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(57 FR 61013)

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COMMENTS OF OHIO CITIZENS FOR RESPONSIBLE ENERGY, INC. ("OCRE")  
ON PROPOSED RULE, "AVAILABILITY OF OFFICIAL RECORDS" 57 FED.  
REG. 61013 (DECEMBER 23, 1992)

This proposed rule would (1) amend 10 CFR 2.790(c) to add three situations where information submitted to the NRC would not be returned to an applicant, and (2) add a new provision to inform the public of agency practice on reproduction and distribution of submitted copyrighted material. OCRE supports this proposed rule. These revisions are necessary to comply with the applicable statutes: the Federal Advisory Committee Act, the Freedom of Information Act, and the Sunshine Act. The provisions regarding copyrighted material are essential for the NRC to carry out its regulatory mission, including its public information and participation responsibilities.

Recent industry submissions have brought the copyright issue to forefront. For example, consider the copyright notice contained in the Westinghouse AP-600 application. This notice states, "With regard to the non-proprietary versions of these reports, the NRC is permitted to make the number of copies beyond those necessary for its internal use which are necessary in order to have one copy available for public viewing in the appropriate docket files in the public document room in Washington, D.C. and in local public document rooms as may be required by NRC regulations if the number of copies submitted is insufficient for this purpose. The NRC is not authorized to make copies for the personal use of members of the public who make use of the NRC public document rooms." If the NRC were to consider itself bound by these provisions, this will create a significant burden on persons who wish to review the application, especially if such persons do not reside near a public document room. It also raises a new issue to consider in the implementation of 10 CFR Part 52: handling of copyrighted information, particularly when such information is to be submitted as exhibits in the hearing or as part of written comments. While OCRE appreciates the commercial and public policy reasons for the protection of intellectual property, it appears that the Westinghouse position is rather extreme and perhaps was established to discourage public scrutiny of the design and public participation in the design certification proceeding.

Thus, the proposed rule is necessary to preserve the NRC's traditional powers regarding reproduction and distribution of public

documents and agency records to the public. However, the rule authorizes only the NRC to copy and distribute copyrighted documents and does not extend these rights to other persons, such as those receiving copies from the NRC. While OCRE understands the reasons for this limitation, this does not solve the problem of how persons participating in NRC proceedings may legally use such documents as exhibits. The NRC should consider this issue as part of this rulemaking. Perhaps it would suffice for the NRC to declare that use of copyrighted materials as exhibits in NRC proceedings constitutes "fair use" under the copyright law.

Respectfully submitted,



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