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To: Rulemaking1CEm Resource
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Subject: Comment on PR-2, 30, etc. - Deliberate Misconduct Rule and Hearing on Challenges...
Attachments: NRC-2013-0132-DRAFT-0003.pdf

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Amendments to the Deliberate Misconduct Rule

Comment On: NRC-2013-0132-0001
Deliberate Misconduct Rule and Hearings on Challenges to the Immediate Effectiveness of Orders

Document: NRC-2013-0132-DRAFT-0003
Comment on FR Doc # 2014-02570

Submitter Information

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General Comment

STARS Alliance LLC Comments on Proposed Rule, Deliberate Misconduct Rule and Hearings on Challenges to the Immediate Effectiveness of Orders

Attachments

STARS Comment Letter

STARS Alliance

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Alliance Members:
Callaway Energy Center
Comanche Peak Nuclear Power Plant
Diablo Canyon Power Plant
Palo Verde Nuclear Generating Station
Wolf Creek Generating Station

STARS-14003

May 12, 2014

Ms. Annette Vietti-Cook
Secretary, U. S. Nuclear Regulatory Commission
Washington, DC 20555-0001
ATTN: Rulemakings and Adjudications Staff

Subject: STARS Alliance LLC Comments on Proposed Rule, "Deliberate Misconduct Rule and Hearings on Challenges to the Immediate Effectiveness of Orders" (79 Fed. Reg. 8097, dated February 11, 2014; Docket ID NRC-2013-0132)

References:

1. 79 Federal Register 8097, dated February 11, 2014; Docket ID NRC-2013-0132
2. Letter from Ellen C. Ginsberg, Nuclear Energy Institute, to Annette Vietti-Cook, USNRC, dated May 12, 2014

Dear Ms. Vietti-Cook:

STARS Alliance LLC (STARS) submits the following comments in response to the Federal Register notice (Reference 1) soliciting comments on the proposed revisions to the Deliberate Misconduct Rule and Hearings on Challenges to the Immediate Effectiveness of Orders. STARS appreciates the opportunity to comment on the proposed rule.

STARS endorses the comments submitted by the Nuclear Energy Institute (Reference 2). STARS would like to emphasize the following points with regard to the proposed changes to the Deliberate Misconduct Rule:

(1) The proposed rule offers a solution without a problem and fails to provide a compelling justification for incorporating "deliberate ignorance" into NRC's regulations. One case in almost 25 years is an exceedingly weak basis to modify the current rule, particularly when that one observation may be explained by something other than the Deliberate Misconduct Rule's scope. The proposed rule offers no viable rationale that supports expanding the rule to incorporate the "deliberate ignorance" concept.

(2) It would be premature to adopt the proposed rule because the U.S. Courts of Appeals are split

on the appropriateness of the "deliberate ignorance" standard.

(3) If promulgated, the proposed rule would increase the risk of violations based on careless disregard or negligence, be difficult to apply, and result in additional litigation.

(4) The NRC lacks guidance on the "deliberate ignorance" standard. Although the NRC should not expand the Deliberate Misconduct Rule by adding the "deliberate ignorance" concept, if the Commission proceeds to codify this standard, it should not make the final rule effective until it first publishes draft guidance for public comment and then finalizes that guidance.

The proposed changes to 10 CFR 2.202, Orders, are a good start but do not go far enough in addressing other deficiencies in the process for issuing and challenging immediately effective orders. STARS would like to emphasize the following points listed below.

(1) The Commission should require that all immediately effective orders contain more concrete detail affirmatively demonstrating the grounds for an immediately effective order and that immediate effectiveness is warranted. The requirement for more detail in an immediately effective order should also make clear that in cases where the NRC staff elects to impose immediate effectiveness, it must also release to the individual or licensee the Office of Investigations (OI) report and all evidence upon which the decision was based as well as a clear articulation of the theory of risk to public health and safety or common defense and security. The final rule should make clear that motions to challenge immediate effectiveness are not subject to the requirements in 10 CFR 2.309(f)(2) and may appropriately lack "particularity," especially when the enforcement order omits relevant information or sufficient detail. The Commission should further define "adequate evidence" for immediate effectiveness challenge purposes to require a showing of "clear and convincing evidence," especially in cases where an immediately effective order takes extraordinary measures that significantly impact careers and livelihoods.

(2) The Commission should further clarify the process for immediate effectiveness hearings. The NRC should clarify that the person challenging the order need not testify in order to prevent that individual from compromising their Constitutional right against self-incrimination. The hearing regulation should require testimony from NRC staff with actual knowledge of underlying facts as well as the person who assessed the alleged risk of significant harm to public health and safety or common defense and security.

(3) The NRC staff should be required to file a written answer to a motion challenging an Order's immediate effectiveness. The proposed change to 10 CFR 2.202(c)(2)(iii) to allow NRC staff to reply to a motion orally at the hearing rather than on paper should be changed to require the NRC staff to file a written response. The final rule should make clear that the NRC staff's answer must focus narrowly on the legal or factual arguments only raised in the motion.

(4) A presiding officer decision vacating an immediately effective order should not be stayed automatically pending commission review. The last sentence of 10 CFR 2.202(c)(2)(viii) should

be revised as follows, "The presiding officer will promptly refer an order setting aside immediate effectiveness to the Commission and such order setting aside immediate effectiveness will not be stayed unless the NRC staff files and the Commission grants a motion for a stay under 2.342."

If you have any questions on these comments, please contact me at 623-239-4359, or scott.bauer@starsalliance.com

Sincerely,

Scott A. Bauer
Regulatory Affairs Functional Area Manager
STARS Alliance LLC

SJM