

TEXAS UTILITIES GENERATING COMPANY

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R. J. GARY
EXECUTIVE VICE PRESIDENT
AND GENERAL MANAGER

DOCKET NUMBER

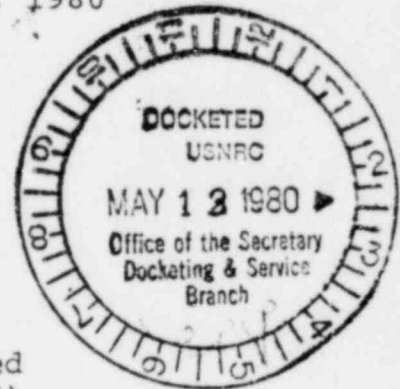
PROPOSED RULE

PR-19 (16)

May 9, 1980

(45 FR 19564)

Mr. Samuel J. Chilk
Secretary of the Commission
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555



ATTENTION: Docketing and Service Branch

RE: Informal Conference During Inspection; Proposed Rulemaking; 45 Fed. Reg. 19564 (March 26, 1980)

Dear Mr. Chilk:

Texas Utilities Generating Company (TUGCo) hereby responds to the captioned notice of proposed rulemaking. As an NRC licensee, TUGCo would be directly affected if the proposed rule were adopted, and thus has an obvious interest in the outcome of this rulemaking. In sum, TUGCo submits that the current practices for conducting informal conferences between inspectors and licensees during inspections are adequate. Accordingly, TUGCo submits that the NRC should not adopt the proposed rule.

I. EXISTING PRACTICES

NRC inspectors are currently able to call for informal conferences with licensees before, during and following inspections. These conferences allow inspectors to obtain timely information from licensees to assist in resolution of issues and preparation of inspection reports. When inspection reports are issued, they are placed on the public record. These practices are not codified in a formal regulation. Nevertheless, we are not aware of any instances where the practices have failed to produce the intended result, viz., free flow of pertinent communication between the NRC inspectors and licensees. Therefore, we perceive of no valid reason to alter these practices through adoption of the proposed regulation.

If the actual purpose of the proposed regulation is to provide members of the public with the opportunity to review and provide input to the results of a NRC inspection, then the

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proposed regulation is unnecessary. Existing procedure are more than adequate to protect the legitimate interests of concerned individuals. For example, any member of the public may review inspection reports (which are a matter of public record), and raise concerns with the NRC formally or informally. Under existing NRC Regulations (10 CFR 2.206), any member of the public may request that the NRC Staff issue an Order to Show Cause to the licensee. If meritorious, this action may lead to an enforcement proceeding.

If the NRC Staff initiates an enforcement proceeding, members of the public with valid, legal "interest" in the proceeding may participate (10 CFR 2.714). This participation is authorized by Section 189 of the Atomic Energy Act. We submit that this formal process provides members of the public who possess such "interest" with adequate access to the process and is consistent with the scheme envisioned by Congress for participation in NRC regulation of atomic energy by those not directly involved in the process (i.e., the NRC and licensees are the only parties directly involved in the process).

II. THE PROPOSED REGULATION

The Statement of Consideration which accompanies the proposed regulation states that the purpose of the rule is to "give NRC the prerogative of having present individuals that have a specific and legitimate interest in attending the meeting . . ." (emphasis added). As examples of individuals having "specific and legitimate" interests, the Statement mentions (a) a representative of the workers who has submitted a request under 10 CFR 19.16 or (b) a worker having interest in the inspection within the meaning of 10 CFR 19.15 or 19.16. The proposed regulation itself, however, would more generally allow the NRC inspector to invite "individuals with legitimate interests" to attend informal conferences.

The proposed regulation appears to authorize the NRC inspector to include at such informal conferences individuals with a wide range of interest in matters which are the subject of inspections, subject only to the inspector's judgment that such interest is "legitimate." We submit that such informal conferences attended by outsiders could be divisive, counterproductive, or useless, and could stifle the free flow of communication between the NRC inspector and the licensee. More importantly, we believe that such informal conferences are inappropriate as a matter of law and unnecessary as a matter of policy. The proper parties now authorized to

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attend and participate in such conferences are the regulator (NRC inspector) and the regulated (NRC licensee), the only parties with legitimate, specific and legal "interest" in this stage of the inspection. Again, when the process reaches the stage where others may be vested with valid, legal "interest" in the matter, existing NRC Regulations adequately protect such "interest."

III. VALUE-IMPACT ASSESSMENT

As discussed above, TUGCo submits that the proposed regulation is inappropriate and unnecessary, and that it should not be promulgated. As additional support for our position, we also note that the Value-Impact Assessment which accompanies the proposed regulation contains a number of unsupported statements and assumptions which attempt to justify the regulation. This Assessment suggests that the reluctance of a licensee to participate in such an informal conference (given the controversial or emotional atmosphere surrounding an inspection based upon a worker's complaint) would be overcome if the NRC inspector has the prerogative of inviting "only persons with legitimate specific interests." This assertion is totally unsupported by any factual or pragmatic basis.

Likewise, the Assessment states that incidents where licensees have rejected requests for attendance of workers at inspections have resulted in greater difficulty in resolving health and safety considerations. Without some statement of facts and experiences demonstrating how the resolution of such considerations has been made more difficult, it is impossible to make an assessment of either the value or the impact of the proposed regulation. In fact, a full assessment of the values and impacts of the proposal mandates a detailed explanation of why the existing process is inadequate. That explanation is not contained in the Assessment.

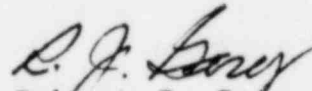
IV. CONCLUSION

We could provide detailed criticisms of several other aspects of the proposed regulation and the Value-Impact Assessment. However, we feel that such an effort would be tangential to our main point here. Suffice it to say that we believe

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that the proposed regulation is ill-conceived and unnecessary, would be counterproductive to the resolution of issues by the NRC inspector and the licensee, and is inappropriate as a matter of law. Accordingly, TUGCo strongly urges that the proposed regulation not be adopted.

Yours very truly,


Robert J. Gary

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