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OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

Secretary  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Attention: Rulemakings and Adjudications Staff

Subject: Comments on 10 CFR Part 26 Fitness for Duty Programs Proposed Rule

This letter provides comments on the subject proposed rule and is submitted on behalf of the Fermi Division, Local 223, Utility Workers Union of America (UWUA). This letter specifically requests that certain portions of Subpart I of the proposed rule be removed from the final rule. The portions requested to be removed are as follows:

Section 26.199(d)(2)(iii) regarding a required 48 hour break in any 14 day period,

Section 26.199(f) regarding collective work hour limits, and

Any other changes necessary to support removal of the above two sections.

Basis for Request to Remove Section 26.199(d)(2)(iii) and Section 26.199(f)

The Staff's argument for the proposed rule references a multitude of technical papers, studies, and research documents that allege that worker fatigue at nuclear power facilities is a safety issue and that the proposed changes are necessary to promote the public health and safety. This argument is nothing more than "smoke and mirrors" justification and propaganda. The facts are that there have been no significant operating events at nuclear power facilities that have been attributed to worker fatigue. The staff's reference to the Three Mile Island incident is offensive. If the staff is not suggesting that worker fatigue was a contributing factor, then the reference to the incident can only be for sensationalism.

The work hour controls for individuals coupled with the strong language in the proposed rule related to self-declaration of fatigue and fatigue assessments provide the necessary provisions to adequately, effectively, and completely address any potential worker fatigue issues in the nuclear power industry. Furthermore, issuance of the proposed rule as currently written will introduce several unintended negative consequences including reduction in the public health and safety and common defense and security, and the creation of a hostile work environment at nuclear power facilities across the country.

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Nuclear power plant workers are highly skilled, engaged, and reliable. What motivates us to the high standards that employment in the nuclear power industry demands is not some absurd higher calling. Rather, we are motivated by the same things that motivate workers in any other industry or occupation, by the financial rewards that our employment affords us. We all have families, and mortgages, and various other financial obligations that our employment enables us to meet. Issuance of the proposed rule as currently written will have a significant negative financial impact on nuclear power workers by limiting the hours we are allowed to work. If the Commission allows the proposed rule to be issued as currently written, there will be an outflow of dedicated and experienced workers from nuclear power facilities to non-nuclear facilities and other industries where work hours are not limited by these new proposed standards. This unrecoverable loss of experienced workforce will result in a reduction in the public health and safety and common defense and security.

The proposed rule as currently written has the effect of reducing the man hours available to licensees for accomplishing various work activities. The maintenance and surveillance necessary to operate a nuclear power facility, however, will remain constant. The question that must be asked is how then will the maintenance and surveillance be accomplished with a reduction in available man hours? There is a well documented and long history of staff reductions at nuclear power facilities throughout the industry. To expect licensee's senior management to increase staff at nuclear power facilities in response to issuance of the proposed rule is lunacy. What will occur is that more and more of the work that has traditionally been bargaining unit work or work of direct facility employees will be contracted to outside entities. This constitutes "union busting" at its most basic level. If the Commission allows the proposed rule to be issued as currently written, they will be contributing to the creation of a hostile work environment at nuclear power facilities across the country.

There are several compounding factors associated with the above two issues. Regarding the outflow of experienced workforce from the nuclear industry, many workers that do remain in the industry will take on second jobs to supplement their lost income. The NRC has no way to regulate these additional work hours. Regarding the reduction in man hours available, licensees will attempt to squeeze more activities per worker into a work day than can reasonably be expected to be completed safely.

The staff references several worker surveys in the discussion of the collective work hour limits and implies that the limits are consistent with nuclear power plant worker desires regarding overtime. This implication is inappropriate and misleading. The surveys referenced are outdated and of insufficient size to provide statistically meaningful data. Had the staff surveyed Fermi Division workers, they would have found that the vast majority of the current workforce is overwhelmingly opposed to NRC mandated reductions in allowed work hours. Furthermore, we believe based on discussions with nuclear power workers at other facilities that this is the predominant opinion of workers in the industry.

Notwithstanding the above, we acknowledge that there are certain licensees that regularly require grossly extended periods of forced overtime from their workforce. We are no more in favor of this practice than the mandated reductions in overtime of the proposed rule. However, the proposed individual work hour limits coupled with the provisions for self declaration of fatigue and fatigue assessments provide for an adequate, complete, and enforceable regulatory framework for the NRC to regulate individual licensees that are inappropriately demanding too many hours from their workforce.

Regarding the 48 hour break in any 14 day period, the staff's argument again revolves centrally around the "smoke and mirrors" justification of studies and research papers. It further references a 15 year old, outdated EPRI report and an inappropriate comparison to medical interns. The staff also references DOT regulations issued in 2003 which require a 34 hour break after any 8 consecutive days of work as further justification for this section of the proposed rule, which is inconsistent with a 48 hour break requirement. The staff clearly did not envision the potential ramifications of this provision. During extended refueling outages, a required 48 hour break would allow licensees to force workers onto the opposite shift they left when they return to work following the 48 hour break due to manpower constraints. This would allow licensees to cycle workers back and forth between night shift and day shift every two weeks which would in practice have a very real negative effect on fatigue.

### Conclusion

Issuance of the proposed rule as currently written will not satisfy the staff's stated Goal 2. The proposed rule as currently written will reduce the public health and safety and common defense and security, and create a hostile work environment at nuclear power facilities. Removal of the requested sections will result in a final rule that meets all of the staff's stated goals and that provides an adequate, complete, and enforceable regulatory framework for the NRC to ensure that fatigue does not negatively impact worker performance at nuclear power facilities.

Respectfully,

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Recording Secretary  
Fermi Division, Local 223  
Utility Workers Union of America

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