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Baltimore Gas and Electric Company  
Calvert Cliffs Nuclear Power Plant  
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FEDERAL RULE PRM 9-2  
(59 FR 30308)



August 26, 1994

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

ATTENTION: Docketing and Service Branch

SUBJECT: Calvert Cliffs Nuclear Power Plant  
Unit Nos. 1 & 2; Docket Nos. 50-317 & 50-318  
Comments on the Ohio Citizens for Responsible Energy, Inc. Petition for  
Rulemaking (59 FR 30310)

The Baltimore Gas and Electric Company has the following comments on the Ohio Citizens for Responsible Energy, Inc. (OCRE) request that the NRC change the regulations to establish public right-to-know provisions that would ensure public access to licensee-held information. Their petition proposes a change to 10 CFR Part 9 regarding public access to information. They are particularly concerned about information that is held by licensees but not submitted to the NRC. As described in the Attachment (1), their petition is weak in three areas:

- ♦ Little credit is given to publicly-available NRC Inspection Reports which discuss licensee information not submitted to the NRC.
- ♦ Little credit is given to the fact that most of the information removed from the technical specifications will be transferred to publicly-available documents, such as the Updated Final Safety Analysis Report and the Quality Assurance Plan.
- ♦ The rule proposed by OCRE does not allow a licensee to charge requestors for the administrative costs associated with providing the information.

We recommend that the NRC review the petition in light of these three concerns. Baltimore Gas and Electric Company believes these concerns provide sufficient grounds to deny the petition. Additionally, we endorse the comments provided by the Nuclear Energy Institute and the Nuclear Utility Backfiring and Reform Group.

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Should you have any further questions regarding this matter, we will be pleased to discuss them with you.

Very truly yours,

A handwritten signature in dark ink, appearing to read "J. G. McDonald, Jr.", is written over a horizontal line.

RED/JMO/dlm

Attachment: As Stated

cc: D. A. Brune, Esquire  
E. Silberg, Esquire  
J. Case, NRC  
J. G. McDonald, Jr., NRC  
T. T. Martin, NRC  
P. R. Wilson, NRC  
R. I. McLean, DNR  
J. H. Walter, PSC

## ATTACHMENT (1)

### **DETAILED COMMENTS ON OHIO CITIZENS FOR RESPONSIBLE ENERGY, INC. PETITION FOR RULEMAKING**

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The Ohio Citizens for Responsible Energy, Inc. (OCRE) contends that it has observed a trend in the NRC's regulatory practice in the past several years that decreases the amount of information to which the public has access. They believe that this trend is apparent in NRC bulletins and generic letters issued over the past six years. They state that these documents instruct licensees to send statements that the requested actions have been completed instead of instructing licensees to send the NRC detailed documentation and analyses of their actions. They also state that detailed records kept at the plant site are only accessible by NRC inspectors and other appropriate regulatory bodies.

However, OCRE fails to note that NRC Inspection Reports often extensively describe the details of a licensee's response to these bulletins and generic letters. They also fail to note that these inspection reports are publicly available. They have made no clear case for why the public would need a copy of a program or procedure that the NRC, itself, did not need to have docketed in order to conclude whether or not a response was acceptable. Finally, OCRE appears to give no credit to the NRC's full-time onsite inspectors' observation of activities that implement the details of programs and procedures that have only been summarized in responses to bulletins and generic letters. In essence, OCRE is disregarding a large portion of the NRC's oversight of plant activities.

They state their belief that other regulatory trends are also decreasing public access to information. One of their examples is the Technical Specification Improvement Program, which they state encourages the removal of material from the plant technical specifications and the relocation of it to internal plant documents. They fail to state that the only material that can be removed is that which does not focus licensee and operator attention on those plant conditions most important to safety. The Baltimore Gas and Electric Company (BGE) staff currently estimates that 90% of the requirements removed from the plant technical specifications will be relocated to the Updated Final Safety Analysis Report (UFSAR). The UFSAR is a public document which is revised at least once every two years. The remaining 10% will, as a minimum, be described in the publicly-available license amendment request to implement the improved technical specifications. In fact, much of this 10% will be transferred to more appropriate, publicly-available documents, such as the Security Plan, Quality Assurance Plan or Emergency Response Plan. Changes to requirements relocated from the technical specifications to the UFSAR, Security Plan, Quality Assurance Plan, or the Emergency Response Plan will be controlled by existing regulations. Their concern regarding the Technical Specification Improvement Program appears to be tempered when these clarifications are considered.

The OCRE petition includes a list of recent generic letters that enable licensees to relocate material from the plant technical specifications, a public document, into other plant documents that may not be available to the public. According to OCRE, about 36% of current technical specification material will be relocated to internal plant documents under this program. Again, as described above, BGE expects that more than 90% of the material removed from the technical specifications will be relocated to the UFSAR or other publicly-available documents.

In an amendment to the petition, OCRE cited two additional examples of the lack of public access to licensee-held information. Both examples seem to address the same concern. They appear to want an opportunity to review any document that the NRC inspectors may review. However, in neither example did they describe why they may need to review the information. We can only assume that they need the information to perform a regulatory function independent of the NRC. It was clearly the intent of Congress that the public is to be informed of and allowed to comment on regulatory activities. However, Congress

## ATTACHMENT (I)

### **DETAILED COMMENTS ON OHIO CITIZENS FOR RESPONSIBLE ENERGY, INC. PETITION FOR RULEMAKING**

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did not intend the public to be coequal to the NRC in assessing the adequacy of a licensee's response to regulatory issues. Even so, BGE continues to support the notion that the public should have access to those documents that have been determined to be appropriate for public disclosure by the NRC.

According to OCRE, the proposed change to 10 CFR Part 9 would establish the public's right-to-know and provide public access to copies of internal plant documents, except when necessary to protect sensitive information. The proposed change would not require that licensees generate information that does not already exist in response to a request. They believe that their proposed change would strike a proper balance between the public's right-to-know and the rights of the licensees. In actuality, granting their request would radically shift this balance and accomplish nothing meaningful.

Ohio Citizens for Responsible Energy, Inc. also believe that their proposed change to 10 CFR Part 9 would impose a minimal burden on licensees, and that this minor burden would be justified by the substantial increase in meaningful public participation. Their petition disregards a potentially major burden that will be placed on rate payers or stockholders. Specifically, it disregards the administrative burden of fulfilling the request.

Based on our experience with developing the information packages required for NRC inspections, we are confident that the costs for administering these requests could be well in excess of a mere "reproduction" fee. For example, a specific document request could require hours of searching and produce only a single page document. In this case, charging the requestor a few hundred dollars to cover the cost of searching would not be excessive and would provide reasonable compensation for the effort expended by the licensee. Since the NRC is allowed by 10 CFR 9.23 and 9.39 to charge the public for searching for agency records, it is reasonable that licensees be allowed to charge for conducting document searches, too.

There are many administrative costs associated with information requests by non-regulatory bodies which should not be passed on to rate-payers or stockholders. These costs should be paid by the requestor. These costs include:

- acknowledging, tracking and processing the request in a manner to adequately defend challenges by the requestor that the request was not handled in a timely, adequate or erroneous manner;
- evaluating whether the request may be refused (including consultation with legal staff, as necessary);
- prioritizing the request commensurate with other existing information requests from regulatory or non-regulatory bodies;
- searching for the requested material;
- verifying that identified material meet the requestor's expectations;
- deleting exempt portions of the requested material;
- reproducing the material;
- forwarding the material to the requestor; and
- documenting all of these administrative actions.

## ATTACHMENT (1)

### **DETAILED COMMENTS ON OHIO CITIZENS FOR RESPONSIBLE ENERGY, INC. PETITION FOR RULEMAKING**

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It is also reasonable to assess fees to the requestor when searching determines that the requested document is publicly available or when the requested document does not exist or cannot be located. Costs associated with placing the requested information in a public document room and notifying the requestor that it has been placed there should also be paid by the requestor. In observing government responses to Freedom of Information Act requests, our experience has shown these to be very burdensome and expensive.

Finally, in the case where the requestor appeals the licensee's response to a request for information, the OCRE proposes that the burden of proof be placed on the licensee to sustain its actions. We strenuously disagree for the multiple reasons stated above. There is no basis, legal or otherwise, for "shifting the burden of proof." Further, in any instance where a request for information is forced on a licensee, compensation for all reasonable costs associated with having to provide such information should be paid by a requestor prior to compliance with the request. Baltimore Gas and Electric Company, however, further responds by reiterating that OCRE has failed to establish a sound basis for their proposed regulatory change -- "shifting the burden of proof" from the requestor (i.e., the plaintiff) to the licensee (i.e., the defendant).