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## Building and Construction Trades Department

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January 3, 2007

OFFICE OF SECRETARY  
RULEMAKINGS AND  
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The Honorable Dale E. Klein  
Chairman  
U.S. Nuclear Regulatory Commission  
Mail Stop O-16 E15  
Washington, DC 20555-0001

**Re: Supplemental Comments Concerning NRC Fitness for Duty Rule, 10 C.F.R. Part 26, Subpart I, Fatigue Management**

Dear Chairman Klein:

The Building and Construction Trades Department, AFL-CIO, and its affiliated national and international unions represents approximately three million workers employed or seeking employment in the building and construction industry throughout the United States. Licensees that operate nuclear power plants regulated by the NRC, as well as contractors hired by NRC licensees to perform work during outages, employ many of these workers.

On behalf of the three million members of the Building and Construction Trades Department, AFL-CIO, I write to convey to the Commission my further comments on 10 CFR Part 26 Fitness-for-Duty. My comments supplement the comments that I sent to Mr. Luis A. Reyes, Executive Director for Operations, on September 14, 2006.

On October 24, 2006, the Nuclear Regulatory Commission (NRC) posted on its website 10 CFR Part 26 Fitness-for-Duty provisions that were described as "early draft final rule language" including Subpart I, "Managing Fatigue," and Subpart K, "Modified FFD Programs for Construction Sites." The Building and Construction Trades Department, AFL-CIO comments from our September 14, 2006 letter do not appear to be considered by the NRC staff.

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The health and safety of our members and the public is our top priority. Therefore, the Building and Construction Trades Department, AFL-CIO supports the majority of this rule. However, the Building and Construction Trades Department, AFL-CIO does not support certain work hour restrictions and break requirements aspects of this rule because they are unnecessary and may be counter productive to the protection of the public health and safety. Throughout this rulemaking effort, reviews of plant operating and human performance data have shown no correlation between the claimed impacts of fatigue and actual human performance at power reactor sites.

A fundamental characteristic of the building and construction industry is that the length of employment for a particular contractor is relatively short. Consequently, the typical construction worker is employed during a year by more than one contractor on a full-time temporary basis. The transient character of employment in the building and construction industry creates a state of affairs in which the most highly skilled and efficient workers in the industry are in constant demand because they are the most reliable and productive. The dwindling supply of skilled and experienced mechanics in many building and construction trades exacerbates this state of affairs.

Workers represented by the Building and Construction Trades Department, AFL-CIO, have worked millions of hours at various nuclear power plants without one injury resulting in lost time. This demonstrates that outside contractors and building trades people have performed at a high level of productivity without sacrificing health and safety under the current guidelines. Therefore, we are concerned that the proposed fatigue management rules, as currently drafted, will discourage the most highly qualified and skilled workers represented by our affiliated unions from accepting offers of employment by contractors at nuclear power plants. This is because these workers will be more likely to accept offers of employment from contractors retained to perform construction and repair work at unregulated facilities, which offer greater opportunity to earn substantially more overtime compensation than they would earn working at nuclear power plants under the proposed fatigue management rules. As a result, outside contractors are more likely to employ less skilled and less experienced workers during outages at nuclear power plants causing unintended consequences such as higher rates of work-related injuries, poorer quality work and lengthier outages.

The Nuclear Energy Institute (NEI) sent to you a letter dated December 21, 2006 with their comments. The Building and Construction Trades Department, AFL-CIO, fully supports the comments of the NEI on work hour restrictions and break requirements aspects of this rule. The Building and Construction Trades Department, AFL-CIO, supports the recommended changes to 26.205 that are discussed in the NEI letter. Specifically, the Building and Construction Trades Department believes: (1) The minimum days off per shift is unnecessary and should

be eliminated. (2) The 3 days off every 15 during an outage should be changed to a 34-hour break in any 9 day period. (3) The requirement related to two or more successive outages that start less than two weeks apart should be eliminated.

The Building and Construction Trades Department, AFL-CIO, supports development of a meaningful and effective fatigue management program for nuclear power plants, based on a common sense approach that is not inconsistent with staffing needs and the economic realities of the construction industry. Such a program would promote the health and safety of workers employed at such facilities, as well as the public health and safety.

With kind regards, I am

Sincerely yours,

A handwritten signature in cursive script that reads "Edward C. Sullivan".

Edward C. Sullivan  
President

cc:

The Honorable Edward McGaffigan, Jr., Commissioner, NRC  
The Honorable Jeffrey S. Merrifield, Commissioner, NRC  
The Honorable Gregory B. Jaczko, Commissioner, NRC  
The Honorable Peter B. Lyons, Commissioner, NRC