

November 15, 2001

MEMORANDUM TO: Suzanne C. Black, Chair
Petition Review Board

FROM: Chandu P. Patel */RA/*
Petition Manager

SUBJECT: STAFF RESPONSE TO COMMENTS ON DRAFT DIRECTOR'S
DECISION DD-01-05

This memorandum documents the NRC staff response to comments on the proposed Director's Decision (DD) DD-01-05 (Union of Concerned Scientists petition regarding Nuclear Power Plants with security provided by Wackenhut). The petitioner's comments were solicited by letter dated September 28, 2001.

The petitioner replied by letter dated October 2, 2001. The petitioner's comments and the staff responses are discussed below.

1. Petitioner's Comment:

Although the time frame is consistent with the guidance contained in Management Directive 8.11, I feel it is unfair for the NRC to request my comments in only 14 days. While I consider it a compliment that the NRC recognizes that I am more proficient and capable than its licensees and can therefore easily respond in half the time normally allotted by the staff for responses to its inquiries, I feel it is an unfair burden on the public. Unlike your licensees and me, most members of the public have to review NRC documents and provide comments in the spare time of their jobs and lives. Yet you are asking members of the public to accomplish in 14 days what you give your Commissioners 25 days to do -- complete a review of the Director's Decision. I recommend that Management Directive 8.11 be revised to indicate that a 30-day review time is the norm with shorter and longer periods permissible when circumstances dictate. The staff's confidence in my capability was not misplaced, as evidenced in my responding within five days, counting the two-day weekend.

Staff Response:

The petitioner has made a reasonable suggestion that should be considered by the staff. I recommend that the Petition Review Board consider the petitioner's comment in a future revision of the Management Directive 8.11. As far as this petition is concerned, the petitioner submitted his comments within five days. Hence, it does not affect the schedule for this petition.

2. Petitioner's Comment:

I went to great lengths in our petition to indicate that the concerns applied to all plants using Wackenhut contract security personnel even though the events at Indian Point 2 prompted our interest in the matter. I was therefore disappointed when the NRC's

evaluation, as reflected in the proposed Director's Decision, was based on only that single licensee. The staff therefore has no basis to determine if its findings from Con Ed are typical or atypical, unique or universal. In other words, the extent of condition assessment by the staff for this problem was weak in my view.

Staff Response:

As discussed in our proposed Director's Decision, the staff concluded that the petition has raised generic policy questions concerning how NRC requirements apply to circumstances involving individuals who declare themselves unfit for duty because of fatigue and to the actions taken by licensees in response to such declarations. The staff subsequently reviewed concerns reported to the NRC during the past two years and found that other concerns related to these policy matters had been reported and that these concerns were not limited to Wackenhut security personnel. Having considered the circumstances at Indian Point 2, and the staff's findings from the review of related concerns, the staff concluded that a regulatory action was warranted, but that one limited to licensees that use Wackenhut security personnel was not an appropriate means to address this concern.

3. Petitioner's Comment:

On page 7 of proposed Director's Decision, the staff has mischaracterized the concerns expressed in my petition. The staff stated that I was concerned that employment arrangements such as those practiced by Wackenhut "can potentially discourage employees from reporting that they are not fit for duty because of fatigue." That's a valid concern, but it is not mine. My concern, as articulated within the petition, is that security personnel employed by Wackenhut at NRC-licensed facilities who feel that their performance may be impaired and report it to their supervisors will have their fatigue concerns dismissed and be forced to work. Does the NRC really want security personnel, impaired by fatigue, protecting Americans from radiological sabotage? I would hope not.

Staff Response:

The staff has revised the final Director's Decision to characterize the petitioner's concerns as described in the petitioner's letter of October 2, 2001. In addition the staff notes that, although Part 26 does not require workers to make fitness for duty (FFD) declarations, the NRC encourages individuals to inform their employer if they believe their FFD is suspect. Furthermore, Part 26.27(b)(1) states that "impaired workers, or those whose fitness may be questionable, shall be removed from activities within the scope of this part, and may be returned only after determined to be fit to safely and competently perform activities within the scope of this part." As a consequence, when presented with information that a worker's fitness for duty is questionable, it is the licensee's responsibility to make a determination that the individual is fit for duty, prior to returning the individual to his or her duties.

4. Petitioner's Comment:

Comments (2) and (3) notwithstanding, the conclusion of the proposed Director's Decision is marginally reasonable in that, as the staff points out, the question of self-declared fatigue is broader than security personnel employed by Wackenhut. UCS would have preferred that the staff opted for a more aggressive tact than meekly issuing an Information Notice or Regulatory Issue Summary. Hopefully, the Commission will address those loose ends in the ongoing working hour limit rulemaking process.

Staff Response:

The staff believes that in matters concerning self-declaration of FFD, the potential for conflicts with NRC requirements is largely in the implementation of licensee policies, procedures, and conditions of employment, rather than the written terms of these documents. Accordingly, the staff does not expect that a Demand for Information requesting such documents will provide significant new information to the staff. Rather, the staff believes, that a generic communication which clarifies how current NRC requirements apply to worker declarations of FFD is the appropriate NRC action in this circumstance. The communication proposed by the staff will address the petitioner's concerns, and the related concerns identified through the staff's review, and articulate the NRC's requirements as they apply to a broad range of circumstances involving a worker's self-declaration of fitness for duty.

Regarding the proposed rulemaking concerning worker fatigue, the staff is currently awaiting a Commission decision on the proposed rulemaking plan. The staff will consider the policy matters identified through this petition as they proceed in accordance with the Commission's direction on this matter.

4. Petitioner's Comment:

November 23, 2001

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