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From: "Robert E. Rutkowski" <rutkowski@terraworld.net>
To: <SECY@nrc.gov>
Date: Thu, Mar 15, 2007 2:51 PM
Subject: Regarding the 10 CFR Part 26 Fitness-for-Duty Draft Final Rule

Chairman Dale E. Klein
U.S. Nuclear Regulatory Commission
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Dear Chairman Klein:

I am writing to urge the Nuclear Regulatory Commission to finalize the 10 CFR Part 26 Fitness-for-Duty Draft Final Rule. In September 2002, POGO issued an investigative report Nuclear Power Plant Security: Voices from Inside the Fences, which in part documented how security officers at nuclear power plants were overworked:

To exploit existing resources, many utilities have relied heavily on requiring the existing guards to put in extraordinary overtime-12 hour shifts, six days a week. A number of guards have raised serious questions about their ability to remain alert under these conditions, as these hours are both mentally and physically exhausting. One guard told POGO he had been required to work 19 hours straight. Two other guards were fired because they refused to work a sixth consecutive day of 12-hour shifts. One of these guards said he was concerned that "he was too fatigued and would be unfit for duty for the mandated overtime." He filed a complaint with the Department of Labor (DOL) who ruled in his favor. The employer, The Wackenhut Corporation, settled with him. During its investigation, the DOL learned, "The NRC considers the 72 hour rule to be reasonable and fear that if an SO [Security Officer] is permitted to refuse to work based on fatigue it would create turmoil in the industry."

In April 2003, the NRC announced a new fatigue rule for nuclear security officers, designed to respond to the concerns raised. While I was encouraged by the NRC's effort to address fatigue, it became clear that industry influence inappropriately crept into the rulemaking process. As a result, the NRC adopted a rule that was less stringent than it should have been: the methodology for calculating an average work week for security officers at nuclear power plants has allowed the nuclear power plants to game the system. Since implementation of the new order, POGO and others have continued to see cases of overworked and fatigued security officers at nuclear power plants nationwide.

In June 2005, POGO wrote to then-Chairman Nils Diaz to alert the NRC to the fact that the nuclear industry was manipulating the rules and continuing to force security officers to work excessive hours. Their letter documented how security officers at Beaver Valley nuclear power plant were still working 60 to 72 hour work weeks. The plant included a variety of administrative and unarmed staff members in its pool of employees used for calculating an average work week. POGO wrote to Diaz that:

NRC admits that a number of people in the group are not armed responders in the security plan-instead they are unarmed badge checkers, watch people, and alarm station personnel.

As one armed guard put it, "these unarmed people who work less than 48 hours can't sleep for me." Again, POGO requested a description of each person included in the group at Beaver Valley. Again we were rebuffed.

It is clear the group is padded with people who are not armed responders. That was not the spirit of this order. Again NRC is sliding backwards into simply checking whether a licensee is in compliance with regulations, rather than ensuring that fatigued guards are not on duty.

I would also note that it would be irresponsible to give serious weight to the disingenuous comments of the Nuclear Energy Institute (NEI) regarding this issue. NEI has claimed that "there has been no correlation between the claimed impacts of fatigue and actual human performance at power reactor sites." This claim is simply not supported by the more than 200 security officers who have contacted POGO since 9/11 to raise safety and security concerns. It is also not supported by analyses from the National Sleep Foundation, comprised of the "nation's foremost sleep, circadian, medical and transportation safety experts," which has expressed concern that the rule does not provide enough time for security officers to recover from their duties.

The industry has been aggressive about silencing security officers who raise concerns about being overworked and fatigued. The chilling effect created by the industry discourages security officers from admitting problems with being tired. As noted in POGO's December 2005 comments "self-declaring" officers-those who have notified their managers that they are too tired to work-are sent to psychiatrists, given undesirable schedules, and fired in retaliation.

The level of security at the plants has suffered as a result of excessive overtime and fatigue. The time has come for the NRC to fix this simple problem. Adopting the Fitness-for-Duty Draft Final Rule should significantly increase security at nuclear power plants and address the ongoing overtime and fatigue problem. I urge you and the other Commissioners to support the Draft Final Rule. While it may not go far enough, it certainly is a significant improvement over the current situation.

Thank you for the opportunity to bring these remarks to your attention.

Mindful of the enormous responsibilities which stand before you, I am,

Yours sincerely,
Robert E. Rutkowski

cc:
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