



DUKE COGEMA
STONE & WEBSTER

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21 December 2001
DCS-NRC-000080

Secretary, U.S. Nuclear Regulatory Commission
Washington, DC 20555

Attention: Rulemakings and Adjudications Staff

Subject: Duke Cogema Stone & Webster Comments on
Proposed Rule 10 CFR Part 2, *Availability of Official Records*

Duke Cogema Stone & Webster, LLC (DCS) submits the enclosed comments on the proposed rule concerning 10 CFR Part 2 published in the Federal Register on 17 October 2001 [66 FR 52721].

If you have any questions, please contact me at (704) 373-7820.

Sincerely,

Peter S. Hastings, P.E.
Licensing Manager

Enclosures: as stated

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Enclosure 1
DCS Comments on Proposed Rule 10 CFR Part 2

DCS provides the following comments on the proposed rule concerning 10 CFR Part 2 published in the Federal Register on October 17, 2001 [66 FR 52721]:

1. § 2.790(b)(1)(i)(A) of the proposed rule states that “the first page of the document” must be marked. Documents are usually submitted under a cover letter; often as an enclosure to the cover letter. It is not clear if “the first page of the document” means the first page of the cover letter and/or the first page of, say, the enclosure. In either case, DCS suggests a provision for adding a footer to the covering page (if it does not contain information to be withheld from the public) stating something to the effect that “this page is decontrolled when separated from contents.”
2. § 2.790(b)(1)(i)(A) of the proposed rule states that pertinent pages to be withheld from disclosure must be marked “Confidential Information Submitted Under 10 CFR 2.790.” DCS strongly suggests that the term “Confidential” should be avoided since it may be construed as classified information (as in Restricted Data or National Security Information). If a general term is to be used for marking, DCS suggests “Withhold From Public Disclosure Pursuant to 10 CFR §2.790” (although, as discussed in Comment 3 below, DCS suggests a specific marking in lieu of a general marking).
3. § 2.790(b)(1)(i)(B) of the proposed rule states that “Each page containing information sought to be withheld from public disclosure must indicate, adjacent to the information, or at the top if the entire page is affected, the basis...” DCS suggests that such a requirement, in addition to the general marking requirement on each page to be withheld, can be problematic. Instead, each page to be withheld could be marked at the top (and not adjacent to the information) with a specific marking in lieu of the general marking. DCS suggests that the following terms be used in lieu of the general marking:

<u>Marking Term</u>	<u>Type of Information</u>
Proprietary	§ 2.790(a)(4)
Private	§ 2.790(a)(6)
Withhold From Public Disclosure Pursuant to 10 CFR §2.790(d)	§ 2.790(d)

4. Again with respect to § 2.790(b)(1)(i)(B) of the proposed rule regarding indication of the basis adjacent to the information, DCS suggests that the rule may need to advise on portion marking (e.g., withheld information denoted by brackets in the right and left hand margins).
5. § 2.790(b)(1)(ii)(E) of the proposed rule states that the affidavit must indicate “the location(s) in the document of all information sought to be withheld.” The rule is not clear on how to identify the locations. DCS suggests that identification of page numbers which contain information to be withheld is sufficient indication of locations.

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6. § 2.790(c)(2) should be clarified to state that “[t]he document will not be returned *except as provided for in § 2.790(c)(3)*.” As written, § 2.790(c)(2) implies that a Commission determination that information denies a request for withholding, then the information will not be returned *under any circumstances*. DCS infers, rather that § 2.790(c)(2) is intended to mean that such information will not be returned automatically (*i.e.*, as a consequence simply of Commission denial), but *may* be returned pursuant to a request under § 2.790(c)(3).
7. Similarly, § 2.790(c)(3) would benefit from the addition of a provision for requesting return of a document if supplemental information submitted pursuant to § 2.790(c)(2) fails to result in the Commission granting the withholding of information. For example, if the Commission notifies the submitter of a denial pursuant to § 2.790(c)(2), and the submitter provides supplemental information to support a demonstration of the proprietary nature of the information, but the Commission still disagrees that the information should be withheld, the submitter should then be given the opportunity to request the return of the information under § 2.790(c)(3).