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DOCKET NUMBER  
PROPOSED RULE ~~1, 2, 50 et.al~~  
(66FR 19610)

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF  
April 26, 2001

Secretary and Commissioners  
United States Nuclear Regulatory Commission  
Washington, DC 20555-0001

ATT: Rulemakings and Adjudications

RE: Availability of background documents for proposed rule on public hearings,  
66 Federal Register 19609-19671 (April 16, 2001).

Request for extended comment period to remedy defect in rulemaking process

To The Secretary and Commissioners:

You are no doubt unaware that your agency promulgated the above referenced proposed rule without a complete rulemaking file in the PDR. Essential background documents to the rulemaking were, until today, unavailable in the public document room. It is still unclear as to what portion of the rulemaking file in this matter is incomplete and unavailable to the public.

Upon discovering this problem yesterday, I e-mailed the OGC representative for the rulemaking. In the process, this afternoon Mr. Mizuno verified that the materials were not in the public document room. Moreover, and most significantly, the documents are not now, nor have they been readily available to the interested public from ADAMS and the NRC website. (Note that for many of us, the latter form of access remains the only practically available one since your agency eliminated the local public documents rooms.)

Some serious concerns arise concerning the unavailability of these documents and the effect that has upon the propriety of going forward with a rulemaking to curtail availability and formal public participation in NRC licensing proceedings.

Your agency should not have promulgated the proposed rule without the material you state in the Federal Register notice to be publicly available actually being available to the public. As you know, the proposed rule represents a radical shift in the nature and availability of the hearing process. Given such broad changes (which your agency acknowledged in the text of the proposed rule), you owe it to the public to have had the material basis for the rule readily (and completely)

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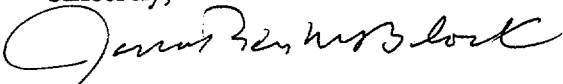
available in the document room. The absence of this material raises an additional question, *viz.*, how could NRC staff make comments and participate in the informed drafting of the proposed rule when the full set of background materials was not available in the PDR? In communicating with the OGC contact person, it was plain that the material had not even been available to him. How informed was the staff process of drafting such a significant change in NRC policy when the staff apparently did not have access to a complete background file for the proposed rule?

These significant issues should be resolved by an appropriate remedy—one that increases the opportunity for (and likelihood of) public involvement in the rulemaking at issue.

A reasonable approach would be publication in the Federal Register of a notice of the error and extension of the deadline for commenting on the proposed rule. While NRC staff prepares the notice, they should also ascertain that the file for this rulemaking is complete and that it has been converted, as necessary, into digital format. The notice should be timed to coincide with posting of the proposed rule and entire background file on the NRC website (where the largest number of interested persons may obtain the information without needing to negotiate the use of ADAMS). Following a reasonable 30-day period for posting to the public of the materials at issue on the NRC website, the comment period should be extended by an additional 60 days. This adds a total of 90 days to the entire process. An insignificant delay that offers the potential benefit of informed, hence, meaningful public participation in the rulemaking process. Certainly, the substantive effects of the proposed rule at issue warrant such an approach.

Thanks you for giving this request your attention and careful consideration.

Sincerely,



Jonathan M. Block  
Attorney at Law

cc: Honorable Senator Harry Reid  
Honorable Congressman John Dingell  
Honorable Congressman Dennis Kucinich  
Honorable Congressman Edward Markey  
Diane Curran, Esq.;  
Paul Gunter (NIRS);  
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