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From: Rebecca Karas
To: Carol Gallagher
Date: Tue, Sep 21, 2004 8:23 AM
Subject: Fwd: August Meeting

Carol,

Please post the attached email from Barry Quigley, and its attachments, to the Part 26 website as a comment on the rulemaking.

Becky

CC: David Desaulniers

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OFFICE OF THE SECRETARY
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ADJUDICATIONS STAFF

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Dave,

Here are my thoughts regarding the August meeting. Please call with questions.

Regards

Barry

Hoarding of Overtime:

Consider two categories of workers using the DOL categories of exempt and non-exempt. Exempt employees are not required to be paid overtime and rarely are; a substantial demotivator to working excessive hours. In some instances such as outages exempt employees may be paid overtime at a straight time rate. Most outages are short enough, that 72 hours for a month or so would be tolerable. Another case where exempt employees are paid is to cover vacations while the plant is online. Competition for this opportunity to get paid for working extra is cut-throat. Peer pressure to share what little overtime there is tends to keep someone from getting excessive amounts.

Non-exempt employees, often represented by unions, have means of apportioning overtime. These are seniority lists, overtime lists and alphabetical. In order for some to corner the overtime market, they would have to be suitably positioned on the list. Someone named Walker who wants to work a lot may have problems. Overtime lists work by offering the person with the most hours the first chance at overtime. At first, this sounds adverse to limiting hours. However, people are working not to accumulate hours but to accumulate money. The overtime list gives someone high on the list the ability to work double-time days instead of time and a half. The creativity of some people is truly high to get the most money for the least hours on-site. Some people can take a vacation day and work overtime to cover their own shift, or they will take a vacation day to reset the 72 hour clock so they can work a double time day. The peer pressure to not hog the overtime can be high. Gentlemen's agreements are often made to distribute the OT.

We have often talked about the 'distribution' of workers - some want none, some all, and some somewhere in the middle.

Let's put some numbers to it:

Week Average	OT shifts desired in biweekly pay	Case 1 % of people	Case 2	Case 3
40	0	10	10	30
46	1	20	10	20
52	2	20	10	10
58	3	20	10	10
64	4	20	20	10
70	5	10	30	10

Put these distributions in the context of the 48 hour weekly average; for Case 1 70% of the people are not having their desires met; the competition for the OT can be reasonably assumed to prevent some small group from working 72 hours in perpetuity. Cases 2 and 3 are skewed in opposite directions. Case 2 will have 80% not getting their desired overtime. Even in case 3, 50% of the people will be competing for the available overtime. Since the available overtime is capped at an average of 48 hours, "market forces" can limit high overtime.

Note that the preceding is for a plant that is adequately staffed and has a few people that want lots of hours. For plants not adequately staffed, the average will be higher than 48 requiring action by management.

For transient workers if they are utility employees shared among sites, the rules apply as if they were an employee at a single site. I still have no suggestion for workers from the union hall who could've worked 96 hours at a commercial last week and show up to work at my place the next week.

Regarding extended or back to back outages. I personally see reduced risk here based on the low probability of a 3 unit site having back to back to back outages. For a single extended outage, a much more likely situation measures are required. Consider the following from my original petition:

- a) For extended shutdowns the biweekly limit increases to 144 hours per week (weekly remains at 72 hours) provided:
 - i) Prior to restart or fuel load a plan is in place to ensure adequate rest for personnel performing critical tasks. Critical tasks are on a higher tier than safety-related work and are physical and administrative tasks directly related to fuel load and startup of the primary and secondary plant. Critical tasks would typically be those related to fuel load, primary and secondary system fill and vents, safety-related system testing, plant heatup and reactor startup

(through the reaching of full power).

- ii) The role of fatigue is specifically and promptly evaluated for all¹:
 - (1) Events classified as Significant Conditions Adverse to Quality under 10 CFR 50, Appendix B Criterion XVI,
 - (2) Events classified as Conditions Adverse to Quality under 10 CFR 50, Appendix B Criterion XVI and attributed to personnel error,
 - (3) Reportable events of 10 CFR 50 and 10 CFR 20,
 - (4) OSHA recordable injuries,
 - (5) Traffic accidents involving employees on their way home from work².

There may be something here we can work with.

¹ This includes events on other units of multi-unit sites if the personnel are under the extended outage provision.

² Letter from D. Lochbaum, Union of Concerned Scientists to Chairman Jackson, NRC March 18, 1999