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VIRGINIA POWER

April 15, 1996

Secretary
U. S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Serial No. GL 96-010
NL&OS/EJL

Attention: Docketing and Services Branch

Dear Sir:

**10 CFR PART 20
REPORTING REQUIREMENTS FOR UNAUTHORIZED USE OF LICENSED
RADIOACTIVE MATERIAL- PROPOSED RULE
FEDERAL REGISTER / Vol. 61, No. 21 / JANUARY 31, 1996 / p. 3334**

This letter provides Virginia Power's comments regarding the subject proposed rule. The Nuclear Regulatory Commission (NRC) is proposing to add a new requirement for licensees to notify the NRC Operations Center within 24 hours of discovering an intentional or an allegedly intentional diversion of licensed radioactive material from its intended or authorized use. The proposed rule would also require licensees to notify the NRC within 48 hours of discovery of the event when the licensee is unable to rule out that the use was intentional. The proposed rule would require reporting of events that cause, or have the potential to cause, an exposure of individuals whether or not the exposure exceeds the regulatory limits.

In the Federal Register notice the NRC described several recent contamination events involving the security and control of radioactive material, and identified two issues. The first issue is that current reporting requirements may not capture potentially intentional events if the events did not involve quantities of material or potential exposures that exceeded the current regulatory thresholds that trigger the requirements to file reports. We agree that this is a regulatory issue and that the NRC needs to be informed of these types of events.

The second issue identified by the NRC is that prompt NRC attention to these types of events is needed to assure that the appropriate corrective actions will or have been taken by the licensee and to determine any need for the NRC to take action in addition to any action taken by the licensee. We agree that the NRC needs assurance that the appropriate corrective action is being taken by the licensee. However, we disagree that prompt NRC attention is generally needed to establish this assurance. The regulations already address reporting requirements for events that result in exposures that exceed regulatory limits, so notification of the NRC is already required for those events. Additionally, commercial nuclear power reactor licensees and independent

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spent fuel storage installation (ISFSI) licensees already have effective corrective action programs which are periodically reviewed by the NRC. These corrective action programs are adequate to address exposure events and promptly implement the appropriate corrective actions.

Virginia Power's management and staff are very concerned about exposure events. Substantial effort is directed at ensuring that effective prompt corrective actions are implemented when an exposure event occurs at any of our facilities. Also, the issues in the corrective action program are typically reviewed daily by the NRC's on site Resident Inspectors. The prompt notification requirements in the proposed rule generally seem to be inappropriate for commercial nuclear power reactor and ISFSI licensees.

However, several of the incidents described by the NRC in the Federal Register notice are particularly significant and in our opinion would warrant special attention by the licensee and the NRC. Any incident involving the willful malicious unauthorized use of licensed radioactive material is a potentially dangerous situation and in our opinion would warrant 24 hour notification to the NRC. In fact incidents of this type should be the focus of the rule at least for commercial power reactors and ISFSI's as opposed to the more general construction of the proposed rule.

Enforcement Policy

The NRC is considering amending their Enforcement Policy to state that failure to meet 10 CFR 20.2205 may be considered a violation of significant regulatory concern, and could be characterized as a Severity Level III violation and be subject to an assessment of civil penalties. Exposure events above the regulatory limits are already addressed by the Enforcement Policy. Failing to report an exposure event below the regulatory limits should not be a significant regulatory concern in and of itself as long as effective corrective action was taken promptly by the licensee. However, we agree that failing to promptly report an incident involving the willful malicious unauthorized use of licensed radioactive material could be a violation of significant regulatory concern.

Paperwork Reduction Act Statement

The NRC has estimated the public reporting burden for the collection of information to average 20 hours per response. We believe that this significantly underestimates the reporting burden. Implementation of the proposed rule would require procedure changes and continuing training for a substantial number of staff - whether or not there is an actual or potential unauthorized use of licensed radioactive material. We think that the NRC's estimate may have overlooked this burden.

The NRC has asked if the proposed collection of information is necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility. In our opinion the proposed collection is generally not necessary for commercial power reactor licensees and ISFSI licensees. However, if the focus of the rule was narrowed to willful malicious incidents, then the 24 reporting requirement would be appropriate.

Regulatory Analysis

The NRC has said that based on past experience the occurrence of events that would be affected by this rule would be rare, and they estimate the number of such events at 20 per year. Additionally, the NRC has requested an estimate of the likely number of events that must be reported under the proposed rule and the number of events in which the licensee could not rule out that the use was intentional and unauthorized. We agree. We would not expect these events to occur at our facilities, in fact we cannot recall any occurrences to date at any of our facilities.

The NRC has indicated that they intend to make the final rule effective 30 days after the publication in the Federal Register, and has requested comments regarding the effective date. As discussed above, procedure modifications and training will be required. We suggest that 90 days would be a more appropriate time allowance to prepare for the rule.

Regulatory Flexibility Certification

The NRC has indicated that the anticipated cost of the proposed requirement would be incurred only by a licensee who is required to report an event. We disagree. Implementation of the proposed rule would require procedure changes and continuing training for a substantial number of staff - whether or not there is an actual or potential unauthorized use of licensed radioactive material. If this rule is implemented, Virginia Power will incur costs whether or not events of this type occur at our facilities.

Finally, we fully endorse the comments sent separately to the NRC by the Nuclear Energy Institute. We appreciate the opportunity to provide comments on this proposed rule.

Very truly yours,



M. L. Bowling, Manager
Nuclear Licensing & Programs

cc: Mr. Ralph Andersen
Project Manager, Radiological Protection, Emergency Preparedness, and
Waste Regulation Department
Nuclear Energy Institute
Suite 400
17761 Street N.W.
Washington, DC 20006-3708

Mr. Peter Francis
Office of Information and Regulatory Affairs
NEOB-10202 (3150-0014)
Office of Management and Budget
Washington, DC 20503

Information And Records Management Branch
(T-6F33)
U. S. Nuclear Regulatory Commission
Washington, DC 20555-0001