

# YANKEE ATOMIC ELECTRIC COMPANY

Telephone (617) 872-8100  
TWX 710-380-7619

DOCKETED  
USNRC

FYC 85-10  
GLA 85-72

1671 Worcester Road, Framingham, Massachusetts 01701

'85 JUL 15 AIO:32

OFFICE OF SECRETARY  
DOCKETING & SERVICE, 1985

BRANCH  
DOCKET NUMBER

PROMOTED FILE PR-2  
(50 FR 21072) ①

Secretary of the Commission  
United States Nuclear Regulatory Commission  
Washington, DC 20555

ATTENTION: Docketing and Service Branch

SUBJECT: Comments Pertaining To the Proposed Rule on "Adjudications;  
Special Procedures for Resolving Conflicts Concerning the  
Disclosure or Nondisclosure of Information", (50 FR 21072)

Dear Sir:

Yankee Atomic Electric Company appreciates the opportunity to comment on the subject Proposed Rule. Yankee Atomic owns and operates a nuclear power plant in Rowe, Massachusetts. Our Nuclear Services Division also provides engineering and licensing services for other nuclear power plants in the Northeast including Vermont Yankee, Maine Yankee and Seabrook.

While Yankee Atomic endorses the adoption of procedural rules which would properly protect confidential information, we believe the Proposed Rule contains two infirmities which could lead to denial of a licensee's due process rights, and which may violate the Administrative Procedure Act. We wish to suggest an alternate procedure which avoids these problems, yet achieves the Commission's stated goals.

The first problem we see with the Proposed Rule is that it would permit NRC Staff, as a party to the pending adjudication, to participate in the in camera review, while excluding all other parties. To allow any party, even the agency itself, to bring ex-parte pressures to bear in a pending case violates notions of fundamental fairness and denies other parties the opportunity for confrontation and rebuttal.<sup>1</sup> To avoid this problem, we suggest that each party be limited to filing on-the-record briefs with the office conducting the in camera review. The information sought to be protected need not be disclosed in these briefs.

The second, and perhaps more significant problem, is that the Proposed Rule would permit the very officer who will render a decision on the merits of the adjudication, to consider the confidential information during an in camera review, and order that the information not be disclosed to the

<sup>1</sup>Sangamon Valley Television Corp. v. United States, 269 F.2d 221 (D.C. Cir. 1959) and Jarrott v. Scrivener, 225 F.Supp. 827 (D.D.C. 1964).

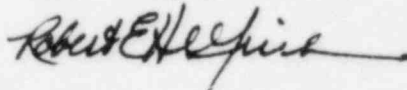
DS10  
add Jane R. Mayes, 9604 MMBB  
1/0  
8507180469 850710  
PDR PR  
2 50FR21072 PDR

Wetland by card JUL 16 1985 pd

Secretary of the Commission  
July 10, 1985  
Page 2

parties. Although Proposed Section 2.795k admonishes the presiding officer to not rely on withheld information in making decisions in the adjudication, we believe the officer could not help but be influenced by the nondisclosed information. Such influence could violate the exclusiveness of the record doctrine codified in the Administrative Procedure Act.<sup>2</sup> If a procedure for an in camera review of confidential information is to be included in the Final Rule, we suggest that it require that such review is to be conducted by an independent officer - one who is not connected with the pending adjudication in any manner.

Very truly yours,

A handwritten signature in dark ink, appearing to read "R. E. Helfrich", with a long horizontal flourish extending to the right.

R. E. Helfrich, Esquire  
Manager, Generic Licensing

MJH/snw

<sup>2</sup>Section 7(d), 5 U.S.C. 556(e); see also Goldberg v. Kelly, 397 U.S. 254, 271 (1970).