

consisting of the application for a license or amendment, any NRC environmental impact statement or assessment relating to the application, and any NRC report and any correspondence between the applicant and the NRC that is relevant to the application. The NRC staff has a continuing duty to keep the hearing file up to date with respect to these materials and to make them publicly available for inspection and copying, as well as providing them to the appropriate parties to the adjudication. To that end, the database for the Web-based version of ADAMS is updated once daily, usually after midnight East coast time. In the more formal NRC adjudications, additional discovery tools are available and these can provide access to much of the information and many of the documents in the licensee's sole possession that the Petitioner seeks through its petition for rulemaking. In view of the extensive provisions for access to relevant information and documents in NRC's hearing procedures in 10 CFR part 2,⁴ NRC strongly disagrees with the Petitioner's assertion that without the proposed rule, the public's effective participation in NRC's hearing process will be restricted.

Comment 5. The Petition Could Have a Negative Impact on the Public Health and Safety

Several commenters pointed out that the petition for rulemaking could actually have a negative effect on public health and safety by producing a chilling effect on the development of utilities' self-assessments (which have been promoted by NRC) because the utilities fear that such documents could be used for purposes other than that for which they were intended.

NRC Response

NRC agrees it is possible that granting the petition could discourage licensee self-assessment. NRC agrees that providing access to draft and other preliminary documents may have a chilling effect and discourage employees of licensees from documenting information that may be perceived as adverse to their employers, resulting in less candid and frank self-assessments and "lessons learned" analysis. It should be noted that NRC encourages self-assessments and licensee-initiated corrective actions and NRC would not want to impose

unnecessary requirements that discourage these activities.

Comment 6. Some Information Now Being Retained by Licensees Is Still Available to Members of the Public Through Reports to the NRC Which Are Placed in the NRC's Public Document Room

One commenter, Westinghouse Electric Corporation, pointed out that in each case provided by OCRE, "there is voluminous information in the possession of the NRC and hence publicly available * * *" Westinghouse took the examples provided by OCRE where documents are now being retained onsite, and pointed out where the information that is being retained onsite is still being provided in other records that are sent to NRC and, thereafter, placed in the PDR.

Another commenter, BG&E, responded to OCRE's appraisal of the current situation, by pointing out that approximately 90% of the information that it will take out of its technical specifications will be transferred to publicly available documents, such as the Updated Final Safety Analysis Report and the Quality Assurance Plan, and the remaining 10% will be transferred to more appropriate, publicly available documents which are controlled by existing regulations.

NRC Response

NRC agrees with the commenters that information retained on site often is provided in other records that are sent to NRC. Although some of this material may have been removed from its Web site and PDR after the terrorist attack of September 11, 2001, NRC has restored access to a large volume of licensing and regulatory materials that were removed.

Comment 7. OCRE is Mischaracterizing the 1989 Rules of Practice and Overstating the Effects of Not Having Access to the Records Sought

OCRE stated that "without sufficient factual information to support admission of contentions, petitioners will never become interveners and will never have the right to discovery." However, while the Rules of Practice will preclude a contention from being admitted where an intervenor has no facts to support its position and NRC hearing practice does not permit discovery to frame contentions, allowing access to "any record relevant to NRC-licensed or regulated activities held by a possessor," would allow, as several commenters pointed out, "litigation-type discovery against a licensee without filing a lawsuit and thus, without the legal safeguards

designed to prevent "fishing expeditions."

NRC Response

The NRC disagrees with the Petitioner's position that if this petition is not granted, the public will not be able to fully participate in the NRC hearing process which is provided for under the AEA. The AEA, as implemented by the Commission's regulations, provides the opportunity for a hearing to any person whose interests may be affected by the granting, renewal, or licensee-initiated amendment of an NRC license. The NRC staff makes available for public inspection and copying, documents relevant to its licensing decisions electronically at the NRC's Public Electronic Reading Room, discussed above, and/or in the PDR. These documents include the application, and any amendment thereto, any NRC environmental impact statement or assessment relating to the application, and any NRC report and any correspondence between the applicant and the NRC that is relevant to the application. These documents provide the basis for the NRC's decision to grant, renew, or amend, a license, and are sufficient to permit a member of the public to make an informed decision as to whether the person desires to participate in the hearing process and to formulate appropriate contentions. See Rules of Practice for Domestic Licensing Proceedings—Procedural Changes in the Hearing Process (54 FR 33168 (August 11, 1989)).

IV. Reasons for Denial

NRC recognizes the contribution the public makes to the regulatory process and the importance of public confidence in that process. However, based on the review of the amendment requested by OCRE and the comments received on this petition, NRC concludes that there are several legal and policy considerations associated with the petition for rulemaking which warrant denial of the petition. The specific reasons for denial are:

1. OCRE's request for access to licensee-held records is overly broad and would allow access to documents that the NRC requires licensees to maintain onsite for inspection purposes but generally does not require licensees to submit, as well as almost all of a licensee's internal documents including drafts and other documents which the NRC does not require licensees to maintain and on which NRC does not rely for NRC regulatory or licensing actions, even if they are, in some respect, relevant to NRC activities.

⁴ The NRC has proposed changes to the adjudicatory process 66 FR 19610 (April 16, 2001). The proposed changes would not affect the access to documents and information currently provided to the public.