

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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MEETING WITH NUCLEAR REACTOR INDUSTRY ON SECURITY  
FORCE WORK HOUR LIMITATIONS

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ROCKVILLE, MARYLAND

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THURSDAY, SEPTEMBER 25, 2003

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The Commission met in open session at  
9:10 a.m., at the Nuclear Regulatory Commission, One  
White Flint North, Rockville, Maryland.

The Honorable Nils Diaz, Chairman of the  
Commission, presiding.

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COMMISSIONERS PRESENT:

NILS DIAZ: Chairman of the Commission

EDWARD MCGAFFIGAN: Member of the Commission

JEFFREY S. MERRIFIELD: Member of the Commission

STAFF AND PRESENTERS:

MR. DAVID CHRISTIAN, Senior VP & Chief Nuclear  
Officer, Dominion

MR. MARVIN FERTEL, NEI

MR. DONALD HINTZ, President, Entergy

MR. MICHAEL SELLMAN, President & CEO, NMC

P-R-O-C-E-E-D-I-N-G-S

CHAIRMAN NILS DIAZ: Well, Good morning. We are pleased to be able to meet with Mr. Hintz and Mr. Fertel representing the nuclear industry on the issue of security work force limitations. It's obvious for a lot of people that this is the first time that the Commission has been able to meet in a public session of the Commission on a security issue that arose after the terrorist events of 9-11. These events, of course, have lead to increasing constraints on public discussion because the Commission has needed to make sure that information that can hurt our country does not reach its enemies. We know that this has been difficult for our stakeholders, but we will continue to make efforts to improve the situation as we move forward.

As you know, the Commission has worked diligently to enhance security at regulated facilities. For nuclear power plants, our efforts have focused on safeguarding information, access control, security force training, and environment and the design basis threats. The meeting this morning concerns Commission action relating to work hour demands on security force personnel. These work hour demands increase substantially as a result of their required heightened security measures. To address this matter, the NRC, on April 29, 2003, issued orders to licensees regarding prudent compensatory measures to address issues that may arise from fatigue of nuclear security force personnel.

We understand that the industry remains concerned about the implementation of the work hour limitations contained in the April 29 orders. We look forward to discussing your concerns on this important matter during this morning's session. Do my fellow Commissioners have any comments?

COMMISSIONER EDWARD McGAFFIGAN: Mr. Chairman, I have a comment about something that's not exactly the subject of this hearing, but we had a GAO report yesterday on force-on-force exercises that follows another GAO report we got a week or two ago about radiological disbursal devices. And I can tell you it just frustrates me that GAO is not treating us very fairly.

You sent them a letter, and there was a follow up letter from the staff. They choose not to include the follow-up letter from the staff in their report, which is typical. They always leave our detailed comments out. And substantively this report and the previous report woefully reflect on the General Accounting Office in my view.

The previous report, the very first line of it, talks about Iodine 131 as a radionuclide of concern for radiological disbursal device. And no self respecting scientist would ever make that claim.

The Federation of American Scientists, the Brookings Institution, the Monterey Institute, the IAEA, reflecting the world's scientific community view, has identified radionuclides of concern. But apparently,

the General Accounting Office, with its deep technical expertise, believes that tritium and Iodine 131 and such other short lived radionuclides are -- tritium is not short lived, but it's absolutely not dangerous. What is it 6-7 year half life. It's just dumb stuff coming out of GAO.

Then yesterday, the force-on-force exercise report basically doesn't listen to our comments, says a bunch of things that are absolutely wrong, hangs on, you know, use of words, word play. "NRC has not determined when a permanent program will be instituted." Well, we haven't determined the exact date that a permanent force-on-force exercise program will be instituted, but since last August, Chairman Meserve and Chairman Diaz have repeatedly said we're going to have a comprehensive force-on-force exercise program that will have exercises every three years, as compared to every eight years in the past. About 21, 22 exercises a year.

We have made that commitment repeatedly. We have said it's going to be an improved program. We have talked about the improvements we're making, both in terms of the way we conduct the exercises, which we're going to continue to improve. Use of MILES Gear, potentially in the future the use of JCATS and all that sort of stuff, the Joint Combat Arms Tactical Assimilation.

So they're hanging on something here. What have we done, ten exercises already in the last months? We're continuing to

aggressively do them because it's a pilot program, which it has to be because the DBT is not finalized yet and won't be until next October. They hang on that.

There's a bunch of other stupid things in here. If the GAO wants to say stupid things, Mr. Chairman, I suggest that we invite the GAO here to say the stupid things across the table from us so that we can rebut them in public. But that's probably something for another meeting.

As I say, I'm very frustrated. This is low quality work coming out of the GAO. It is factually wrong, it is scientifically flawed. And they should be ashamed of themselves.

CHAIRMAN NILS DIAZ: Thank you, Commissioner McGaffigan. Commissioner Merrifield?

COMMISSIONER JEFFREY MERRIFIELD Well, Mr. Chairman, I have not had sufficient time to go through the GAO report to the degree of detail that Commissioner McGaffigan has. I look forward to doing so. I will say at least an initial impression, that I would agree with what Commissioner McGaffigan sense that the report does not fully capture in an accurate sense what we have accomplished and what industry has accomplished in enhancing what was already the nation's most secure infrastructure prior to September 11 and has remained so ever since.

So hopefully, if there are the inaccuracies that

Commissioner McGaffigan has spoken to, we can engage in a way that we'll get the facts out and get our story out so that the public has a true reflection on what we have done and what is the nature of security at the nuclear power plants that we oversee. Thank you Mr. Chairman.

CHAIRMAN NILS DIAZ: Thank you, Commissioner Merrifield.

Mr. Hintz, you have the floor, sir.

Mr. DONALD HINTZ: Thank you. Mr. Chairman, Commissioners, Good morning. As chairman of the Nuclear Energy Institute, I want to express our appreciation for the opportunity to meet with you today to discuss the work hours order.

First I want to thank the Commission for providing the technical basis for the work hours order. We recognize that you issued this order in the interest of common defense and security. We are continuing to review the basis and will provide our comments as part of the pending fitness for duty rulemaking under 10 CFR Part 26.

The industry has been very responsive to the events of September 11, 2001, more so than any other industry in this country. We have spent over \$400 million at power reactors alone and have increased the number of security officers at the power reactors from approximately 5,000 to 7,000 to provide the enhanced security.

The interim compensatory measures ordered February 25,

2002, were quickly implemented by the industry. As you know, several of these measures required posting additional officers. Due to the lead times in hiring and training our security officers, we had no choice but to increase the work hours of our existing officers until additional officers could be hired and trained. In fact, the February 25th orders largely created the overtime condition that prompted the work hours order.

With the additional security officers that we have hired, overtime is now well under control and within the limits established for other essential plant workers subject to generic letter 82-12. We continue to believe that a more efficient mechanism for controlling security officer work hours could have been accomplished by placing them under our existing generic letter 82-12 programs. Nonetheless, we are well along implementing the work hours order but have two issues to discuss with you today.

The first deals with turnover time and the second deals with work hour limits during the preparation and conduct of annual force-on-force exercises. I would now like to turn it over to Marvin Fertel to lead the discussion on these items.

CHAIRMAN NILS DIAZ: Mr. Fertel?

MR. MARVIN FERTEL: Thank you. Good morning  
Mr. Chairman, Commissioners. As you're aware in the response to this order, basically all the licensees had requested relief on the two issues

that Don Hintz just mentioned. One was that turnover time not be included in the metric for the calculation of the group work hour order. And the other was that we get relief on the group work hour order during the annual exercise.

Let me start with the turnover issue. As you're aware, the individual limits for the people at the plant, the security officers, does not include turnover. That has come out of multiple years of discussion on the Part 26 issues and basically, I think, was decided to avoid unintended consequences effecting, potentially, safety.

We think it would be useful just to understand turnover from a security standpoint. And this is not the result of a major survey, but it's from talking with a number of the security managers that are in our offices daily these days. We're talking shift turnover that's on the order of fifteen to twenty minutes.

Typically what would happen is, if I were the officer coming on shift, I would get there early, I would use that time to go get my weapon, get my dosimeter, get my assignments for where I'm going, be briefed on any safety conditions at the plant that I need to know about, be briefed on any operating or security issues that I need to know about, and then get on the post that I'm on. And it's on the order of fifteen to twenty minutes is what we're seeing on average. Obviously, if there's a lot going on, it would be potentially different. But that would be a normal situation.

Given that nature of turnover, the first thing we believe is that whether turnover is in or out of the metric, it doesn't effect fatigue. We don't believe it effects fatigue whether you count it or if you don't count it in the group work hour.

The reason we don't believe it should be in the metric is predicated first on the experience from the Part 26 rulemaking activities to date, which is there could be unintended consequences of rushing turnover or whatever and we don't believe it should be there.

Second, it adds a degree of complexity that is unnecessary from an accounting standpoint. For me as an individual, if I'm the security officer, you're not counting turnover. For me now as a member of the group, you are counting turnover. And there's actually another component of complexity which I've been learning about, which is that based upon union agreements and other things, labor agreements that the companies have, they may be paying as part of their agreement for turnover at a set time, 30 minutes, 40 minutes, 20 minutes, whether you do it for that long or not. So I might have actually three different things I'm looking at for me as an individual. I don't count it when I'm an individual. I do count it when it's in the group. And the numbers may not even jive with what I'm paying them for, because I may be paying them for more time than it actually takes because that's part of my labor agreement.

From a regulatory standpoint, what we see is -- we don't really see

a problem in the normal time. We actually think that we're probably going to be okay. We do see a potential regulatory problem when we're in the outages. What you're allowing during an outage is a sixty hour group average.

Not everywhere, but normally during outages we'll go to 12 hour shifts. If I go to a twelve hour shift, I'm going to eat up my sixty hours. And then if I do have twenty minutes of turnover, I will be finding myself exceeding, potentially, the regulatory limit and then having to basically probably get permission to do so because I think everybody would argue it's okay.

So our argument is that right now it doesn't make sense to count it. What we hear when we talk with the staff and even when we talk among ourselves, to be honest, was the first reaction you have is, isn't turnover work, and aren't we counting the work time?

When you sort of peel that onion back a little bit, what you find is that you're trying to get a metric that's as meaningful as possible but it's not precise. Lunch is not work. Sometimes it is, but generally we don't consider lunch work. And we count that in the metric. Break time is not work, and that's counted in the metric.

The staff, as part of the learning experience in the Part 26 activities, has made decisions on how to deal with people who don't work 100% of the time and have come up with a number that says, if you don't

have 75% of the hours accounted for, you drop out of the group. There's rationale for that that probably makes some sense.

My point is that the metric is not very precise. It doesn't represent every hour worked by everybody. It represents those hours that are not worked too. So our conclusion is that, for a whole bunch of reasons, potential and intended consequences, there's certainly a degree of complexity we would rather not deal with at the plants. And third, a potential regulatory issue that might exist during outages. We would propose turnover not be included.

And I'll end on that issue by saying what I started with. We don't believe, in or out, that it effects fatigue. So we don't see not included it creating a fatigue problem.

Turning to the second issue which is a request for relief during the annual exercises. Getting ready for an annual exercise we look at will take about a week. And the exercise itself would be a week. Our proposal would be that for the two week period, the week getting ready and the week of the exercise, we be allowed to use the group work hours that you currently permit for an outage.

For an outage, we're allowed to go to a sixty hour group average for an outage that can last up to 120 days. Now, in general our outages are much shorter than that these days. We're happy with that. So we don't think we'll be using 120 days normally, but we think it's good that

you've provided that much time.

What we're talking about here is probably on the order of two weeks and no more. We're saying that if a sixty hour group average is okay for up to 120 days during an outage period, why wouldn't a group average of sixty hours be also okay from, again, a performance standpoint for a two week period.

Why do we need it? Well, we don't need it because we're not training regularly and we're going to just all of a sudden peak everybody at that period. That's what we've heard in some discussions. And that may have been the case in the past, when OSREs were being run once every eight years.

We are now setting up for basically not only your triannual reviews by the NRC, but we're setting up to have a very systematic approach to training which will have annual exercises, will have on-going training, the order requires a whole bunch of stuff, our approach will include a whole bunch of stuff.

So this isn't a case that we're not training and all of a sudden we peak. What it is is to do an annual exercise, whether NRC is present or not, we actually have to have three shifts involved. We have to have a shift that's on duty protecting the plant, we have to have a shift that's actually playing, and we have to have a shift that will act as controllers. Our general approach is that we think that the security officers will make

the best controllers as part of the training. By definition, if I'm doing that at the plant, I have to have overtime going on.

So our request here is to allow us to use the sixty hour cap that's permissible already for an outage for the two week period that we're actually preparing for and conducting an exercise. With that I will stop, and we would both be glad to answer any questions that you may have.

CHAIRMAN NILS DIAZ: Thank you very much. I believe it's Commissioner McGaffigan's turn to begin questioning.

COMMISSIONER EDWARD McGAFFIGAN: I'll just ask a couple of questions. You said it's fifteen to twenty minutes typically for turnover time. So if a person is working a typical twelve hour shift, you know, 48 hours one week, 36 hours the next week, averaging 42, which is typical I think in the industry if you're in a steady state, we're talking about an hour. So I mean I heard your perspective. But am I right that you're saying the de facto 48 hour normal group work hour limit becomes a 47 hour work hour limit as a result of this, if we include this?

MR. MARVIN FERTEL:

Again Commissioner, the problem we have isn't a problem so much of fatigue one way or the other and that and how much do we eat into the margin. It's a complexity issue for us. We're going to be keeping, I think at this point, from what I've heard, three sets of books on every individual for calculating the hours; the set of books that based upon him as an individual where it doesn't count, a set of books where he's part of the

group where it does count, and a third set of books that's representative of what we're paying him for which may have no relation to the amount of time.

COMMISSIONER EDWARD McGAFFIGAN: That argument I don't find totally convincing because it says for the unions you're willing to have a different set of books but for the NRC you prefer -- whatever. I think your other arguments may be a better. But we're arguing about an hour, so I'm not going to --

On the second item, I'll just mention that I'm sympathetic to the point you're making with regard to the sixty hours during the annual exercise. I think we are essentially announcing today something we haven't announced publicly before which is the order we issued on training which we said at the time requires much more frequent and much more realistic training than we required in the past under Part 50.73, etc. in the appendices. It has in it a complex annual exercise that is OSRE like, except that we're, aside from our Resident, maybe I guess we retain the right to have people observe your complex annual exercises but not to the extent that we would in an OSRE. But that is part of the training program. So for those like GAO who don't bother to read the fine print, they may want to know that, in addition to OSREs every three years you guys will be conducting much more frequent training. And we're not going to go into all the details of it. But among the details of it, which we're talking about in

public today, is a complex annual exercise, which will take you a full week to conduct and a full week to prepare for. And therefore it is every bit as complex, from your perspective, as an OSRE.

MR. MARVIN FERTEL: We agree.

COMMISSIONER EDWARD McGAFFIGAN: Thank you, Mr. Chairman.

CHAIRMAN NILS DIAZ: Commissioner Merrifield?

COMMISSIONER JEFFREY MERRIFIELD: Mr. Chairman, as I was preparing for the meeting we're having this morning and reviewing the materials provided by the staff about these issues, particularly the turnover issue, I was reminded that many years ago I used to be an hourly worker and used to actually at one point in my life supervise about 100 hourly workers. And the issue of turnover to me is no small issue.

Now, it may be only an hour that we're talking about. But to me the most resonating argument is the notion of the quality of that time. It seems to me that one of the principle purposes of that turnover time is to allow the employees who are on shift and the supervisors who are on shift to debrief those who are coming on. And you want to have a smooth turnover where information is fully flowed so that the people who are coming on know what the circumstances are at the plant.

I think this is noteworthy considering the fact that where the

staff is going -- although I did not support this initiative -- where the staff is going is to apply this also to other plant operations, including potentially the control room. And one would never want to be in a circumstance where there is any shortchanging of the time used to do turnover.

Now, our licensees do a very good job tracking time. And if we start imposing specific time limits in terms of what that turnover is going to be, they're going to keep track of it. And there will be -- and I don't see anything malicious about this, but they will have a stopwatch with their employees and say turnover is going to be x number of minutes and we're going to track it. Now that may not individually go back to one worker, but there may be circumstances where there could have been more information flow but it was unnaturally stopped.

And I would hate to be in a circumstance where there was a worker thinking gee, I had something I think might be useful to add but we're up to our fifteen minute time limit so I better not say it. And I don't think we as a safety agency should be creating a circumstance in which we are shortening unnaturally the amount of time that workers have to provide safety related information.

And so for that reason, I do agree with the position that has been articulated by NEI in terms of not counting the turnover time as part of the group hour limits. I personally don't think it makes any sense.

On the work hour limits, I agree with Commissioner

McGaffigan. I think for the two week period of time we have an enhanced training regimen that we're putting underway. It does make sense to me that in that one two week window that we have an accounting period similar to what we provide for outages. That seems fair and logical. I support that one as well. Thank you, Mr. Chairman.

COMMISSIONER EDWARD McGAFFIGAN: Mr. Chairman, could I mention one thing that follows on Commissioner Merrifield? And this is more a comment to the staff. They can read the Commission, but I think all of us -- you said something in your San Diego speech, and I fully agreed with it. You said it on behalf of the Commission as a whole and consulted with us before you said it, but we regard what we did for work hours for guards as not necessarily a precedent for what we're going to do on work hours in Part 26, particularly the group hour stuff.

The guards are out there, they're by themselves. They have to make life or death decisions by themselves potentially. We don't want them fatigued. So they're much more like the truck driver or the airline pilot, you know. Whereas the industry has argued in the past that operators and maintenance crews typically work in groups, have back ups. It is a different situation. I think we need the tightest work hours for and the tightest limits overall for the guards as opposed to the operators or the maintenance personnel or whatever.

But in particular, I think you said -- and you'll, I'm sure, pick

up on this. You said in San Diego that the Commission did not regard what we did in the work hours order for security officers as a precedent necessarily for what's going to happen in Part 26.

CHAIRMAN NILS DIAZ: That's absolutely correct.

COMMISSIONER JEFFREY MERRIFIELD: Mr. Chairman, I appreciate the statement of Commissioner McGaffigan in that regard. I think the writing on the wall with the staff is that is precisely what they're going to provide to the Commission. We may, as a Commission yet, turn them down on that. But I think it is certainly in the minds of many in our staff that that is precisely what they are going to do.

COMMISSIONER EDWARD McGAFFIGAN: But I also think that the senior staff hasn't agreed with that yet. And we'll see what happens. But to my knowledge -- I see them smiling over there -- nothing has been presented to the Deputy EDO or perhaps even the office directors at this point for their concurrence. So it will be an interesting process.

CHAIRMAN NILS DIAZ: At the outset, you know, the buck stops here and we will have to make that decision. And we won't make it this morning, but I'm sure that we will make it very soon.

Just a comment, taking the high road on the issue of the work hours and the turnover time. It has always been my hope during my years in here that the emphasis that the Commission has put on risk

informed and performance based regulations would be applicable across the board, that we will not be looking at a minute here or fifteen minutes there. What we're really concerned about is that the job is being well done, that the functions are exercised, and that overall when we look at the program that we can say that we believe this plan is providing the appropriate defenses for their facilities. You know, my position is that we need to do the very best that we can do. And I hope that you agree with that.

But we cannot be looking at a minute here or a minute there. But as a regulator, we eventually have to have a structure. And between these two things, it's now between a rock and a hard place. But we need to make those decisions. The Commission will make those decisions.

On the issue of the exercises, I spent many, many hours on the last exercise. When I was there, I saw people working from seven in the morning until midnight. And I do agree that is very time consuming we want to make sure that, you know, limits during those times are really considered in a broader sense. So in this case, I think I'm also sympathetic to the fact that we need to provide relief to make sure the exercises are done well, that nobody's cutting every corner. Because as you see very clearly, these exercises are a very visible component of what is happening in this country. And we need to ensure that they're done well.

And with that, if there are no further comments from my fellow Commissioners, we will adjourn.

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(Whereupon, the briefing concluded at 9:35 a.m.)