts have been small at operating nuclear power plants.
Altered salinity gradients	1	SMALL. Effects on salinity gradients would be limited to the area in the vicinity of the intake and discharge structures. These impacts have been small at operating nuclear power plants.
Altered thermal stratification of lakes	1	SMALL. Effects on thermal stratification would be limited to the area in the vicinity of the intake and discharge structures. These impacts have been small at operating nuclear power plants.
Scouring caused by discharged cooling water.	1	SMALL. Scouring effects would be limited to the area in the vicinity of the intake and discharge structures. These impacts have been small at operating nuclear power plants.
Discharge of metals in cooling system effluent.	1	SMALL. Discharges of metals have not been found to be a problem at operating nuclear power plants with cooling-tower-based heat dissipation systems and have been satisfactorily mitigated at other plants. Discharges are monitored and controlled as part of the National Pollutant Discharge Elimination System (NPDES) permit process.
Discharge of biocides, sanitary wastes, and minor chemical spills.	1	SMALL. The effects of these discharges are regulated by Federal and State environmental agencies. Discharges are monitored and controlled as part of the NPDES permit process. These impacts have been small at operating nuclear power plants.
Surface water use conflicts (plants with once-through cooling systems).	1	SMALL. These conflicts have not been found to be a problem at operating nuclear power plants with once-through heat dissipation systems.
Surface water use conflicts (plants with cooling ponds or cooling towers using makeup water from a river).	2	SMALL or MODERATE. Impacts could be of small or moderate significance, depending on makeup water requirements, water availability, and competing water demands.
Effects of dredging on surface water quality.	1	SMALL. Dredging to remove accumulated sediments in the vicinity of intake and discharge structures and to maintain barge shipping has not been found to be a problem for surface water quality. Dredging is performed under permit from the U.S. Army Corps of Engineers, and possibly, from other State or local agencies.
Temperature effects on sediment transport capacity.	1	SMALL. These effects have not been found to be a problem at operating nuclear power plants and are not expected to be a problem.
Groundwater Resources		
Groundwater contamination and use (non-cooling system impacts).	1	SMALL. Extensive dewatering is not anticipated from continued operations and refurbishment associated with license renewal. Industrial practices involving the use of solvents, hydrocarbons, heavy metals, or other chemicals, and/or the use of wastewater ponds or lagoons have the potential to contaminate site groundwater, soil, and subsoil. Contamination is subject to State or Environmental Protection Agency regulated clean-up and monitoring programs. The application of best management practices for handling any materials produced or used during these activities would reduce impacts.
Groundwater use conflicts (plants that withdraw less than 100 gallons per minute [gpm]).	1	SMALL. Plants that withdraw less than 100 gpm are not expected to cause any groundwater use conflicts.
Groundwater use conflicts (plants that withdraw more than 100 gallons per minute [gpm]).	2	SMALL, MODERATE, or LARGE. Plants that withdraw more than 100 gpm could cause groundwater use conflicts with nearby groundwater users.

TABLE B–1—SUMMARY OF FINDINGS ON NEPA ISSUES FOR LICENSE RENEWAL OF NUCLEAR POWER PLANTS [1]—Continued

Issue	Category [2]	Finding [3]
Groundwater use conflicts (plants with closed-cycle cooling systems that withdraw makeup water from a river).	2	SMALL, MODERATE, or LARGE. Water use conflicts could result from water withdrawals from rivers during low-flow conditions, which may affect aquifer recharge. The significance of impacts would depend on makeup water requirements, water availability, and competing water demands.
Groundwater quality degradation resulting from water withdrawals.	1	SMALL. Groundwater withdrawals at operating nuclear power plants would not contribute significantly to groundwater quality degradation.
Groundwater quality degradation (plants with cooling ponds in salt marshes).	1	SMALL. Sites with closed-cycle cooling ponds could degrade groundwater quality. However, groundwater in salt marshes is naturally brackish and thus, not potable. Consequently, the human use of such groundwater is limited to industrial purposes.
Groundwater quality degradation (plants with cooling ponds at inland sites).	2	SMALL, MODERATE, or LARGE. Inland sites with closed-cycle cooling ponds could degrade groundwater quality. The significance of the impact would depend on cooling pond water quality, site hydrogeologic conditions (including the interaction of surface water and groundwater), and the location, depth, and pump rate of water wells.
Radionuclides released to groundwater.	2	SMALL or MODERATE. Leaks of radioactive liquids from plant components and pipes have occurred at numerous plants. Groundwater protection programs have been established at all operating nuclear power plants to minimize the potential impact from any inadvertent releases. The magnitude of impacts would depend on site-specific characteristics.
Terrestrial Resources		
Effects on terrestrial resources (non-cooling system impacts).	2	SMALL, MODERATE, or LARGE. Impacts resulting from continued operations and refurbishment associated with license renewal may affect terrestrial communities. Application of best management practices would reduce the potential for impacts. The magnitude of impacts would depend on the nature of the activity, the status of the resources that could be affected, and the effectiveness of mitigation.
Exposure of terrestrial organisms to radionuclides.	1	SMALL. Doses to terrestrial organisms from continued operations and refurbishment associated with license renewal are expected to be well below exposure guidelines developed to protect these organisms.
Cooling system impacts on terrestrial resources (plants with once-through cooling systems or cooling ponds).	1	SMALL. No adverse effects to terrestrial plants or animals have been reported as a result of increased water temperatures, fogging, humidity, or reduced habitat quality. Due to the low concentrations of contaminants in cooling system effluents, uptake and accumulation of contaminants in the tissues of wildlife exposed to the contaminated water or aquatic food sources are not expected to be significant issues.
Cooling tower impacts on vegetation (plants with cooling towers).	1	SMALL. Impacts from salt drift, icing, fogging, or increased humidity associated with cooling tower operation have the potential to affect adjacent vegetation, but these impacts have been small at operating nuclear power plants and are not expected to change over the license renewal term.
Bird collisions with plant structures and transmission lines [4].	1	SMALL. Bird collisions with cooling towers and other plant structures and transmission lines occur at rates that are unlikely to affect local or migratory populations and the rates are not expected to change.
Water use conflicts with terrestrial resources (plants with cooling ponds or cooling towers using makeup water from a river).	2	SMALL or MODERATE. Impacts on terrestrial resources in riparian communities affected by water use conflicts could be of moderate significance.
Transmission line right-of-way (ROW) management impacts on terrestrial resources [4].	1	SMALL. Continued ROW management during the license renewal term is expected to keep terrestrial communities in their current condition. Application of best management practices would reduce the potential for impacts.
Electromagnetic fields on flora and fauna (plants, agricultural crops, honeybees, wildlife, livestock) [4].	1	SMALL. No significant impacts of electromagnetic fields on terrestrial flora and fauna have been identified. Such effects are not expected to be a problem during the license renewal term.
Aquatic Resources		
Impingement and entrainment of aquatic organisms (plants with once-through cooling systems or cooling ponds).	2	SMALL, MODERATE, or LARGE. The impacts of impingement and entrainment are small at many plants but may be moderate or even large at a few plants with once-through and cooling-pond cooling systems, depending on cooling system withdrawal rates and volumes and the aquatic resources at the site.
Impingement and entrainment of aquatic organisms (plants with cooling towers).	1	SMALL. Impingement and entrainment rates are lower at plants that use closed-cycle cooling with cooling towers because the rates and volumes of water withdrawal needed for makeup are minimized.

TABLE B–1—SUMMARY OF FINDINGS ON NEPA ISSUES FOR LICENSE RENEWAL OF NUCLEAR POWER PLANTS [1]—Continued

Issue	Category [2]	Finding [3]
Entrainment of phytoplankton and zooplankton (all plants).	1	SMALL. Entrainment of phytoplankton and zooplankton has not been found to be a problem at operating nuclear power plants and is not expected to be a problem during the license renewal term.
Thermal impacts on aquatic organisms (plants with once-through cooling systems or cooling ponds).	2	SMALL, MODERATE, or LARGE. Most of the effects associated with thermal discharges are localized and are not expected to affect overall stability of populations or resources. The magnitude of impacts, however, would depend on site-specific thermal plume characteristics and the nature of aquatic resources in the area.
Thermal impacts on aquatic organisms (plants with cooling towers).	1	SMALL. Thermal effects associated with plants that use cooling towers are expected to be small because of the reduced amount of heated discharge.
Infrequently reported thermal impacts (all plants).	1	SMALL. Continued operations during the license renewal term are expected to have small thermal impacts with respect to the following: Cold shock has been satisfactorily mitigated at operating nuclear plants with once-through cooling systems, has not endangered fish populations or been found to be a problem at operating nuclear power plants with cooling towers or cooling ponds, and is not expected to be a problem. Thermal plumes have not been found to be a problem at operating nuclear power plants and are not expected to be a problem. Thermal discharge may have localized effects but is not expected to affect the larger geographical distribution of aquatic organisms. Premature emergence has been found to be a localized effect at some operating nuclear power plants but has not been a problem and is not expected to be a problem. Stimulation of nuisance organisms has been satisfactorily mitigated at the single nuclear power plant with a once-through cooling system where previously it was a problem. It has not been found to be a problem at operating nuclear power plants with cooling towers or cooling ponds and is not expected to be a problem.
Effects of cooling water discharge on dissolved oxygen, gas supersaturation, and eutrophication.	1	SMALL. Gas supersaturation was a concern at a small number of operating nuclear power plants with once-through cooling systems but has been mitigated. Low dissolved oxygen was a concern at one nuclear power plant with a once-through cooling system but has been mitigated. Eutrophication (nutrient loading) and resulting effects on chemical and biological oxygen demands have not been found to be a problem at operating nuclear power plants.
Effects of non-radiological contaminants on aquatic organisms.	1	SMALL. Best management practices and discharge limitations of NPDES permits are expected to minimize the potential for impacts to aquatic resources during continued operations and refurbishment associated with license renewal. Accumulation of metal contaminants has been a concern at a few nuclear power plants but has been satisfactorily mitigated by replacing copper alloy condenser tubes with those of another metal.
Exposure of aquatic organisms to radionuclides.	1	SMALL. Doses to aquatic organisms are expected to be well below exposure guidelines developed to protect these aquatic organisms.
Effects of dredging on aquatic organisms.	1	SMALL. Dredging at nuclear power plants is expected to occur infrequently, would be of relatively short duration, and would affect relatively small areas. Dredging is performed under permit from the U.S. Army Corps of Engineers, and possibly, from other State or local agencies.
Water use conflicts with aquatic resources (plants with cooling ponds or cooling towers using makeup water from a river).	2	SMALL or MODERATE. Impacts on aquatic resources in stream communities affected by water use conflicts could be of moderate significance in some situations.
Effects on aquatic resources (non-cooling system impacts).	1	SMALL. Licensee application of appropriate mitigation measures is expected to result in no more than small changes to aquatic communities from their current condition.
Impacts of transmission line right-of-way (ROW) management on aquatic resources [4].	1	SMALL. Licensee application of best management practices to ROW maintenance is expected to result in no more than small impacts to aquatic resources.
Losses from predation, parasitism, and disease among organisms exposed to sublethal stresses.	1	SMALL. These types of losses have not been found to be a problem at operating nuclear power plants and are not expected to be a problem during the license renewal term.

TABLE B–1—SUMMARY OF FINDINGS ON NEPA ISSUES FOR LICENSE RENEWAL OF NUCLEAR POWER PLANTS [1]—Continued

Issue	Category [2]	Finding [3]
Special Status Species and Habitats		
Threatened, endangered, and protected species and essential fish habitat.	2	The magnitude of impacts on threatened, endangered, and protected species, critical habitat, and essential fish habitat would depend on the occurrence of listed species and habitats and the effects of power plant systems on them. Consultation with appropriate agencies would be needed to determine whether special status species or habitats are present and whether they would be adversely affected by continued operations and refurbishment associated with license renewal.
Historic and Cultural Resources		
Historic and cultural resources [4]	2	Continued operations and refurbishment associated with license renewal are expected to have no more than small impacts on historic and cultural resources located onsite and in the transmission line ROW because most impacts could be mitigated by avoiding those resources. The National Historic Preservation Act (NHPA) requires the Federal agency to consult with the State Historic Preservation Officer (SHPO) and appropriate Native American Tribes to determine the potential effects on historic properties and mitigation, if necessary.
Socioeconomics		
Employment and income, recreation and tourism.	1	SMALL. Although most nuclear plants have large numbers of employees with higher than average wages and salaries, employment, income, recreation, and tourism impacts from continued operations and refurbishment associated with license renewal are expected to be small.
Tax revenues	1	SMALL. Nuclear plants provide tax revenue to local jurisdictions in the form of property tax payments, payments in lieu of tax (PILOT), or tax payments on energy production. The amount of tax revenue paid during the license renewal term as a result of continued operations and refurbishment associated with license renewal is not expected to change.
Community services and education ..	1	SMALL. Changes resulting from continued operations and refurbishment associated with license renewal to local community and educational services would be small. With little or no change in employment at the licensee's plant, value of the power plant, payments on energy production, and PILOT payments expected during the license renewal term, community and educational services would not be affected by continued power plant operations.
Population and housing	1	SMALL. Changes resulting from continued operations and refurbishment associated with license renewal to regional population and housing availability and value would be small. With little or no change in employment at the licensee's plant expected during the license renewal term, population and housing availability and values would not be affected by continued power plant operations.
Transportation	1	SMALL. Changes resulting from continued operations and refurbishment associated with license renewal to traffic volumes would be small.
Human Health		
Radiation exposures to the public	1	SMALL. Radiation doses to the public from continued operations and refurbishment associated with license renewal are expected to continue at current levels, and would be well below regulatory limits.
Radiation exposures to plant workers	1	SMALL. Occupational doses from continued operations and refurbishment associated with license renewal are expected to be within the range of doses experienced during the current license term, and would continue to be well below regulatory limits.
Human health impact from chemicals	1	SMALL. Chemical hazards to plant workers resulting from continued operations and refurbishment associated with license renewal are expected to be minimized by the licensee implementing good industrial hygiene practices as required by permits and Federal and State regulations. Chemical releases to the environment and the potential for impacts to the public are expected to be minimized by adherence to discharge limitations of NPDES and other permits.
Microbiological hazards to the public (plants with cooling ponds or canals or cooling towers that discharge to a river).	2	SMALL, MODERATE, or LARGE. These organisms are not expected to be a problem at most operating plants except possibly at plants using cooling ponds, lakes, or canals, or that discharge into rivers. Impacts would depend on site-specific characteristics.

TABLE B–1—SUMMARY OF FINDINGS ON NEPA ISSUES FOR LICENSE RENEWAL OF NUCLEAR POWER PLANTS [1]—Continued

Issue	Category [2]	Finding [3]
Microbiological hazards to plant workers.	1	SMALL. Occupational health impacts are expected to be controlled by continued application of accepted industrial hygiene practices to minimize worker exposures as required by permits and Federal and State regulations.
Chronic effects of electromagnetic fields (EMFs)[4] [6].	N/A[5]	Uncertain impact. Studies of 60-Hz EMFs have not uncovered consistent evidence linking harmful effects with field exposures. EMFs are unlike other agents that have a toxic effect (e.g., toxic chemicals and ionizing radiation) in that dramatic acute effects cannot be forced and longer-term effects, if real, are subtle. Because the state of the science is currently inadequate, no generic conclusion on human health impacts is possible.
Physical occupational hazards	1	SMALL. Occupational safety and health hazards are generic to all types of electrical generating stations, including nuclear power plants, and are of small significance if the workers adhere to safety standards and use protective equipment as required by Federal and State regulations.
Electric shock hazards [4]	2	SMALL, MODERATE, or LARGE. Electrical shock potential is of small significance for transmission lines that are operated in adherence with the National Electrical Safety Code (NESC). Without a review of conformance with NESC criteria of each nuclear power plant's in-scope transmission lines, it is not possible to determine the significance of the electrical shock potential.
Postulated Accidents		
Design-basis accidents	1	SMALL. The NRC staff has concluded that the environmental impacts of design-basis accidents are of small significance for all plants.
Severe accidents	2	SMALL. The probability-weighted consequences of atmospheric releases, fallout onto open bodies of water, releases to groundwater, and societal and economic impacts from severe accidents are small for all plants. However, alternatives to mitigate severe accidents must be considered for all plants that have not considered such alternatives.
Environmental Justice		
Minority and low-income populations	2	Impacts to minority and low-income populations and subsistence consumption resulting from continued operations and refurbishment associated with license renewal will be addressed in plant-specific reviews. See NRC Policy Statement on the Treatment of Environmental Justice Matters in NRC Regulatory and Licensing Actions (69 FR 52040; August 24, 2004).
Waste Management		
Low-level waste storage and disposal.	1	SMALL. The comprehensive regulatory controls that are in place and the low public doses being achieved at reactors ensure that the radiological impacts to the environment would remain small during the license renewal term.
Onsite storage of spent nuclear fuel	1	SMALL. The expected increase in the volume of spent fuel from an additional 20 years of operation can be safely accommodated onsite during the license renewal term with small environmental effects through dry or pool storage at all plants.
Offsite radiological impacts of spent nuclear fuel and high-level waste disposal.	N/A[5]	Uncertain impact. The generic conclusion on offsite radiological impacts of spent nuclear fuel and high-level waste is not being finalized pending the completion of a generic environmental impact statement on waste confidence.[7]
Mixed-waste storage and disposal	1	SMALL. The comprehensive regulatory controls and the facilities and procedures that are in place ensure proper handling and storage, as well as negligible doses and exposure to toxic materials for the public and the environment at all plants. License renewal would not increase the small, continuing risk to human health and the environment posed by mixed waste at all plants. The radiological and nonradiological environmental impacts of long-term disposal of mixed waste from any individual plant at licensed sites are small.
Nonradioactive waste storage and disposal.	1	SMALL. No changes to systems that generate nonradioactive waste are anticipated during the license renewal term. Facilities and procedures are in place to ensure continued proper handling, storage, and disposal, as well as negligible exposure to toxic materials for the public and the environment at all plants.

TABLE B–1—SUMMARY OF FINDINGS ON NEPA ISSUES FOR LICENSE RENEWAL OF NUCLEAR POWER PLANTS [1]—Continued

Issue	Category [2]	Finding [3]
Cumulative Impacts		
Cumulative impacts	2	Cumulative impacts of continued operations and refurbishment associated with license renewal must be considered on a plant-specific basis. Impacts would depend on regional resource characteristics, the resource-specific impacts of license renewal, and the cumulative significance of other factors affecting the resource.
Uranium Fuel Cycle		
Offsite radiological impacts—individual impacts from other than the disposal of spent fuel and high-level waste.	1	SMALL. The impacts to the public from radiological exposures have been considered by the Commission in Table S–3 of this part. Based on information in the GEIS, impacts to individuals from radioactive gaseous and liquid releases, including radon-222 and technetium-99, would remain at or below the NRC's regulatory limits.
Offsite radiological impacts—collective impacts from other than the disposal of spent fuel and high-level waste.	1	There are no regulatory limits applicable to collective doses to the general public from fuel-cycle facilities. The practice of estimating health effects on the basis of collective doses may not be meaningful. All fuel-cycle facilities are designed and operated to meet the applicable regulatory limits and standards. The Commission concludes that the collective impacts are acceptable. The Commission concludes that the impacts would not be sufficiently large to require the NEPA conclusion, for any plant, that the option of extended operation under 10 CFR part 54 should be eliminated. Accordingly, while the Commission has not assigned a single level of significance for the collective impacts of the uranium fuel cycle, this issue is considered Category 1.
Nonradiological impacts of the uranium fuel cycle.	1	SMALL. The nonradiological impacts of the uranium fuel cycle resulting from the renewal of an operating license for any plant would be small.
Transportation	1	SMALL. The impacts of transporting materials to and from uranium-fuel-cycle facilities on workers, the public, and the environment are expected to be small.
Termination of Nuclear Power Plant Operations and Decommissioning		
Termination of plant operations and decommissioning.	1	SMALL. License renewal is expected to have a negligible effect on the impacts of terminating operations and decommissioning on all resources.

[1] Data supporting this table are contained in NUREG–1437, Revision 1, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants'' (June 2013).

[2] The numerical entries in this column are based on the following category definitions:

Category 1: For the issue, the analysis reported in the Generic Environmental Impact Statement has shown:

(1) The environmental impacts associated with the issue have been determined to apply either to all plants or, for some issues, to plants having a specific type of cooling system or other specified plant or site characteristic;

(2) A single significance level (*i.e.*, small, moderate, or large) has been assigned to the impacts (except for Offsite radiological impacts—collective impacts from other than the disposal of spent fuel and high-level waste); and

(3) Mitigation of adverse impacts associated with the issue has been considered in the analysis, and it has been determined that additional plant-specific mitigation measures are not likely to be sufficiently beneficial to warrant implementation.

The generic analysis of the issue may be adopted in each plant-specific review.

Category 2: For the issue, the analysis reported in the Generic Environmental Impact Statement has shown that one or more of the criteria of Category 1 cannot be met, and therefore additional plant-specific review is required.

[3] The impact findings in this column are based on the definitions of three significance levels. Unless the significance level is identified as beneficial, the impact is adverse, or in the case of ''small,'' may be negligible. The definitions of significance follow:

SMALL—For the issue, environmental effects are not detectable or are so minor that they will neither destabilize nor noticeably alter any important attribute of the resource. For the purposes of assessing radiological impacts, the Commission has concluded that those impacts that do not exceed permissible levels in the Commission's regulations are considered small as the term is used in this table.

MODERATE—For the issue, environmental effects are sufficient to alter noticeably, but not to destabilize, important attributes of the resource.

LARGE—For the issue, environmental effects are clearly noticeable and are sufficient to destabilize important attributes of the resource.

For issues where probability is a key consideration (*i.e.*, accident consequences), probability was a factor in determining significance.

[4] This issue applies only to the in-scope portion of electric power transmission lines, which are defined as transmission lines that connect the nuclear power plant to the substation where electricity is fed into the regional power distribution system and transmission lines that supply power to the nuclear plant from the grid.

[5] NA (not applicable). The categorization and impact finding definitions do not apply to these issues.

[6] If, in the future, the Commission finds that, contrary to current indications, a consensus has been reached by appropriate Federal health agencies that there are adverse health effects from electromagnetic fields, the Commission will require applicants to submit plant-specific reviews of these health effects as part of their license renewal applications. Until such time, applicants for license renewal are not required to submit information on this issue.

[7] As a result of the decision of United States Court of Appeals in *New York* v. *NRC*, 681 F.3d 471 (DC Cir. 2012), the NRC cannot rely upon its Waste Confidence Decision and Rule until it has taken those actions that will address the deficiencies identified by the D.C. Circuit. Although the Waste Confidence Decision and Rule did not assess the impacts associated with disposal of spent nuclear fuel and high-level waste in a repository, it did reflect the Commission's confidence, at the time, in the technical feasibility of a repository and when that repository could have been expected to become available. Without the analysis in the Waste Confidence Decision and Rule regarding the technical feasibility and availability of a repository, the NRC cannot assess how long the spent fuel will need to be stored onsite.

[61 FR 66546, Dec. 18, 1996, as amended at 62 FR 59276, Nov. 3, 1997; 64 FR 48507, Sept. 3, 1999; 66 FR 39278, July 30, 2001; 78 FR 37317, June 20, 2013]

Subpart B [Reserved]

PART 52—LICENSES, CERTIFICATIONS, AND APPROVALS FOR NUCLEAR POWER PLANTS

GENERAL PROVISIONS

Subpart A—Early Site Permits

Subpart B—Standard Design Certifications

Subpart C—Combined Licenses

Subpart D [Reserved]