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U. S. Nuclear Regulatory Commission
ATTN: Rulemaking and Adjudications Staff
Washington, D.C. 20555-0001

Subject: Response to Request for Comments on Proposed Rule Regarding *Availability of Official Records* (66 Fed. Reg. 52,721; October 17, 2001)

This letter is being submitted in response to the Nuclear Regulatory Commission's (NRC) proposed rule to amend 10CFR Part 2. The NRC is proposing to amend its regulations on availability of official records in three areas. The proposed rule would require those who submit documents claimed to contain proprietary or other confidential information to mark the information as specified to decrease the chances of inadvertent public release of the information by the NRC, codify NRC's current practices delineating the circumstances under which the agency will not return confidential documents that have been submitted to the NRC, and clarify that the NRC will make as many copies of copyrighted material submitted to the agency as it needs to perform its mission. The proposed rule is necessary to conform the NRC's regulations regarding the availability of official records to existing case law and agency practice.

Exelon Generation Company, LLC appreciates the opportunity to comment on the proposed rule and supports the comments submitted on behalf of the nuclear energy industry, by the Nuclear Energy Institute.

In addition, Exelon would like to submit the following additional comments:

- The criteria of proposed new Section 2.790(c)(3) for not allowing a licensee to withdraw confidential information are overly broad.
  - The exclusion for information requested in a FOIA request could apply whenever a third party files a "blanket" FOIA request seeking any and all documents relating to some subject. The exclusion should be limited to documents that are *specifically* sought in a FOIA request.
  - Similarly, the exclusion for information obtained during an OI investigation should be restricted to information that actually forms part of the basis for an official agency decision. If a document did not form part of the basis for the NRC's enforcement decision in the case, the licensee should be able to request withdrawal.

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- The NRC should take the opportunity in this rulemaking to announce a policy of broadly construing the exceptions from public disclosure for proprietary information and personnel records. This policy, which is consistent with existing NRC practice in applying Section 2.790, should be made clear in the Statement of Considerations or the language of Section 2.790 itself.

  - In today's competitive environment, more and more information related to plant operations (e.g., outage schedules) is sensitive business information that can have an impact, if disclosed, on markets.

  - In connection with NRC investigations of discrimination complaints, licensees must submit to the NRC sensitive personnel-related information. Because of the impact on individual employees from the release of such information, the NRC should have broad protections prohibiting public disclosure of such information.

Respectfully,

Michael P. Gallagher
Director, Licensing and Regulatory Affairs
Mid-Atlantic Regional Operating Group