

DOCKETED
USNRC

DOCKET NUMBER

PROPOSED RULES 2, 30, 40, 50, 52, 60, 63, 71, 72,
(70FR 07196) 73, 76-150

March 25, 2005 (4:00pm)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFFProposed Rule, Protection of Safeguards Information (RIN 3150-AH57)

③

Introduction

This comment is presented on behalf of the Nuclear Utility Workers Coalition (NUWC), a coalition of the following labor unions: Utility Workers Union of America, Local 150; International Union of Operating Engineers, Local 310; and International Brotherhood of Electrical Workers, Locals 160, 204, 949 and 2150. The Locals collectively represent over 1,000 physical, technical, clerical and professional employees at six nuclear generation stations in Iowa, Michigan, Minnesota, and Wisconsin. Currently, the Nuclear Management Company operates the six plants.

The NUWC supports safe reliable power generation at our nation's nuclear power generation stations. We understand that there is a need to address security concerns after the events of September 11, 2001. However, the rapid implementation of certain security procedures may compromise employees' rights under federal labor and employment discrimination laws. Specifically, the Proposed Rule, Protection of Safeguards Information (RIN 3150-AH57), which prevents employees or their collective bargaining representatives from obtaining site access procedures, has become a distraction to employees and, in some cases, could become an unnecessary deterrent to the timely and accurate reporting of unsafe conditions at nuclear facilities. We strongly urge the Commission to restore the availability of site access procedures, which in turn, will restore employees' rights as prescribed by law. Our recommendation can be accomplished without compromising the safety of our nation's nuclear power generation stations.

Federal Labor Law Conflict

The National Labor Relations Act (NLRA) requires employers to bargain in good faith with their employees' collective bargaining representatives over mandatory subjects of bargaining. Site access procedures, including their changes and effects, are mandatory subjects of bargaining. By classifying site access procedures as safeguards information, employers will maintain that the employees' representatives, including legal counsel, do not have a "need to know" and therefore cannot gain access to such information. As a result, employers can unilaterally change site access procedures without bargaining with their employees' representatives or informing the representatives of the actual changes implemented. This obstructs the recognized representatives from performing their legal obligation to represent the employees' interests in contract negotiations and administration.

Similarly, in disciplinary situations and/or other situations where site access issues could adversely affect employment, employees' representatives will be denied access to relevant site access procedures and governing documents. Failure to gain access to this information, compromises employees' rights and interferes with the employees' representatives' duty to fairly represent employees in grievances and arbitrations.

Template-SECY-067

SECY-02

Employment Discrimination

Under the proposed rule, it is possible for employers to discriminate against individuals protected by Title VII of the Civil Rights Act, Americans with Disabilities Act (ADA), Age Discrimination in Employment Act (ADEA), and other federal and state anti-discrimination laws. Employers denying employment opportunities or promotions on the basis of site access denial would not be required or even permitted to provide an explanation. In other words, employers will not have to divulge why an individual was denied site access or the procedure used in denying access. Consequently, individuals and their representatives will not be able to legally challenge the employer's decision to determine whether site access denial was pretextual for discrimination based on race, sex, or other protected class.

Safety Conscious Work Environment

Finally, we are concerned that the lack of access to site access information could negatively affect employees' willingness to report situations adverse to nuclear safety. Classifying site access procedures as safeguards information and preventing employees and their collective bargaining representatives from having access to these procedures, will create undue speculation among employees about the procedures used and the activities that can negatively affect one's site access and, accordingly, one's employment. This speculation could inadvertently lead to an unnecessary and unintentional chilling environment having adverse safety implications at our nation's nuclear facilities.

Conclusion

The NUWC is committed to the safe and reliable operation of nuclear facilities and, therefore, supports rules that assure a reliable and trustworthy workforce. To accomplish the goal of protecting employees' rights while maintaining the safety of our nuclear facilities, the NUWC offers the following recommendations:

1. Remove the designation of site access information as safeguards information; or
2. Specify that the "need to know" include the protection of employment and labor rights so that individuals involved in employment-related grievances, arbitration, litigation and/or labor contract negotiations and administration may gain access to relevant safeguards information when such individuals qualify as "Individuals Authorized to Access Safeguards Information". Also, set forth a procedure for which employees and their representatives may apply to gain access to relevant safeguards information for the protection of employment and labor rights so that individuals involved in employment-related grievances, arbitration, litigation and/or labor contract negotiations and administration may gain access to relevant safeguards information when such individuals do not qualify as "Individuals Authorized to Access Safeguards Information".

Removing site access information as safeguards information or, alternatively, establishing provisions whereby employees and their representatives may obtain such information, will prevent violations of individual's rights under applicable laws and not compromise the safety of

our nuclear facilities.

From: Carol Gallagher
To: Evangeline Ngbea
Date: Fri, Mar 25, 2005 2:55 PM
Subject: Comment letter on Protection of Safeguards Information Proposed Rule

Attached for docketing is a comment letter on the above noted proposed rule from Michael Follett that I received via the Rulemaking website on 3/25/04. His address is:

Michael Follett
2031 Dorset Dr.
Green Bay WI 54311
mfollett@ibewlocal2150.com

Carol

Mail Envelope Properties (42446CA2.380 : 2 : 21030)

Subject: Comment letter on Protection of Safeguards Information Proposed Rule
Creation Date: 3/25/05 2:55PM
From: Carol Gallagher
Created By: CAG@nrc.gov

Recipients

nrc.gov
owf5_po.OWFN_DO
ESN (Evangeline Ngbea)

Post Office
owf5_po.OWFN_DO

Route
nrc.gov

Files	Size	Date & Time
MESSAGE	1023	03/25/05 02:55PM
1485-0001.doc	28160	03/25/05 02:52PM

Options

Expiration Date: None
Priority: Standard
Reply Requested: No
Return Notification: None

Concealed Subject: No
Security: Standard