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Comment on Draft Rule Wording – 10 CFR 26 Fitness-for-Duty Programs (67 FR 7093)

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Introduction

The purpose of this letter is to provide a Portland General Electric Company (PGE) comment on the Nuclear Regulatory Commission's (NRC's) preliminary draft rule wording that, if finalized, would revise 10 CFR 26, "Fitness-for-Duty Programs." A notice of the preliminary draft rule wording was issued on February 15, 2002 (67 FR 7093), with comments requested on individual subparts of the draft revised rule (10 CFR 26) as these subparts are developed. As of the date of this comment submittal, only draft Subpart A, "Administrative Provisions," and draft Subpart B, "Program Elements," are available for comment. PGE's comment provided herein addresses the preliminary revised rule wording introduced in the draft Subparts A and B.

Comment on Draft Revised 10 CFR 26, Subparts A and B

PGE's comment is in response to changes introduced in the draft revised Subparts A and B that expand the scope and applicability of 10 CFR 26 to include decommissioning plants. Specifically, the draft revised rule wording of 10 CFR 26.3(a), 10 CFR 26.3(d), 10 CFR 26.3(e)(5), and 10 CFR 26.21(a) would apply to decommissioning plants and personnel at decommissioning plants. PGE strongly disagrees with such an expansion of the scope and applicability of 10 CFR 26, since this would result in licensees of decommissioning plants incurring significantly increased costs with no significant offsetting benefit to public health and safety. For decommissioning plants such as PGE's Trojan Nuclear Plant, this assertion is consistent with NUREG/CR-6451, August 1997, which states that on the basis of a safety hazards analysis of the consequences of a dropped fuel assembly at a permanently defueled plant where the remaining spent fuel has sufficiently low decay heat loads such that the cladding will remain intact even if all spent fuel pool water is lost, "it appears that the Part 26 requirements...can be deleted without a significant impact on the public health and safety."

With a nuclear power plant in a permanently shutdown condition and the spent nuclear fuel stored in the Spent Fuel Pool, evolutions that have the potential to affect reactivity, spent fuel cooling, or spent fuel structural integrity are significantly reduced from those at an operating plant. The relatively few plant systems that are required to be operational for maintaining Spent Fuel Pool level and temperature are of simple design and easily monitored. As the spent nuclear fuel decay heat decreases over time, the time required to approach boiling in the Spent Fuel Pool steadily increases, such that operation of Spent Fuel Pool cooling systems becomes less urgent. For example, in the case of the permanently shutdown Trojan Nuclear Plant, Spent Fuel Pool cooling systems may be deactivated for more than nine days without approaching boiling in the Spent Fuel Pool. Furthermore, the number of fuel handling evolutions required prior to fuel transfer to an Independent Spent Fuel Storage Installation (ISFSI) or an off-site storage facility is typically very limited, but even with the concentrated fuel handling effort required upon transfer of spent fuel to a storage or shipping cask, these evolutions require the combined efforts of several trained personnel and continual management presence. No one individual would have the capability to perform an evolution, intentionally or unintentionally, that would compromise the health and safety of the public in a time too short to avoid detection and implement corrective

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action. Thus, the risks associated with a permanently defueled and decommissioning nuclear plant are significantly reduced from those of an operating nuclear power plant. In light of the significantly reduced risks associated with decommissioning plants as summarized above, expanding the scope of 10 CFR 26 to include decommissioning plants is not warranted.

Notwithstanding the above reductions in risk associated with decommissioning plants, corporate drug and alcohol monitoring and employee assistance programs, or other fitness-for-duty programs, typically have continued to be applied by decommissioning plants outside the auspices of 10 CFR 26 to ensure that public health and safety are maintained. For example, by letter dated February 7, 1992, the NRC approved the intention of Sacramento Municipal Utilities District (SMUD) to discontinue the 10 CFR 26 Fitness-for-Duty Program upon issuance of a Possession Only License (POL) for Rancho Seco, and to instead apply a corporate fitness-for-duty program. Similarly, by letter dated November 6, 1997, the permanently shutdown Maine Yankee nuclear power plant notified the NRC of their intention to discontinue the 10 CFR 26 Fitness-for-Duty Program, and instead apply fitness-for-duty elements outside the auspices of 10 CFR 26. In a letter dated January 12, 1998, the NRC concurred with Maine Yankee's conclusion that 10 CFR 26 no longer applies to the permanently shutdown nuclear power plant because "10 CFR Part 26 pertains to licensees authorized to operate a nuclear power reactor."

More recently, PGE notified the NRC via letter VPN-029-2000, dated June 28, 2000, that PGE intended to discontinue the 10 CFR 26 fitness-for-duty program at its decommissioning Trojan Nuclear Plant, but would retain certain fitness-for-duty program elements outside the auspices of 10 CFR 26. As with the aforementioned decommissioning plants, PGE's notification was based on the permanently shutdown status of the Trojan Nuclear Plant, together with the current non-applicability of 10 CFR 26 to nuclear power plants that are no longer authorized to operate. It should be noted that based on the results of PGE's current fitness-for-duty testing at Trojan Nuclear Plant since discontinuing the 10 CFR 26 fitness-for-duty program, there are no measurable indications of an increased risk to public health and safety.

Conclusion

Based on the above, the proposed expansion of the scope and applicability of 10 CFR 26 is not warranted, since this action would result in licensees of decommissioning plants incurring significantly increased costs with no significant offsetting benefit to public health and safety. Further, as an NRC Staff position that is new and different from the currently applicable Staff position, the subject expansion of the scope and applicability of 10 CFR 26 would require significant backfitting of equipment, programs, and/or procedures for those decommissioning plants that have been applying and continue to apply, with the NRC's concurrence, fitness-for-duty elements outside the auspices of 10 CFR 26. As detailed in the above comment, this backfitting effort would not result in a substantial increase in the overall protection of the public health and safety or the common defense and security, and thus the direct and indirect costs of implementation for decommissioning plants are not justified.

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