

June 16, 2009

MEMORANDUM TO: Frederick D. Brown
Division of Inspection and Regional Support
Office of Nuclear Reactor Regulation

FROM: Nancy L. Salgado, Chief **/RA/ DMuller for**
Operator Licensing and Human Performance Branch
Division of Inspection and Regional Support
Office of Nuclear Reactor Regulation

SUBJECT: PUBLIC MEETING TO DISCUSS PART 26, SUBPART I
IMPLEMENTATION

Enclosed is the meeting summary for the May 22, 2009, stakeholder meeting regarding the implementation of 10 CFR Part 26, Subpart I, "Managing Fatigue." The purpose of the meeting was to allow interested stakeholders an opportunity to provide the NRC information regarding industry's implementation of Part 26, Subpart I, as part of the NRC's efforts to monitor implementation status. The meeting was held at NRC Headquarters, Two White Flint North, 11555 Rockville Pike, Rockville, MD 20852.

The meeting was noticed on May 7, 2009. The notice is available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html> where the public can access the text and image files of NRC's public documents in the NRC's Agencywide Document Access and Management System (ADAMS). The meeting notice can be found under accession number ML091240089.

The meeting participants included NRC staff and contractors, members of the power reactor licensee community, representatives from the Nuclear Energy Institute (NEI), and a representative of the International Brotherhood of Electrical Workers (IBEW).

CONTACT: Michael Boggi, NRR
301-415-5309

Enclosures: 1. Meeting Summary
2. Meeting Attendance List
3. NRC Presentation
4. Industry Handout

MEMORANDUM TO: Frederick D. Brown
 Division of Inspection and Regional Support
 Office of Nuclear Reactor Regulation

FROM: Nancy L. Salgado, Chief **/RA/ DMuller for**
 Operator Licensing and Human Performance Branch
 Division of Inspection and Regional Support
 Office of Nuclear Reactor Regulation

SUBJECT: PUBLIC MEETING TO DISCUSS PART 26, SUBPART I
 IMPLEMENTATION

Enclosed is the meeting summary for the May 22, 2009, stakeholder meeting regarding the implementation of 10 CFR Part 26, Subpart I, "Managing Fatigue." The purpose of the meeting was to allow interested stakeholders an opportunity to provide the NRC information regarding industry's implementation of Part 26, Subpart I, as part of the NRC's efforts to monitor implementation status. The meeting was held at NRC Headquarters, Two White Flint North, 11555 Rockville Pike, Rockville, MD 20852.

The meeting was noticed on May 7, 2009. The notice is available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html> where the public can access the text and image files of NRC's public documents in the NRC's Agencywide Document Access and Management System (ADAMS). The meeting notice can be found under accession number ML091240089.

The meeting participants included NRC staff and contractors, members of the power reactor licensee community, representatives from the Nuclear Energy Institute (NEI), and a representative of the International Brotherhood of Electrical Workers (IBEW).

CONTACT: Michael Boggi, NRR
 301-415-5309

- Enclosures: 1. Meeting Summary
 2. Meeting Attendance List
 3. NRC Presentation
 4. Industry Handout

Distribution: See next page

ADAMS Accession No. ML091610396 ADAMS Package No. ML091610430

OFFICE	DIRS/IOLB	DIRS/IOLB
NAME	MBoggi	NSalgado
DATE	6/ 16/09	6/16/09

Official Record Copy

Valerie Barnes	Valerie.Barnes@NRC.GOV
Howard Benowitz	Howard.Benowitz@NRC.GOV
Michael Boggi	Michael.Boggi@NRC.GOV
Paul Bonnett	Paul.Bonnett@nrc.gov
David Desaulniers	David.Desaulniers@NRC.GOV
Craig Erlanger	Craig.Erlanger@nrc.gov
Lynn Hall	Lynn.Hall@NRC.GOV
Paul Harris	Paul.Harris@nrc.gov
Thomas Hipschman	Thomas.Hipschman@nrc.gov
Niav Hughes	Niav.Hughes@NRC.gov
Tim Kolb	Timothy.Kolb@NRC.GOV
Christiana Lui	Christiana.Liu@NRC.GOV
Kamishan Martin	Kamishan.Martin@NRC.GOV
Sean Peters	Sean.Peters@NRC.GOV
Autumn Szabo	Autumn.Szabo@NRC.GOV
Ross Telson	Ross.Telson@nrc.gov
Harvey Anderson	handerson@scana.com
Jesus Arias	jesus.arias@xenuclear.com
C. Baucom	chuck.baucom@pgnmail.com
Joseph Bauer	joseph.bauer@exeloncorp.com
Mary Birch	Mbirch@duke-energy.com
Greg Boerschig	gregory.boerschig@exeloncorp.com
Ed Brennen	ed.brennen@dominion.com
Danielle Brian	Info@pogo.org
Mike Bryce	mike_bryce@fpl.com
Shannon Burke	Shannon.Burke@FPL.com
John Butcher	jbc@nei.org
Kevin C. Carter	kccarter@energy-northwest.com
Ron Casey	Rcasey1@entergy.com
Jason Castro	jjcastro@tva.gov
Nancy Chapman	ngchapma@bechtel.com
Neil Coddington	ctcoddington@pplweb.com
John Collier	Johncollier@icfi.com
Peter Defilippi	defilipi@westinghouse.com
Jack DeSando	jack.m.desando@constellation.com
Nick DiPietro	Dipeitron@firstenergycorp.com
Darrel Drobnich	ddrobnich@sleepfoundation.org
Greg Dunn	gadunn@firstenergycorp.com
John Fee	john.fee@sce.com
Peter Fowler	Prfowler@duke-energy.com
James Gallman	Jgallma1@luminant.com
Mark Giacini	Mark.giacini@constellation.com
Mark Hale	HaleMW@westinghouse.com
Greg Halnon	Ghalnone@firstenergycorp.com
Thomas Hyoe	Madts20101@aol.com
M. Johanna Jaworsky	jaworsky@sbcglobal.net
James Kammer	Jakammer@duke-energy.com

Kevin Kingsley	Kkingsl@entergy.com
Ted Koser	tckoser@stpegs.com
Al Lindsay	rqlindsay@duke-energy.com
John Lines	jelines@pplweb.com
Sandra Lines	sklines@pplweb.com
Sheila Litchfield	Sheila.litchfield@framatome-np.com
Edward Lyman	elynab@ucsusa.org
Lee Marabella	Lee.Marabella@PSEG.com
Brian McCabe	Brian.mccabe@pgnmail.com
Robert McNiel	ramcniel@stpegs.com
Robert Meyer	Robt.Meyer@gmail.com
Dana Millar	dmillar@entergy.com
Todd Newkirk	Todd_newkirk@ibew.org
Michael O'Keefe	Michael_okeefe@fpl.com
Phil O'Mally	philip.j.omally@constellation.com
Ann Orr	Ann.Orr@aps.com
Michael Priebe	Michael.priebe@nmcco.com
Barry Quigley	Qpif@aol.com
Deann Raleigh	draleigh@curtiswright.com
Donald Rickard	DRickard@ameren.com
Margy Rochester	mrochester@pplweb.com
Billie Rooks	bprooks@southernco.com
Roger Rosa	Rrosa@cdc.gov
Jamie Seitz	jamie.seitz@nmcco.com
Dave Shafer	dshafer@ameren.com
Randy Shotwell	Rwshotwell@mcdermott.com
Terry Silverberg	terrence.silverberg@nmcco.com
Carlos Sisco	Csisco@winston.com
Russell Smith	ras@nei.org
William Smith	William_A_Smith@fpl.com
Diana Sorfleet	Diana.sorfleet@exeloncorp.com
Georgia Thu	gthu@icfi.com
Steve Turrin	Sturrin@stpegs.com
Ted Vogt	vogttj@songs.sce.com
James Voorhees	James.Voorhees@FPL.com
Thomas Wallace	Tdwallace@tva.gov
Robert Waselus	rwaselus@scana.com
Jenny Weil	Jenny_weil@platts.com
James Wicks	jrwicks@aep.com
Michelle Yun	Michelle.yun@exeloncorp.com
David Ziebell	dziebell@epri.com

Enclosure 1

Summary of May 22, 2009, Public Meeting Regarding 10 CFR Part 26 Subpart I Implementation

On May 22, 2009, a stakeholder meeting was held regarding the implementation of 10 CFR Part 26 (Fitness-for-Duty [FFD] Programs), Subpart I, "Managing Fatigue." The purpose of the meeting was to allow interested stakeholders an opportunity to provide the NRC with information regarding industry's implementation of Part 26, Subpart I as part of the NRC's efforts to monitor implementation status. The meeting was held at NRC Headquarters, Two White Flint North, 11555 Rockville Pike, Rockville, MD 20852.

The meeting was noticed on May 7, 2009. The notice is available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html> where the public can access the text and image files of NRC's public documents in the NRC's Agencywide Document Access and Management System (ADAMS). The meeting notice can be found under accession number ML091240089.

A list of the meeting attendees is included as Enclosure 2.

The meeting began with introductions and a general discussion of the status of NRC activities related to Subpart I implementation. The remainder of the meeting consisted of industry and public comments on Subpart I implementation. The following summarizes the discussion of key topics.

1. Technical Specifications

An NEI representative asked for the status of NRC's review of technical specifications amendment requests relating to fatigue management. The NRC staff responded that NRC was not specifically tracking the number of sites that have come in for an amendment request but based on the number of requests being worked on today and the number of requests that were approved this week, about one-third of the total number of expected requests have been received and are being reviewed.

2. Inspection

An NEI representative asked if the NRC has enhanced Inspection Manual Chapter 0612, Appendix E, to include Subpart I examples. The NRC staff responded that enhancement of Appendix E with regard to fatigue management is expected to be completed by the end of July 2009.

The staff also stated that the Office of Nuclear Security and Incident Response (NSIR) is reviewing its Significance Determination Process (SDP) for NSIR inspection procedures and will work with NRR to ensure regulatory consistency.

3. April 29, 2003, Order for Security Officers

During the public meeting, the staff discussed its plans to relax the April 29, 2003 security order. The staff plans to provide licensees two options by which the order would be relaxed. One option would automatically relax the order on October 1, 2009, when all licensees must implement the requirements of Subpart I. The second option would be required for licensees who implement Subpart I before October 1, 2009. For this second option, the licensee would have to submit a letter to the NRC. The staff also stated that one letter may address several docket numbers.

The staff stated that licensees have placed the order requirements into their security plans and technical specifications. Relaxation of the order will entail a security plan change under 10 CFR 50.4(p). The staff notes that this plan change will not require NSIR review because the March 31, 2009, Fitness-for-Duty final rule supersedes the order. The staff also stated that licensees would have to pursue an amendment to their technical specifications to remove any work hour controls and that this guidance was already provided to the industry.

The order states that it may be relaxed via the submission of a letter to the NRC. The NRC staff is preparing a letter that will describe the following two options: (1) implementation of Subpart I provisions on October 1, 2009, or (2) if a licensee wants to implement the provisions of Subpart I prior to October 1, 2009, a licensee may submit a letter stating that it has implemented Subpart I, and the order will be relaxed. The staff clarified that a response to the letter is only necessary if the licensee chooses option 2. Also, one letter may address several docket numbers.

An NEI representative asked if a licensee, during the transition period before full implementation of the Subpart I, may implement some requirements of Subpart I without notifying the NRC. The NRC staff responded that a licensee must notify the NRC if it is changing the regulatory basis of its technical specifications.

One representative stated that licensees do not want to be subject to inspection while piloting the implementation of Subpart I. He noted that licensee procedures will comply with Subpart I, but it is possible that compliance issues will arise, and suggested that the issues be addressed in corrective action space. The NRC staff responded that the inspection program will not go into effect until October 1, 2009. Also, while the enforcement process may be different than what is in place today, this would be a process difference, not a practical difference. The NRC staff clarified that, during the conduct of any implementation pilot, licensees must comply with the more restrictive applicable requirements.

4. Frequently Asked Question (FAQ) Process

The NRC staff noted that there has been a considerable increase in FAQ submissions in the past month. The FAQ process is the process of obtaining an official response from the staff, but phone calls are welcome as well.

An NEI representative stated that industry also is answering FFD questions and asked whether NEI could obtain a copy of the NRC's answers to avoid duplication of efforts. NEI is willing to give its responses to the NRC for review. The NRC responded that the NRC will post pending questions and responses to the questions on the NRC website. The staff noted that NEI should place questions they receive in the FAQ process, and an NEI representative stated that NEI will do so.

5. Applicability

Industry noted that utilities will need to decide whether to escort current badge-less personnel or place them under the FFD program. The NRC staff asked what licensees consider to be the applicability of independent spent fuel storage installations (ISFSI) operations. One industry representative responded that for his program, individuals working on ISFSI operations will be subject to the same requirements as maintenance personnel under the rule.

A question was asked by an industry representative whether refueling activities should be considered as maintenance or operating activities under the rule. Industry suggested that these activities might be considered maintenance activities. NRC staff noted that this is an ideal question for submission to the FAQ process and NEI agreed to submit such a question.

6. Training

Section 26.29(b) states that the FFD training examination must include a comprehensive random sampling of all knowledge and abilities (KAs), including at least one question from each KA. An NEI representative stated that it is clear that each KA must be addressed by a question and the rest of the questions on the test may be randomly selected.

The NRC staff noted that a question was submitted asking whether the requirement to have a certified instructor “available” during FFD training means that the instructor must be physically available. The staff clarified that the intent of this requirement is not that a subject matter expert must be physically available, but that she or he is available at least by phone or some other method.

7. Travel Time

The meeting participants discussed whether travel time from home to work or between work sites should be included in the calculation of work hours. Industry representatives provided the following examples of situations illustrating how travel time could be included in the calculation of work hours.

- Normal commuting time from home to work site (and vice versa) would not be counted as work hours. The NRC staff agreed.
- An individual works 3-4 hours at one site, then travels 40 minutes to a second site, then travels home. Travel time during the work day would be counted as work hours. The NRC staff agreed.
- After working a full day, an individual travels to a second site for work the following day. The individual stays overnight in a hotel near the second site. Travel time would not be counted as work hours. The staff said it will consider industry’s approach.
- An individual is sent to a second site to support a refueling outage. The individual receives a 34-hour break or greater over the weekend. If the individual chooses to drive home over the weekend and return to the second site for work the following week, that travel time would not be counted as work hours. The NRC staff agreed.

The NRC staff and industry representatives discussed the complexity of the issue of travel time with respect to the calculation of work hours, including the implications of tracking travel time and assigning travel schedules. An NEI representative stated that travel time should be included in the calculation of breaks, but not in the calculation of work hours. This

representative also stated that industry should allow adequate travel time to enable workers to meet the requirements of the rule, but should not tell the worker precisely when he or she must travel. Workers should be allowed to travel when they wish, even if they choose travel times or methods that end up not complying with the requirements of Subpart I; licensees should not be held accountable for this. The staff responded that it will investigate this issue further.

NRC staff indicated that industry has a responsibility not to put workers into a situation that compels the individual to show up for work fatigued.

8. 34-hour Break in 9 Days

A meeting participant noted that its scheduling software is based on hours (not days or months). This is inconsistent with NRC-endorsed NEI guidance, which uses the term “calendar day.” The NRC staff responded that the 9-day period is more conservative than 216 hours and the 9-day period is not a fixed period (it can be any window of 9 days). The staff will consider whether the NRC will accept 216 hours as an alternative implementation of the rule. NEI will submit this question to the formal FAQ process.

9. Transition Out of an Outage

A meeting participant asked how industry should handle transitions from an unexpected outage to on-line operations with regard to the minimum day off requirements of the rule. The staff responded that industry should plan the transition out of an outage just as they do the transition into an outage. NEI will submit this question to the formal FAQ process.

10. Weather- Related Emergencies

An industry representative explained that licensees sometimes increase staffing levels before the declaration of a weather-related emergency (as in the case of a hurricane watch), but, in some instances, the actual emergency will never be declared. Industry requested that the NRC confirm that work hour controls do not apply during the preparation for an emergency. The NRC staff responded that it understands the situation, but does not have an official answer at this time and will look into this issue. Currently, the Emergency Action Levels (EALs) do not address hurricanes or situations in which licensees may voluntarily increase site staffing in preparation for natural events. The NRC staff stated that EALs should not be modified due to the fatigue requirements. The staff discussed the waiver or exemption processes as possible solutions. Industry will submit this question to the formal FAQ process.

11. Dynamic Evaluation of Structures, Systems, and Components (SSCs) under 10 CFR 50.65(a)(4)

Industry representatives asked the NRC about the application of the “maintenance rule” (10 CFR 50.65) with regard to activities subject to the requirements of Subpart I. They explained that the FFD rule refers to 10 CFR 50.65(a)(4) to determine the safety-significance of certain activities, but many of the items listed are not safety-significant during outages. NRC-endorsed NEI guidance refers to section 50.65(a)(4), but industry wants to clarify that not all items in this provision are appropriate. Industry argued that it would be impossible to create a static list of risk-significant activities because the determination of risk-significance is dynamic and dependent upon real-time situations. The NRC staff responded that guidance may not

accurately reflect the intent of the rule and this issue should be discussed further. NEI will send the NRC staff a flow chart that will facilitate understanding and discussion of this topic.

12. Shift Turnover Times

The staff asked whether the NRC should anticipate that an operator's recorded time could be less than 12 hours for a normal 12-hour shift. An industry representative responded that turnover time may be excluded at both the front and back ends of a shift. Thus, 30 minutes of turnover times will not be included in the shift. The staff responded that this (i.e., individuals on watch less than 24 hours in a day) is an unintended consequence of the rule. The staff clarified that it would consider pursuing a rule change if it finds that industry is not accounting for operators in the control room for 24 hours each day.

13. Inspection Process for Gray Areas

Industry representatives stated that a process is needed for resolving disagreements between licensees and inspectors during the inspection of Subpart I. They suggested that, when there is uncertainty about whether a violation has taken place, licensees should ensure safety during the dispute process but otherwise should not implement corrective action until a final decision is made through the FAQ process. They argued that a more immediate corrective action could lead to disruptive impacts on a cascade of workers, even though the licensee's approach may prove acceptable upon resolution of the FAQ. The NRC staff responded that potential violations will be resolved through a Review Panel process, not through the FAQ process, and corrective action cannot wait for the approval of a FAQ. If the NRC discovers a universal compliance issue during the normal inspection process, the resolution may be incorporated into an FAQ. The staff noted that it will ensure that inspector training is written to minimize gray areas.

14. Definitions of "Adverse to Safety," "Adverse to Security," and "Security System Outage"

An NEI representative asked what the NRC's training materials include with regard to the definitions of "Adverse to Safety," "Adverse to Security," and "Security System Outage." NEI asked to be included in the development of training materials regarding these terms to ensure that examples do not overly restrict operators nor give them carte blanche. NEI will send the staff what it has developed thus far regarding these definitions.

Enclosure 2

May 22, 2009, Public Meeting Regarding 10 CFR Part 26 Subpart I Implementation

Attendance List

NAME	AFFILIATION
Mike Boggi	NRC
Ed Brennan	Dominion
Fred Brown	NRC
John Butler	NEI
John Collier	ICF
Jack Desando	Constellation Energy
David Desaulniers	NRC
Greg Halnon	First Energy
Paul Harris	NRC
Glen Kaegi	Exelon
Kamishan Martin	NRC
Dave Muller	NRC
Deann Raleigh	Scientech
Donald Rickard	XCEL Energy
Russell Smith	NEI
Georgia Thu	ICF
Dale Vincent	NEI
Autumn Szabo	NRC
<i>Via phone</i>	
Val Barnes	NRC
Kristi Branch	PNNL
Nancy Chapman	Bechtel
Mary Jawarski	PPL Susquehanna
Todd Newkirk	IBEW
Lee Johnson	DC Cook
Kevin Kingsley	Entergy
Harvey Anderson	SCANA
Mark Shaffer	
Michelle Pope	