

July 7, 1989

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PROPOSED RULE

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(54 FR 26730)

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USNRC

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Office of General Counsel  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

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OFFICE OF GENERAL COUNSEL  
DOCKETING & SERVICE  
BRANCH

Dear Mr. Mullins:

I am writing in regard to the final rule published in the Federal Register on June 26, 1989 (54 Fed. Reg. 26730) on "Manner of Service of Pleadings Upon the Secretary of the Commission." This rule requires that the Office of the Secretary be served in the same manner as the adjudicatory tribunal in a proceeding is served, i.e., if the Board is served by express mail, the Office of the Secretary must also be served by express mail.

I believe that this rule should have been published for public comment as a proposed rule before being enacted. This rule imposes a significant financial burden upon small entities participating in the NRC's adjudicatory proceedings. Furthermore, there does not appear to be sufficient justification for imposing this burden. The purported justification is that, when the Office of the Secretary is served by regular, first class mail, when the Board and parties are served in a more expeditious fashion, the Office of the Secretary will receive the pleadings "several days after they have been received by the parties and the tribunals," resulting in difficulty in maintaining "the official agency docket in a timely fashion." What difference does several days make? The persons having immediate need for the filings, the Boards and parties to the particular proceedings, will receive them by express mail or other expeditious delivery. The Docketing and Service Section is not a party to the proceeding, does not need to respond to any filing, and has no real need to receive the filings immediately. The NRC should provide evidence that a few days delay has in fact hampered agency business or prevented access to the filings by persons having need for immediate access to them.

This rule will substantially increase the costs of participation in the NRC's adjudicatory proceedings, especially since the original and two copies of filings must be served on the Office of the Secretary. 10 CFR 2.708(d). This financial burden may prove to be too great for public participants, particularly individuals and small public interest groups, in

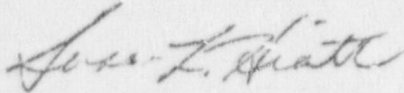
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the NRC's adjudicatory proceedings, thereby thwarting the intent of Congress in the Atomic Energy Act that the public be afforded meaningful participation in the NRC's proceedings. See, e.g., Union of Concerned Scientists v. NRC, 735 F.2d 1437, 1446 (D.C. Cir. 1984). I would ask that you please reconsider this rulemaking.

Sincerely,



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cc: Chairman Carr, Commissioners Roberts, Rogers, and Curtiss  
Representative Dennis E. Eckart