

December 22, 2005

BV-L-05-194  
DB-RAS-05-00549  
PY-CEI/NRR-2923L**DOCKET NUMBER**  
**PROPOSED RULE** **PR 26**  
**(70FR 50442)****DOCKETED**  
**USNRC**

January 4, 2006 (11:50am)

**OFFICE OF SECRETARY**  
**RULEMAKINGS AND**  
**ADJUDICATIONS STAFF**Secretary  
U.S. Nuclear Regulatory Commission  
Attention: Rulemakings and Adjudication Staff  
Washington, D.C. 20555-0001Subject: FirstEnergy Nuclear Operating Company Comments on the Work Hour Portion  
of the Proposed Fitness for Duty Rule, 10 CFR 26 Subpart I, "Managing  
Fatigue" (RIN 3150-AF12)

Ladies and Gentlemen:

By notice in the Federal Register dated August 26, 2005 (70 FR 50442), the Nuclear Regulatory Commission (NRC) proposed to amend its regulations for Fitness for Duty (FFD) programs. The NRC requested that comments regarding the proposed amended regulations be submitted by December 27, 2005. FirstEnergy Nuclear Operating Company (FENOC) hereby takes the opportunity to comment on portions of the proposed rulemaking that relate to worker fatigue. FENOC is participating in the associated industry workshops sponsored by the Nuclear Energy Institute (NEI), and also anticipates that NEI will submit a comprehensive set of comments on behalf of the industry.

Proposed 10 CFR 26 Subpart I, "Managing Fatigue," would be added to establish fatigue management requirements, including policies, procedures, training, examinations, recordkeeping, reporting, work hour controls, and fatigue assessments. FENOC supports most of the provisions of Subpart I. However, FENOC is concerned with the following aspects of the rule and the supplemental information provided with the Federal Register notice:

**1. Excessive Layering of Work Hour Limits and the Impact on Eight-Hour Work Schedules**

The proposed rule (10 CFR 26.199(d)) provides group work limits; individual work limits of 16 hours in a 24 hour period, 26 hours in a 48 hour period, 72 hours in 7 days; and breaks of 10 hours between shifts, 24 hours every 7 days, and 48 hours every 14 days. In addition, proposed 10 CFR 26.199(c) requires licensees to schedule work hours consistent with the objective of preventing impairment from fatigue due to duration, frequency, or sequencing of successive shifts. Other portions of the proposed rule require self-reporting of fatigue (10 CFR 26.199(e)), behavioral observation (10 CFR 26.33), training for individuals and supervisors (10 CFR 26.29 and 10 CFR 26.197), and policies and procedures (10 CFR 26.197).

SEC 4067

pmolator-sec v. 067

SEC 402

cc: [unclear]

FENOC is concerned with the loss of management flexibility and the operational distraction that will be created by the proposed restrictions. In addition to the proposed FFD rules, plant managers will need to consider labor contracts, federal overtime law, and other business needs such as scheduled system outages. In some cases, the new rules will result in an increased number of turnovers, with the attendant potential for communication errors or omissions. FENOC believes that the effort to meet the existing constraints and the new FFD rules will distract attention from the safe operation of the plants.

FENOC observes that the proposed regulation appears to create a preference for 12-hour work rotations. After reviewing the public comments already submitted regarding the current 8-hour rotation for operators at Point Beach, FENOC has concluded that it is nearly impossible to develop an effective routine 8-hour rotating shift schedule that meets all of the proposed FFD rules and objectives. Whether to schedule 8-hour or 12-hour work rotations is a business decision that should not be constrained by regulation. FENOC requests that the proposed rules be rewritten to provide the flexibility needed to schedule 8-hour work rotations.

## **2. Excessive Reporting Requirements**

Proposed 10 CFR 26.196(e) requires licensees to report annually a summary of the number of instances in which the licensee waived work hour controls, the collective work hours of any job duty group that exceeded an average of 48 hours per person per week, the conditions that caused the job duty group to exceed the collective work hours limit, the number of fatigue assessments conducted during the previous calendar year, the conditions under which each fatigue assessment was collected, and the management actions, if any resulting from each fatigue assessment. The Supplementary Information (70 FR 50579) states that "(T)he primary reason for requiring licensees to submit this information annually would be that ... certain nuclear power plant licensees have permitted individuals to work hours that are significantly in excess of those intended under the NRC's Policy on Worker Fatigue and abused the waiver provisions of the Policy by granting blanket waivers to larger groups of plant personnel for extended periods of time. It is the intent of the requirements ... to ensure that such abuses do not recur under the proposed rule. However, the NRC does not have the resources to inspect every licensee's fatigue management program each year and collect this information by relying solely on NRC inspection personnel."

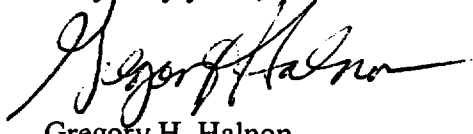
The implication that reporting requirements will influence compliance is not consistent with the operational philosophy at FENOC's facilities. FENOC intends to comply with the letter and intent of all NRC regulatory requirements, and presence or absence of onerous reporting requirements will have no bearing on the success of our fatigue management programs. The proposed requirements are inconsistent with NRC reporting requirements for other programs (for example, corrective action), and are redundant to the record retention requirements of proposed 10 CFR 26.197(d) and the licensee reviews required by 10 CFR 26.197(j). Furthermore, all required records

are available for inspection by the resident inspectors at each site. Therefore, FENOC does not agree that proposed 10 CFR 26.196(e) is needed to prevent fatigue management program abuses.

FENOC appreciates the opportunity to comment on the proposed FFD regulations, and endorses the industry effort led by NEI. We anticipate that NEI will submit a more comprehensive set of industry comments prior to the December 27, 2005 comment deadline.

Enclosure 1, Commitment List, identifies that there are no commitments contained in this letter. If there are any questions concerning this request, please contact Mr. Gregory H. Halnon, Director – FENOC Fleet Regulatory Affairs, at (330) 315-7500.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Gregory H. Halnon', written in a cursive style.

Gregory H. Halnon  
Director, Fleet Regulatory Affairs  
FirstEnergy Nuclear Operating Company

MSH

Enclosure

cc: NRC Region 1 Administrator  
NRC Region 3 Administrator  
Beaver Valley Power Station NRC Senior Resident Inspector  
Davis-Besse Nuclear Power Station NRC Senior Resident Inspector  
Perry Nuclear Power Plant NRC Senior Resident Inspector  
David R. Desautniers, NRC NRR/ADRO/DIRS/IO

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Enclosure 1  
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### **COMMITMENT LIST**

The following list identifies those actions committed to by the FirstEnergy Nuclear Operating Company (FENOC) in this document. Any other actions discussed in the submittal represent intended or planned actions by FENOC. They are described only for information and are not regulatory commitments. Please notify Robert E. Donnellon, Manager – Nuclear Industry Relations (330-315-7496) of any questions regarding this document or associated regulatory commitments.

<b><u>COMMITMENTS</u></b>	<b><u>DUE DATE</u></b>
None	Not Applicable.