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WORKERS.**

900 Seventh Street, NW  
Washington, DC 20001  
202.833.7000  
<http://www.ibew.org>

EDWIN D. HILL  
International President

JON F. WALTERS  
International  
Secretary-Treasurer

**PR 26  
(70FR50442)**

January 22, 2007

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January 24, 2007 (4:30pm)

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

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

**Re: IBEW Comments on NRC Fitness for Duty Rule,  
10 CFR Part 26**

Dear Chairman Klein:

On behalf of the approximately 725,000 members of the International Brotherhood of Electrical Workers (IBEW), I write to convey to the Commission my further comments on 10 CFR Part 26, Fitness for Duty. My comments supplement the comments previously sent to Mr. Luis A. Reyes, Executive Director for Operations, on August 3, 2006.

On October 24, 2006, the Nuclear Regulatory Commission (NRC) posted on its Web site 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 comments I made in my August 3, 2006, letter did not appear to be considered by the NRC staff.

The health and safety of IBEW members and the public is my top priority. Every employee and contractor working inside the protected area at a nuclear facility contributes to remarkable performance results and safety record milestones. In this industry, such results are being repeated year after year. Other industries marvel at what the nuclear industry has accomplished, and will continue to accomplish in the pursuit of excellence.

The IBEW has not supported certain work hour restrictions and break requirements of this rule because they are unnecessary and may be counterproductive to the protection of 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.

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The Honorable Dale E. Klein  
January 22, 2007  
Page 2

A key point that needs to be reiterated from my prior comments to the proposed rulemaking is the scope of covered workers. *Any worker performing work tasks inside the protected area for the licensee should be included in a meaningful fatigue rule.* The shortcoming in the current proposed rule will compromise the rule's success in the workplace. My recommendation has been to require that any individual performing licensee work duty inside the protected area to be subject to fatigue rulemaking, complete with fatigue monitoring and work hours control. 10CFR26, §26.4 and §26.205(a) of the proposed rule would require modification to define individuals as I have requested.

I implore the Commission to acknowledge that every employee's work effort leads to the successful operation and execution of work tasks by final line employees. It is alarming that the proposed fatigue portion of the rule carves out certain work tasks and work groups for drafting fatigue policy. The original petitioner of this rulemaking, Mr. Barry Quigley, placed a written comment to the NRC January 2, 2006, that identifies an area of my continuing concern very well.

Task completion performed correctly the first time requires many individuals to perform their work in a very conscientious manner. The planned work idea or equipment manipulation task has many "human eyes" associated with it to be performed correctly. At each point a work task travels within a facility it must be recognized that the pending rule will weaken solid links that avert and minimize errors in the work controls and operation processes.

If the proposed rule proceeds, as written, the Commission should be fully prepared for concerns by workers being exempted from fatigue management by the increased exposure to excessive work hours disguised as "non-covered work" and the likelihood of increasing trends of job task errors or rework. The rule, as written, will likely erode long-term teamwork skills between intermingling departments.

The industry has worked earnestly and diligently authoring NEI Implementation Guidance Document 06-11 for attempting an implementation plan to the proposed rule, as written. At each public NRC meeting, when "covered work" and "non-covered work" is examined for implementation for fatigue regulation, it is clear a debate lies ahead in the near future. Upon implementation of this rule, the debate will ensue into the facilities and likely will continue for many years.





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The Honorable Dale E. Klein  
January 22, 2007  
Page 3

Furthermore, when discussing NEI's implementing guidance it is apparent that the industry will require workers to track and record hours each worker has performed on "non-covered work" and "covered work" on a continuing basis. Workers need to focus on completing the task at hand in a safe manner without being distracted or burdened with unnecessary tracking functions. It is often an industry written expectation, in which I agree, that every worker should take personal responsibility for knowing whether they have exceeded the proposed 16 hours in a 24-hour period, 26 hours in a 48-hour period, or 72 hours in a seven-day period. Any requirement above these basic work hour time cornerstones by dissecting work into "covered and non-covered work" time tracking, is unnecessary. By the addition of a required 34-hour break every nine days, all cumulative and acute fatigue discussions have ceased as NEI has indicated in their submitted written comments on December 21, 2006.

The proposed rule will be excessively burdensome for the industry. It will require developing or modifying existing payroll systems to capture the layered work control limit requirements. Compliance would be extremely costly for the industry, and a financial impact analysis should be conducted prior to its finalization.

**I would like to submit the IBEW's position on the pending 10CFR26 as posted on the NRC's Web site October 24, 2006:**

**Trustworthiness and Reliability**

10 CFR 26 Subsection 26.23 Performance Objectives, §26.406 Fitness Monitoring and §26.419 Suitability and Fitness Evaluations.

The proposed rule lacks guidance or reference to regulatory processes for workers to utilize appeal or recourse rights. An individual deemed not trustworthy or reliable results in being unfit for duty and the removal of unescorted access. This can be devastating for a worker's livelihood when such an action has no dispute remedy.

*The IBEW urges the Commission to direct workers to any regulatory procedures and practices available, which would include reference to collective bargaining agreements containing dispute resolution procedures for a worker to utilize when seeking appeal or recourse to disputed removal of unescorted access.*



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The Honorable Dale E. Klein  
January 22, 2007  
Page 4

### Fatigue Management, Subpart I

The IBEW agrees with NEI that with respect to Subpart I, "Managing Fatigue," that cites proposed multiple layers of requirements for days off and break times during normal and outage periods are excessive when compared to a scientific approach to fatigue management.

The IBEW supports the recommended changes to §26.205 by NEI in their letter dated December 21, 2006. Specifically, the IBEW believes:

- (1) The minimum "days off per shift" is unnecessary and should be eliminated during normal operations.
- (2) The three days off every 15 during an outage should be changed to a 34-hour break in any nine-day period.
- (3) The requirement related to two or more successive outages that start less than two weeks apart should be eliminated.

*The IBEW continues to express the need for the rule to include all workers inside the protected area being subject to the fatigue portion of the rule. The IBEW continues to support work hour limitations identified in §26.205(d) (1), (16 hours in 24 hours, 26 hours in 48 hours, and 72 hours in a 7 day work hour limitations). The IBEW continues to support the "self declare" fatigue provision contained in §26.209.*

The final rule should address the impact on staffing a qualified workforce into facilities during refueling outages and provide an appropriate remedy. The entire industry is already facing a shortage of skilled, qualified workers. The proposed work hour restrictions and break requirements will not stabilize the current problem. The industry is managing a case-by-case, crisis situation, as this current staffing challenge transitions into a long-term chronic dilemma for outages. Continuing forward with the rule, as written, will compromise long-term stable, safe, and efficient work practices and will have an onerous impact on the nuclear workforce. The NEI's suggested 34-hour break every nine days coupled with §26.205(d) (1) curtails this accelerating problem. This break period, combined with the work hour limits, removes cumulative worker fatigue as NEI has indicated.



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The Honorable Dale E. Klein  
January 22, 2007  
Page 5

**Subpart K—FFD Program for Construction**

This is the first time the IBEW has submitted comments on Subpart K. The IBEW strongly believes that all construction workplaces should be drug and alcohol-free, and is pleased to see the NRC acknowledge the importance of this issue. In the near future, there will be tremendous opportunity for the construction of new nuclear plants. The IBEW believes strong drug and alcohol standards should be monitored and enforced for all contractors equally on plant construction projects. Fitness for Duty programs can be utilized to ensure nuclear construction projects are built safely, on schedule, and within budget the first time. Labor and management alike can ill afford negative consequences of alcohol and drugs in the workplace, whether it is in the construction or operations side of the industry.

IBEW appreciates the NRC's continued effort to develop an effective rule that addresses key concerns addressed by all stakeholders.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Edwin D. Hill".

Edwin D. Hill  
International President

EDH:lb

Copy to 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

**From:** "Utility Dept" <Utility@IBEW.org>  
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