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**Building and Construction Trades Department
AFL-CIO
&
Associated Maintenance Contractors**



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RULES AND DIRECTIVES
BRANCH
USNRC

Rulemaking, Directives, and Editing Branch
Office of Administration
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Re: Comments on Draft Regulatory Guide DG-5026, Fatigue Management for Nuclear Power Plant Personnel

Dear Sir or Madam:

The following comments are submitted jointly by the Building and Construction Trades Department of the AFL-CIO ("Department") and the Associated Maintenance Contractors ("AMC"). The Department is comprised of 13 national and international unions, which represent over 2.5 million working men and women. The AMC represents 27 maintenance contractors that routinely perform maintenance and modification work in nuclear power plants. Licensees that operate nuclear power plants regulated by the NRC, as well as AMC member contractors hired by NRC licensees to perform maintenance work, employ many of the workers represented by the affiliates of the Department. We estimate that workers hired by AMC-member contractors or directly by NRC licensees, whose employees are represented by the affiliates of the Department, perform approximately 80% of all maintenance work completed during outages in the nuclear stations in the United States.

The Department and AMC support the issuance of a regulatory guide in order to provide clear implementation guidance for fatigue management programs for nuclear power plants. Such guidance, however, must be tempered by a common sense approach not inconsistent with the staffing needs and economic realities of the construction industry.

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Fundamental to the construction industry is that the typical duration of a worker's employment with a particular contractor is relatively short. Most construction workers are generally employed seasonally on a full-time but temporary basis by more than one contractor. The transient nature of this employment creates a state of affairs in which the most highly skilled and efficient workers are in constant demand because of their reliability and productivity.

Industrial (non-nuclear) construction work seasons typically overlap the spring/fall nuclear refueling outage seasons. The critical nature of nuclear maintenance work demands that the industry be able to attract the best and brightest construction workers to supplement in-house employees during refueling outages. Reducing overtime (and therefore earning) opportunities at nuclear refueling outages will dissuade construction workers from accepting employment there if more lucrative construction opportunities within other industries are available.

Therefore, we are concerned that the new regulations for managing personnel fatigue at nuclear power plants, set forth in Subpart I of 10 CFR Part 26, will discourage the most highly qualified and skilled workers from accepting job offers with contractors at nuclear power plants because of reduced earnings opportunities. We predict that the regulations will have the unintended effect of producing chronic low nuclear-returnee rates by experienced construction workers when employment in that industry becomes a third or fourth-choice option in light of other opportunities in a booming industrial construction marketplace. As a result, nuclear contractors will likely experience a lack of available skilled labor during outages at nuclear power plants, resulting in the potential for unintended consequences such as higher rates of work-related injuries, reduced work quality and longer outage durations.

To the best of our knowledge, there has never been a moderate or significant nuclear/industrial safety event at a U.S. nuclear station attributed to construction worker fatigue. In fact, workers represented by the Department and employed by NRC licensees or AMC members work millions of hours annually at nuclear power plants with a safety record significantly better than general industry and on par with licensee personnel. This record demonstrates that construction workers can consistently perform at a high level of productivity while working overtime on a short-term basis without sacrificing health and safety.

We understand that Draft Regulatory Guide DG-5026 is designed to provide guidance on the implementation of the fatigue management rules of

Subpart I of 10 CFR Part 26, and that this is not the forum for urging changes to the regulations. Nevertheless, we feel the Commission should be aware of our concerns with respect to the impact of the regulations and urge the Commission to reconsider application of the regulations to construction workers hired on a temporary full-time basis to perform maintenance work at nuclear stations. In addition, for these same reasons we believe that the fatigue rules need to be reexamined to the extent they are deemed to apply to construction workers during the construction phase of new nuclear power facilities once the nuclear fuel is received on site. Alternatively, the Commission, for the above reasons, should issue an exemption from the fatigue management rules, pursuant to 10 CFR Part 26, Subpart A, Section 26.9, for such construction workers when they are performing maintenance and new construction work.

With respect to Draft Regulatory Guide DG-5026, we note that Section 26.205(d)(4) of 10 CFR 26, Subpart I, recognizes the unique circumstances involving maintenance work related to outages by providing that during the first 60 days of a unit outage licensees need not meet the minimum days off requirements set forth in paragraph (d)(3) of Section 26.205 "while those individuals are working on outage activities." Instead, individuals specified in §26.4(a)(4), *i.e.* those performing maintenance or directing maintenance work, must have at least one day off in any seven-day period. Until there is a change in the regulations, we are requesting that the activities subject to the requirement of one day off in any seven-day period during the first 60 days of a unit outage include pre-outage activities performed by construction workers not regularly employed at the site

As noted in Section 8.3 of NEI 06-11, Revision E, 10 CFR Part 26, Subpart I, defines outages but not the term "working on outage activities." Outages, in which the reactor unit is disconnected from the electrical grid, average 36 days. Pre-outage activities, for which construction workers are often required, average two to three weeks in duration and involve preparing specifically for the imminent outage period. Typically then, the pre-outage and outage work performed by such construction workers do not exceed the 60-day period provided for in Section 26.205(d)(4).

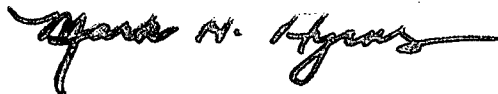
We fail to understand the basis for excluding the pre-outage work performed by temporary construction personnel within the 60-day period as such individuals are clearly "working on outage activities." For example, if steam generators are to be replaced during the outage, the new steam generators are typically delivered to the site prior to the outage to allow certain preparatory work to be performed on the new generators prior to installation. This advance work

reduces the actual outage duration but is clearly an outage-required activity. Moreover, if this preparatory activity was done off-site it would not be covered by 10 CFR Part 26, Subpart I.

We suggest, therefore, that Regulatory Guide DG-5026 be modified to make clear that the first 60-day period of a unit outage includes pre-outage work by construction workers hired temporarily by licensees or by contractors of licensees to perform maintenance work related to outage activities. If the Commission believes such modification is not possible without an exemption pursuant to 10 CFR Part 26, Subpart A, Section 26.9, please treat this letter as a request for such exemption. With this clarification or exemption, such workers would be covered by the minimum days off requirements of Section 26.205(d)(4) as long as the total of pre-outage and outage activities do not exceed 60 days.

We believe this modification to the proposed regulatory guide will protect against worker fatigue and maintain public health and safety without unnecessarily impeding the recruitment and productivity of outside temporary personnel hired by maintenance contractors or directly by a licensee to perform maintenance work related to outages. We thank you for your consideration.

Sincerely,



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