

Proposed Rules

Federal Register

Vol. 66, No. 185

Monday, September 24, 2001

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2608

RIN 3209-AA23

Testimony by OGE Employees and Production of Official Records in Legal Proceedings

AGENCY: U.S. Office of Government Ethics (OGE).

ACTION: Proposed rule.

SUMMARY: The Office of Government Ethics seeks public comment on a proposed rule that would set forth procedures that requesters would have to follow when making demands or requests to an OGE employee to produce official records and information, and provide testimony relating to official information, in connection with a legal proceeding in which OGE is not a party. As proposed, this rule would establish procedures to respond to such demands and requests in an orderly and consistent manner. The proposed rule, among other benefits, will promote uniformity in decisions, protect confidential information, provide guidance to requesters, and reduce the potential for both inappropriate disclosures of official information and wasteful allocation of agency resources.

DATES: Comments must be received on or before November 23, 2001.

ADDRESSES: Send comments to William E. Gressman, Senior Associate General Counsel, Office of General Counsel & Legal Policy, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005-3917.

FOR FURTHER INFORMATION CONTACT:

William E. Gressman, Senior Associate General Counsel, Office of Government Ethics, telephone: 202-208-8000; TDD: 202-208-8025; FAX: 202-208-8037; Internet E-mail address: usoge@oge.gov. For E-mail messages, the subject line should include the following reference: Proposed Rule on Testimony by OGE Employees and Production of Official Records in Legal Proceedings.

SUPPLEMENTARY INFORMATION:

Background

The Office of Government Ethics occasionally receives subpoenas and requests for OGE employees to provide evidence in litigation in which OGE is not a party. Typically, these subpoenas and requests are for OGE records that are not available to the public under the Freedom of Information Act. Also, OGE sometimes receives subpoenas and requests for OGE employees to appear as witnesses in litigation in conjunction with a request for nonpublic records. Requesters have sought information, for example, on a particular filer of a financial disclosure report, a particular nominee or incumbent or former employee and for any ethics advice that OGE may have given to that individual, or concerning the nature of ethical advice that OGE gave to another agency and how OGE arrived at that advice.

Responding to such demands and requests sometimes results in a significant disruption in an OGE employee's work schedule. The result is that employees may be diverted from performing their official duties in order to respond to requests from parties in litigation. In order to address this problem, many agencies over the years have issued "Touhy" regulations that are similar to this proposed regulation, governing the circumstances and manner in which an employee may respond to demands for testimony or for the production of documents. Such a regulation was upheld by the United States Supreme Court in *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

In *Touhy*, the Supreme Court held that a Department of Justice (DOJ) official, acting on order of the Attorney General, could not be held in contempt for declining to produce records in response to a subpoena. The employee's refusal was based upon a DOJ regulation that prohibited disclosure of agency files, documents, records, or information without the express approval of the Attorney General. The Court upheld the validity of the DOJ regulation, reasoning that it was appropriate for the Attorney General to prescribe regulations not inconsistent with law for the custody, use, and preservation of records, papers, and property pertaining to the Department of Justice.

Briefly summarized, the proposed rule would prohibit disclosure of nonpublic official records or testimony by OGE employees unless there is compliance with the rule (§§ 2608.201 and 2608.203). The proposed rule identifies the factors that OGE will consider in making determinations in response to such requests and what information requesters must provide (§§ 2608.202 and 2608.203). The proposed rule also specifies when the request should be submitted (§ 2608.203), the time period for review (§ 2608.205), potential fees (§ 2608.301), and, if a request is granted, any restrictions that may be placed on the disclosure of records or the appearance of an OGE employee as a witness (§§ 2608.207 and 2608.208). The proposed charges for witnesses are the same as those provided by the Federal courts; and the fees related to production of records are the same as those charged under FOIA. The proposed charges for time spent by an employee to prepare for testimony and for certification of records by OGE are authorized under 31 U.S.C. 9701, which permits an agency to charge for services or things of value that are provided by the agency.

The proposed rule applies to a broad range of matters in any legal proceeding in which OGE is not a named party. It also applies to former and current OGE employees (as well as OGE consultants and advisers). Former employees are prohibited from testifying about specific matters for which they had responsibility during their active employment unless permitted to testify as provided in the proposed rule. They would not be barred from appearing to testify about general matters unconnected with the specific matters for which they had responsibility.

The proposed regulation will ensure a more efficient use of OGE resources, minimize the possibility of involving OGE in issues unrelated to its responsibilities, promote uniformity in responding to such requests and subpoenas, and maintain the impartiality of OGE in matters that are in dispute between other parties. It also would serve OGE's interest in protecting sensitive, confidential, and privileged information and records that are generated in response to the requirements in the ethics laws and regulations.

The proposed OGE rule is internal (not branchwide), and is essentially procedural, not substantive. It would not create a right to obtain official records or the testimony of an OGE employee nor would it create any additional right or privilege not already available to OGE to deny any demand or request therefor. However, failure to comply with the procedures in the proposed rule would be a basis for denying a demand or request submitted to OGE.

Matters of Regulatory Procedure

Administrative Procedure Act

This proposed rulemaking is in compliance with the Administrative Procedure Act (5 U.S.C. 553) and allows for a 60-day comment period. Interested persons are invited to submit written comments to OGE on this proposed regulation, to be received on or before November 23, 2001. The Office of Government Ethics will review all comments received and consider any modifications to this proposal which appear warranted in issuing its final rule.

Regulatory Flexibility Act

For purposes of the Regulatory Flexibility Act (5 U.S.C. chapter 6), the proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. The proposed rule addresses only the procedures to be followed in the production or disclosure of OGE materials and information in litigation where OGE is not a party. Accordingly, OGE has determined that a Regulatory Flexibility Analysis is not required.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), the proposed rule would not significantly or uniquely affect small governments and would not result in increased expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (as adjusted for inflation).

Executive Order 12866

In issuing this proposed regulation, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulation as set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This proposed rule has not been reviewed by the Office of Management and Budget under that Executive order since it is not a significant regulatory action within the meaning of the Executive order.

Executive Order 12988

As Director of the Office of Government Ethics, I have reviewed this proposed regulation in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this proposed regulation does not contain information collection requirements that require approval by the Office of Management and Budget. The Office of Government Ethics expects the collection of information that is called for by the proposed regulation would involve fewer than ten persons each year.

Congressional Review Act

The Office of Government Ethics has determined that this proposed rulemaking involves a nonmajor rule under the Congressional Review Act (5 U.S.C. chapter 8) and will, before the future final rule takes effect, provide a report thereon to the U.S. Senate, House of Representatives and General Accounting Office in accordance with that law.

List of Subjects in 5 CFR Part 2608

Administrative practice and procedure, Conflict of interests, Courts, Government employees, Records, Subpoenas, Testimony.

Approved: September 18, 2001.

Amy L. Comstock,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics proposes to add a new part 2608 to 5 CFR to read as follows:

PART 2608—TESTIMONY BY OGE EMPLOYEES AND PRODUCTION OF OFFICIAL RECORDS IN LEGAL PROCEEDINGS

Subpart A—General Provisions

Sec.

2608.101 Scope and purpose.

2608.102 Applicability.

2608.103 Definitions.

Subpart B—Requests for Testimony and Production of Documents

2608.201 General prohibition.

2608.202 Factors OGE will consider.

2608.203 Filing requirements for demands or requests for documents or testimony.

2608.204 Service of subpoenas or requests.

2608.205 Processing demands or requests.

2608.206 Final determination.

2608.207 Restrictions that apply to testimony.

2608.208 Restrictions that apply to released records.

2608.209 Procedure when a decision is not made prior to the time a response is required.

2608.210 Procedure in the event of an adverse ruling.

Subpart C—Schedule of Fees

2608.301 Fees.

Subpart D—Penalties

2608.401 Penalties.

Authority: 5 U.S.C. App. (Sec. 401, Ethics in Government Act of 1978); 44 U.S.C. 3101–3107, 3301–3303a, 3308–3314.

Subpart A—General Provisions

§ 2608.101 Scope and purpose.

(a) This part sets forth policies and procedures you must follow when you submit a demand or request to an employee of the Office of Government Ethics (OGE) to produce official records and information, or provide testimony relating to official information, in connection with a legal proceeding. You must comply with these requirements when you request the release or disclosure of official records and information.

(b) The Office of Government Ethics intends these provisions to:

(1) Promote economy and efficiency in its programs and operations;

(2) Minimize the possibility of involving OGE in controversial issues not related to our functions;

(3) Maintain OGE's impartiality among private litigants where OGE is not a named party; and

(4) Protect sensitive, confidential information and the deliberative processes of OGE.

(c) In providing for these requirements, OGE does not waive the sovereign immunity of the United States.

(d) This part provides guidance for the internal operations of OGE. It does not create any right or benefit, substantive or procedural, that a party may rely upon in any legal proceeding against the United States.

§ 2608.102 Applicability.

This part applies to demands and requests to employees for factual or expert testimony relating to official information, or for production of official records or information, in legal proceedings in which OGE is not a named party. However, it does not apply to:

(a) Demands upon or requests for an OGE employee to testify as to facts or events that are unrelated to his or her official duties or that are unrelated to the functions of OGE;

(b) Demands upon or requests for a former OGE employee to testify as to matters in which the former employee was not directly or materially involved while at the OGE;

(c) Requests for the release of records under the Freedom of Information Act, 5 U.S.C. 552, or the Privacy Act, 5 U.S.C. 552a; and

(d) Congressional demands and requests for testimony or records.

§ 2608.103 Definitions.

Demand means a subpoena, or an order or other command of a court or other competent authority, for the production, disclosure, or release of records or for the appearance and testimony of an OGE employee that is issued in a legal proceeding.

General Counsel means the General Counsel of OGE or a person to whom the General Counsel has delegated authority under this part.

Legal proceeding means any matter before a court of law, administrative board or tribunal, commission, administrative law judge, hearing officer, or other body that conducts a legal or administrative proceeding. Legal proceeding includes all phases of litigation.

OGE means the U.S. Office of Government Ethics.

OGE employee or employee means:

- (1) Any current or former officer or employee of OGE;
- (2) Any other individual hired through contractual agreement by or on behalf of the OGE or who has performed or is performing services under such an agreement for OGE; and
- (3) Any individual who served or is serving in any consulting or advisory capacity to OGE, whether formal or informal.

(4) Provided, that this definition does not include persons who are no longer employed by OGE and who are retained or hired as expert witnesses or who agree to testify about general matters, matters available to the public, or matters with which they had no specific involvement or responsibility during their employment with OGE.

Records or official records and information mean:

- (1) All documents and materials which are OGE agency records under the Freedom of Information Act, 5 U.S.C. 552;
 - (2) All other documents and materials contained in OGE files; and
 - (3) All other information or materials acquired by an OGE employee in the performance of his or her official duties or because of his or her official status.
- Request* means any informal request, by whatever method, for the production

of records and information or for testimony which has not been ordered by a court or other competent authority.

Testimony means any written or oral statements, including depositions, answers to interrogatories, affidavits, declarations, recorded interviews, and statements made by an individual in connection with a legal proceeding.

Subpart B—Requests for Testimony and Production of Documents

§ 2608.201 General prohibition.

No employee may produce official records and information or provide any testimony relating to official information in response to a demand or request without the prior, written approval of the General Counsel.

§ 2608.202 Factors OGE will consider.

The General Counsel, in his or her sole discretion, may grant an employee permission to testify on matters relating to official information, or produce official records and information, in response to a demand or request. Among the relevant factors that the General Counsel may consider in making this decision are whether:

- (a) The purposes of this part are met;
- (b) Allowing such testimony or production of records would be necessary to prevent a miscarriage of justice;
- (c) OGE has an interest in the decision that may be rendered in the legal proceeding;
- (d) Allowing such testimony or production of records would assist or hinder OGE in performing its statutory duties or use OGE resources where responding to the request will interfere with the ability of OGE employees to do their work;
- (e) Allowing such testimony or production of records would be in the best interest of OGE or the United States;
- (f) The records or testimony can be obtained from other sources;
- (g) The demand or request is unduly burdensome or otherwise inappropriate under the applicable rules of discovery or the rules of procedure governing the case or matter in which the demand or request arose;
- (h) Disclosure would violate a statute, Executive order or regulation;
- (i) Disclosure would reveal confidential, sensitive, or privileged information, trade secrets or similar, confidential commercial or financial information, or would otherwise be inappropriate for release;
- (j) Disclosure would impede or interfere with an ongoing law enforcement investigation or

proceedings, or compromise constitutional rights;

(k) Disclosure would result in OGE appearing to favor one litigant over another;

(l) Disclosure relates to documents that were produced by another agency;

(m) A substantial Government interest is implicated;

(n) The demand or request is within the authority of the party making it; and

(o) The demand or request is sufficiently specific to be answered.

§ 2608.203 Filing requirements for demands or requests for documents or testimony.

You must comply with the following requirements whenever you issue demands or requests to an OGE employee for official records and information or testimony.

(a) Your request must be in writing and must be submitted to the General Counsel. If you serve a subpoena on OGE or an OGE employee before submitting a written request and receiving a final determination, OGE will oppose the subpoena on grounds that your request was not submitted in accordance with this subpart.

(b) Your written request must contain the following information:

(1) The caption of the legal proceeding, docket number, and name and address of the court or other authority involved;

(2) A copy of the complaint or equivalent document setting forth the assertions in the case and any other pleading or document necessary to show relevance;

(3) A list of categories of records sought, a detailed description of how the information sought is relevant to the issues in the legal proceeding, and a specific description of the substance of the testimony or records sought;

(4) A statement as to how the need for the information outweighs the need to maintain any confidentiality of the information and outweighs the burden on OGE to produce the records or provide testimony;

(5) A statement indicating that the information sought is not available from another source, from other persons or entities, or from the testimony of someone other than an OGE employee, such as a retained expert;

(6) If testimony is requested, the intended use of the testimony, a general summary of the desired testimony, and a showing that no document could be provided and used in lieu of testimony;

(7) A description of all prior decisions, orders, or pending motions in the case that bear upon the relevance of the requested records or testimony;

(8) The name, address, and telephone number of counsel to each party in the case; and

(9) An estimate of the amount of time that the requester and other parties will require with each OGE employee for time spent by the employee to prepare for testimony, in travel, and for attendance in the legal proceeding.

(c) The Office of Government Ethics reserves the right to require additional information to complete your request where appropriate.

(d) Your request should be submitted at least 45 days before the date that records or testimony is required. Requests submitted in less than 45 days before records or testimony is required must be accompanied by a written explanation stating the reasons for the late request and the reasons for expedited processing.

(e) Failure to cooperate in good faith to enable the General Counsel to make an informed decision may serve as the basis for a determination not to comply with your request.

§ 2608.204 Service of subpoenas or requests.

Subpoenas or requests for official records or information or testimony must be served on the General Counsel, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005-3917.

§ 2608.205 Processing demands or requests.

(a) After service of a demand or request to testify, the General Counsel will review the demand or request and, in accordance with the provisions of this subpart, determine whether, or under what conditions, to authorize the employee to testify on matters relating to official information and/or produce official records and information.

(b) The Office of Government Ethics will process requests in the order in which they are received. Absent exigent or unusual circumstances, OGE will respond within 45 days from the date that we receive it. The time for response will depend upon the scope of the request.

(c) The General Counsel may grant a waiver of any procedure described by this subpart where a waiver is considered necessary to promote a significant interest of OGE or the United States or for other good cause.

§ 2608.206 Final determination.

The General Counsel makes the final determination on demands and requests to employees for production of official records and information or testimony. All final determinations are within the

sole discretion of the General Counsel. The General Counsel will notify the requester and the court or other authority of the final determination, the reasons for the grant or denial of the demand or request, and any conditions that the General Counsel may impose on the release of records or information, or on the testimony of an OGE employee.

§ 2608.207 Restrictions that apply to testimony.

(a) The General Counsel may impose conditions or restrictions on the testimony of OGE employees including, for example, limiting the areas of testimony or requiring the requester and other parties to the legal proceeding to agree that the transcript of the testimony will be kept under seal or will only be used or made available in the particular legal proceeding for which testimony was requested. The General Counsel may also require a copy of the transcript of testimony at the requester's expense.

(b) The Office of Government Ethics may offer the employee's written declaration in lieu of testimony.

(c) If authorized to testify pursuant to this part, an employee may testify as to facts within his or her personal knowledge, but, unless specifically authorized to do so by the General Counsel, the employee shall not:

(1) Disclose confidential or privileged information;

(2) Testify as to facts when the General Counsel determines such testimony would not be in the best interest of OGE or the United States; or

(3) For a current OGE employee, testify as an expert or opinion witness with regard to any matter arising out of the employee's official duties or the functions of OGE unless testimony is being given on behalf of the United States (see also § 2635.805 of this chapter).

§ 2608.208 Restrictions that apply to released records.

(a) The General Counsel may impose conditions or restrictions on the release of official records and information, including the requirement that parties to the proceeding obtain a protective order or execute a confidentiality agreement to limit access and any further disclosure. The terms of the protective order or of a confidentiality agreement must be acceptable to the General Counsel. In cases where protective orders or confidentiality agreements have already been executed, OGE may condition the release of official records and information on an amendment to the existing protective order or confidentiality agreement.

(b) If the General Counsel so determines, original OGE records may

be presented for examination in response to a demand or request, but they are not to be presented as evidence or otherwise used in a manner by which they could lose their identity as official OGE records, nor are they to be marked or altered. In lieu of the original records, certified copies will be presented for evidentiary purposes (see 28 U.S.C. 1733).

§ 2608.209 Procedure when a decision is not made prior to the time a response is required.

If a response to a demand or request is required before the General Counsel can make the determination referred to in § 2608.201, the General Counsel will provide the court or other competent authority with a copy of this part, inform the court or other competent authority that the demand or request is being reviewed, and seek a stay of the demand or request pending a final determination.

§ 2608.210 Procedure in the event of an adverse ruling.

If the court or other competent authority fails to stay the demand, the employee upon whom the demand is made will appear at the stated time and place, produce a copy of this part, state that the employee has been advised by counsel not to provide the requested testimony or produce documents, and respectfully decline to comply with the demand, citing *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951). A written response may be offered to a request, or to a demand, if permitted by the court or other competent authority.

Subpart C—Schedule of Fees

§ 2608.301 Fees.

(a) *Generally.* The General Counsel may condition the production of records or appearance for testimony upon advance payment of a reasonable estimate of the costs to OGE.

(b) *Fees for records.* Fees for producing records will include fees for searching, reviewing, and duplicating records, costs of attorney time spent in reviewing the demand or request, and expenses generated by materials and equipment used to search for, produce, and copy the responsive information. Costs for employee time will be calculated on the basis of the hourly pay of the employee (including all pay, allowance, and benefits). Fees for duplication will be the same as those charged by OGE in its Freedom of Information Act and Ethics in Government Act fee regulations at 5 CFR part 2604 (subparts E and G).

(c) *Witness fees.* Fees for attendance by a witness will include fees, expenses,

and allowances prescribed by the court's rules. If no such fees are prescribed, witness fees will be determined based upon the rule of the Federal district court closest to the location where the witness will appear. Such fees will include cost of time spent by the witness to prepare for testimony, in travel, and for attendance in the legal proceeding.

(c) *Payment of fees.* You must pay witness fees for current OGE employees and any records certification fees by submitting to the General Counsel a check or money order for the appropriate amount made payable to the Treasury of the United States. In the case of testimony by former OGE employees, you must pay applicable fees directly to the former employee in accordance with 28 U.S.C. 1821 or other applicable statutes.

(d) *Certification (authentication) of copies of records.* The Office of Government Ethics may certify that records are true copies in order to facilitate their use as evidence. If you seek certification, you must request certified copies from OGE at least 45 days before the date they will be needed. The request should be sent to the General Counsel. You will be charged a certification fee of \$15.00 for each document certified.

(e) *Waiver or reduction of fees.* The General Counsel, in his or her sole discretion, may, upon a showing of reasonable cause, waive or reduce any fees in connection with the testimony, production, or certification of records.

(f) *De minimis fees.* Fees will not be assessed if the total charge would be \$10.00 or less.

Subpart D—Penalties

§ 2608.401 Penalties.

(a) An employee who discloses official records or information or gives testimony relating to official information, except as expressly authorized by OGE or as ordered by a Federal court after OGE has had the opportunity to be heard, may face the penalties provided in 18 U.S.C. 641 and other applicable laws. Additionally, former OGE employees are subject to the restrictions and penalties of 18 U.S.C. 207 and 216.

(b) A current OGE employee who testifies or produces official records and information in violation of this part shall be subject to disciplinary action.

[FR Doc. 01-23771 Filed 9-21-01; 8:45 am]

BILLING CODE 6345-01-U

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 50, 51, and 52

[Docket No. PRM-52-2]

Nuclear Energy Institute; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) is publishing for public comment a notice of receipt of a petition for rulemaking, dated July 18, 2001, which was filed with the Commission by the Nuclear Energy Institute (NEI). The petition was docketed by the NRC on July 24, 2001, and has been assigned Docket No. PRM-52-2. The petition requests that the NRC eliminate the requirement that an early site permit applicant evaluate, and that the NRC review, alternative sites, and remove provisions regarding the siting, construction, and operation of nuclear power plants which require applicants and licensees to analyze, and the NRC to evaluate, alternative sites, alternative energy sources, and the need for power.

DATES: Submit comments by November 8, 2001. Comments received after this date will be considered if it is practical to do so, but assurance of consideration can only be given to comments received on or before this date.

ADDRESSES: Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff.

Deliver comments to: 11555 Rockville Pike, Rockville, Maryland between 7:30 a.m. and 4:15 p.m. on Federal workdays.

For a copy of the petition, write to Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U. S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

You may also provide comments via the NRC's interactive rulemaking website at <http://ruleforum.nrl.gov>. This site allows you to upload comments as files in any format, if your web browser supports the function. The petition and any public comments received are available on the site. For information about the interactive rulemaking website, contact Carol Gallagher at (301) 415-5905 or via e-mail at cag@nrc.gov.

The petition and copies of comments received may be inspected, and copied

for a fee, at the NRC Public Document Room, (first floor) 11555 Rockville Pike, Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT:

Michael T. Lesar, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Telephone: 301-415-7163 or Toll-free: 1-800-368-5642. E-mail: MTL@NRC.GOV.

SUPPLEMENTARY INFORMATION:

Background

The Nuclear Regulatory Commission received a petition for rulemaking dated July 18, 2001, submitted by the Nuclear Energy Institute (the petitioner). The petition was docketed by the NRC on July 24, 2001, and has been assigned Docket No. PRM-52-2.

The Petitioner

The petitioner (the Nuclear Energy Institute or NEI) claims representational responsibility for coordinating the combined efforts of all utilities licensed by the NRC to construct or operate nuclear power plants, and of other nuclear industry organizations, in all matters involving generic regulatory policy issues and regulatory aspects of generic operational and technical issues affecting the nuclear power industry.

The Petitioner's Request

The petitioner believes that the NRC, in implementing the National Environmental Policy Act of 1969 (NEPA), has imposed requirements on the content of environmental impact reviews that are unnecessary under the statute, unduly burdensome to both industry and the NRC, and outside the scope of the agency's mission. Specifically, the petitioner requests that the NRC amend part 52, subpart A, *Early Site Permits*, §§ 52.17(a)(2) and 52.18, to remove provisions that the petitioner believes are more appropriately dealt with through the application of 10 CFR part 51, *National Environmental Policy Act—Regulations Implementing Sec. 102(2)*. The petitioner further requests that the NRC amend 10 CFR part 51 and revise associated NRC regulations and guidance regarding the siting, construction, operation, and license renewal of nuclear power plants (e.g., 10 CFR part 51, appendix A to subpart A) to remove the requirement for applicants and licensees to conduct an analysis of and for the NRC to evaluate alternative sites, alternative sources of energy, and the need for power. The petitioner emphasizes that its proposed amendments would not affect any other required reviews of matters pertinent to