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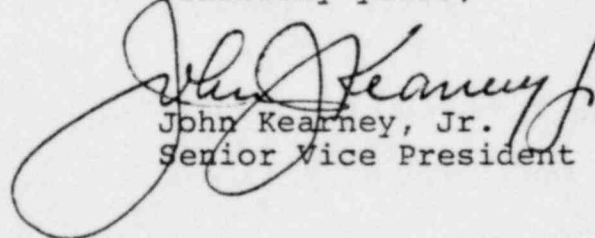
May 12, 1980

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

Dear Mr. Chilk:

In response to the Commission's request for public comments on 10 CFR 19.2 and 19.14 concerning informal conferences during inspections, attached is the position of EEI on behalf of its membership. We appreciate the opportunity to provide you with our thoughts on these proposed rules and your consideration of them.

Sincerely yours,


John Kearney, Jr.
Senior Vice President

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Acknowledged by card. 5/13/80 mdv.

UNITED STATES OF AMERICA
BEFORE THE
NUCLEAR REGULATORY COMMISSION

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| Proposed regulations |) | 10 CFR 19.2, 19.14 |
| concerning informal |) | (45 Fed. Reg. 19564, |
| conferences during |) | March 26, 1980.) |
| inspections and |) | |
| attendance of licensee |) | |
| and NRC representatives |) | |

The Edison Electric Institute, the national association of the investor-owned electric utility industry, submits these comments in response to the Notice of Proposed Rulemaking which was issued by the Nuclear Regulatory Commission (NRC) on March 26, 1980, 45 Fed. Reg. 19564.

The EEI member companies serve 99 percent of all customers of the investor-owned segment of the industry and 77.5 percent of all users of electricity in the United States. Many of the Institute's member companies generate a portion of their customers' needs with nuclear power facilities.

I. Introduction:

As explained in the Federal Register Notice, the intention of the NRC in codifying the existing informal conference procedure in Part 19 is to facilitate the exchange of information during and after inspections and to expedite the resolution of inspection findings. Furthermore, the Commission seeks to put itself on a par with licensees by explicitly authorizing the NRC inspectors to invite individuals with "legitimate, specific interests" to the informal conferences. NRC cites representatives of workers or workers

themselves as examples of the individuals whom NRC might ask to participate in the informal conferences. 1/

The genesis for the proposed rules is "a request from several unions interested in being involved in inspections related to radiological conditions in the work environment." 2/ The proposal also reflects the view of the NRC Office of Inspection and Enforcement that the effectiveness of inspection conferences will be increased if NRC inspectors have the prerogative of inviting interested individuals, including expert consultants. As justification for including specific authorization for this in the regulations, the preamble refers, without specific detail, to "several occasions" 3/ when licensees have denied requests for attendance of workers or worker representatives at informal conferences. No explanation of the factual circumstances associated with such denials is given.

Finally, the proposed rule would extend the present informal conference procedures to all 10 CFR Part 50 licensees, including holders of construction permits and limited work authorizations.

II. The Proposed Rule is Unnecessary and Will Not Achieve the Intended Objectives.

EI agrees with the Office of Inspection and Enforcement that "informal conferences have considerable value in terms of clarifying inspection objectives and procedures, and discussing inspection findings including the resolution of possible items of non-compliance with regulatory requirements." 4/ Under current

1/ 45 Fed. Reg. 19564

2/ Id

3/ 45 Fed. Reg. 19564

4/ 45 Fed. Reg. 19564-19565

procedure pursuant to the terms of the I & E Manual, licensees welcome the opportunity to meet informally with the inspectors and realize that these discussions are informative and helpful to both parties involved. The conferences have been constructive in large part due to their informality. The value of such conferences will diminish in direct proportion to their loss of informality.

We are unaware of more than one or two isolated incidents among the innumerable informal conferences which have occurred in the past during which disagreements or misunderstandings between the licensee and the NRC inspector have resulted in an inability to conduct an informal conference. Nowhere in the preamble does NRC describe past incidents in which the stated objectives of the informal conference procedure have been thwarted.

As has been noted above, the NRC intends this proposed regulation "to facilitate the exchange of information" and "to expedite the resolution of inspection findings." EEI believes the proposed rule will not achieve these objectives. It is unnecessary and likely to be counterproductive. No need exists to alter a practice which presently functions satisfactorily.

Our concern with the proposal centers on the problems it would raise if enacted in its present form. As pointed out above, to the extent it codifies current practice it is unnecessary. However, to the extent it modifies that practice it raises serious questions and if promulgated is likely to detract seriously from the value of the conferences to both the licensee and the NRC.

Serious questions are raised because adoption of a rule in this area will formalize the "informal conferences." The proposed rule would require an informal conference with a representative of the licensee to be held at any time during an inspection upon the request of the NRC inspector. Tentative inspection findings, individual complaints involving a broad array of issues, and resolution of matters pertaining to inspection findings would be appropriate topics for discussion. Such a mandatory "informal conference" requirement cannot but help raise a number of questions among licensees regarding their obligation to participate, the need for legal representation and the effect of statements made at the conference.

The presence of NRC invitees at "informal conferences" also represents a change from present practices. This change is likely to reduce the current benefits of informal conferences. Not only would these invitees be likely to inhibit the frank exchange of information, but that which was discussed could also subsequently be distorted or misrepresented when discussed in a public forum.

In addition, the presence of invitees with "legitimate interests" at "informal conferences" is likely to prolong rather than expedite issue resolution. Consideration of the diverse views which will be represented by all participants will take time. The divergent views may complicate or make issue resolution by the licensee and NRC inspector impossible in that forum. We respectfully suggest that NRC is being unrealistic in stating that problems such as

these "...should be obviated by the fact that the NRC inspector and the licensee would have the prerogative of inviting only persons with legitimate, specific interest." 5/

In summary, EEI does not believe NRC has demonstrated a need for this rule and that, if adopted, the benefits of the existing informal conference will be lost.

III. If NRC Proceeds to Adopt Final Rules, Several Amendments Are Needed.

If NRC determines that some regulations are necessary, we urge it to adopt several amendments to the proposed rule to insure that the conferences are manageable and productive. Without them we believe the present usefulness of informal conferences will definitely be lost.

- a. The "legitimate interest" standard is overbroad and subject to unintended abuse.

In the preamble to its proposed rule NRC refers to individuals with "specific and legitimate interest" and "legitimate, specific interests." While we believe the reference to specific and legitimate interest does not go far enough, NRC has not even incorporated this language in the body of the proposed rule. For unexplained reasons the proposed rule would adopt only a "legitimate interest" standard.

The preamble indicates that "the proposed rule is not intended to open inspection conferences to the general public." 6/ In order to insure that this matter is clear the standard to be applied to invitees to informal conferences must be further refined. Other-

5/ 45 Fed. Reg. 19565

6/ 45 Fed. Reg. 19565

wise NRC will be subjected to pressure from a broad array of individuals seeking participation in such conferences. As a routine matter numerous individuals or representatives of organizations or groups could advance persuasive arguments concerning their "legitimate interest."

For example, a reporter, a resident of the area, local government officials, and others could make compelling arguments under the "legitimate interest" standard. Could local NRC inspectors withstand concerted pressure from such persons with "legitimate interests"? Without further clarification in the regulations would courts limit participation in the manner apparently desired by the NRC? EEI believes that the language of the rule must be modified to identify more specifically those who may attend. Without such amendments we fear disputes over who may attend the conferences will arise, causing a needless delay in concluding inspections.

If NRC decides to promulgate a rule, EEI recommends the following amendment to 10 CFR 19.14(h) as proposed:

"...shall each have the option of inviting, as either determines appropriate, workers or worker representatives as defined in paragraph (d), or contractors or expert consultants retained by NRC with legitimate and specific expertise pertaining directly to the inspection. The general public, intervenors and parties to NRC and court proceedings who do not otherwise qualify as an invitee shall not be invited or participate in any informal conference held under this section."

In addition to defining more precisely those who may qualify as NRC invitees, the final rule should provide some mechanism to resolve disagreements between the licensee and NRC concerning whether an invitee's participation is appropriate. This mechanism

should be as informal and expeditious as possible. For example, NRC may want to consider a prompt referral from the NRC inspector to the regional office if a licensee objects to the presence of a particular invitee. The regional office should consider whether an invitee's presence would materially aid the conduct of the inspection when considered against a number of factors including disruption of work schedules and worker and invitee safety. Without some procedures disagreements may prevent effective implementation of this regulation.

- b. The proposed rule should clarify and limit the invitee's participation in inspection/informal conference proceedings.

The proposed rule is ambiguous, particularly when read in light of the other paragraphs in 10 CFR 19.14, and needs clarification concerning the extent of an NRC invitee's participation. The threshold question, which cannot be answered without the rule being clarified, is exactly to what is the invitee being invited; is the person invited to participate only in the informal conferences or is the person also invited to accompany the inspector on his walk-through inspection?

The wording of the proposed rule would allow for an informal conference to be held "...at any time during an inspection..." rather than only at the beginning or end. A reasonable implication to be drawn from this is that the NRC invitees would have to be present during the inspection in order to be available to participate without delay in an informal conference called during the middle of an inspection. If not present during the inspection a delay of a day or more might arise before an informal conference could be held while arrangements were made for a NRC invitee to be

available. In contrast, the preamble suggests that NRC invitees would be present only for the informal conferences. 7/

Further confusion arises in comparing the proposed rule with 10 CFR 19.14(b), (c) and (e) - (g). They currently provide the opportunity for a licensee or his representative, and a worker or worker's representative to accompany the inspector on his walk-through inspection of the facility.

With respect to this issue EEI believes the final rule should make a distinction between the participation afforded a worker or worker representative invitee and that afforded an NRC contractor or expert consultant. EEI proposes that NRC contractors and expert consultants be permitted to attend specific portions of inspections and informal conferences. Workers or worker representatives should only be authorized to attend specific portions of inspections.

We recognize that NRC should be entitled to avail itself of necessary expertise in performing its functions. Participation by NRC contractors and expert consultants who qualify as invitees would be appropriate in those portions of the inspection and informal conferences for which their particular knowledge and expertise is pertinent. We do not believe, however, that a final rule should authorize such contractors and expert consultants to be present during portions of NRC inspections or informal conferences for which their particular expertise is not relevant.

On the other hand, EEI believes that the proper scope of par-

ticipation for workers or worker representatives who qualify as NRC invitees is more limited. The NRC apparently assumes that a worker's interests are not only in seeing that the NRC is aware of any activities that may affect his or the public's health and safety, but also in negotiating the ultimate resolution of the alleged infraction. §/ A better interpretation is that the worker's interest is in seeing that the alleged infraction is properly identified and that the NRC has all available information at its disposal. The NRC must then assume complete responsibility to pursue resolution of any problems with the licensee. The Commission must make the decisions regarding enforceability and appropriate enforcement action.

Enforcement is solely a responsibility and function of the NRC. The discussions between the NRC and the licensee are a part of enforcement and beyond the reasonably legitimate interests of the worker. Attendance at such informal conferences would place the worker squarely in the "negotiated" enforcement procedure. The presence of a worker or his representative would restrict the free flow of discussion between the NRC inspector and the licensee to the end of resolving a problem through commitments made at these informal conferences. Furthermore, because the results of informal conferences become a matter of public record, the worker or his representative will be able to judge whether the alleged infraction which he has identified has been adequately resolved.

For these reasons EEI recommends that if a final rule is promulgated NRC adopt the following language with respect to an NRC invitee's participation.

§/ See, 10 CFR 19.14(h) as proposed: "...and resolution [sic] of matters pertaining to inspection findings." (Emphasis added).

19.14(i). An NRC contractor or expert consultant qualifying as an invitee under paragraph (h) may participate only in those portions of an inspection or resulting informal conference held pursuant to paragraph (h) for which he is specifically qualified by knowledge or expertise as determined by the NRC inspector.

19.14(j). A worker or representative of a worker qualifying as an NRC invitee under paragraph (h) may participate only in those portions of an inspection relevant to matters or conditions which a worker has brought to the attention of an NRC inspector pursuant to section 19.15 or 19.16. Such worker or worker representative shall not be entitled to participate in any informal conference at which resolution of such matters or conditions is to be considered.

In connection with the issue of a worker or worker representative's participation in an inspection, we suggest that NRC reconsider the language of 10 CFR 19.14(c) and (e). Section 19.14 (c) provides for the licensee to inform NRC inspectors of a workers' representative authorized by the workers to represent them at an inspection. We are unclear how this designation process would relate to the worker or worker's representative invited by NRC under the proposed rule. As currently written 10 CFR 19.14(e) states: "However, only one workers' representative at a time may accompany the inspectors." Depending upon how the section 19.14(c) workers' representative designation relates to the workers' representative invited under the proposed rule, the limitation in 10 CFR 19.14(e) could become an issue. Under our understanding of how these requirements would relate to one another, we believe the one worker's representative limitation in 10 CFR 19.14(e) should be deleted.

- c. If a final rule on this subject is adopted it should explicitly limit the scope of an NRC invitee's access to materials, activities, facilities, premises, and records.

The present rule states in Section 19.14(a) that "[e]ach

licensee shall afford to the Commission...opportunity to inspect materials, activities, facilities, premises, and records pursuant to the regulations in this chapter." If NRC decides to adopt a final rule based upon this proposal, the final rule should explicitly provide that persons participating as NRC invitees do not, by virtue of that status, have access to materials, activities, facilities, premises and records which they would not otherwise have. In other words, existing or revised regulations concerning access to restricted areas, proprietary or confidential information, trade secrets and similar matters must be applicable to NRC invitees. Such invitees should not be considered agents or representatives of NRC with equal rights of access unless so provided by other NRC regulations.

If these principles are not explicitly recognized in regulatory language the cooperation and dialogue which are essential ingredients of informal conferences will be stifled. Licensees cannot reasonably be expected to disclose trade secrets and confidential or proprietary information to private persons over whose future conduct they will have no control and who are not governed by NRC regulations on disclosure of such information. For obvious health and safety reasons invitees cannot be allowed indiscriminate access to certain premises and activities within a nuclear powerplant.

For these reasons, if NRC proceeds to adopt a final rule on this subject, EEI recommends that 10 CFR 19.14(a) be amended by adding at the end:

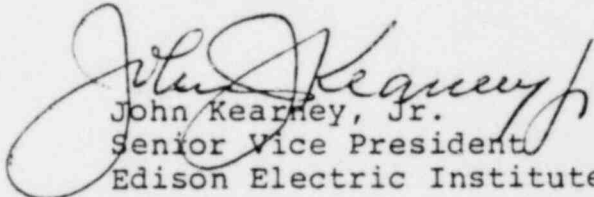
19.14(a)...

The opportunity afforded the Commission under this paragraph shall not extend to NRC invitees under paragraph (h) of this section except as would otherwise be provided to them as members of the public under regulations in this chapter.

Conclusion:

EEI appreciates the opportunity to comment upon this proposed rule. We urge the Commission and the Commission staff to consider thoroughly all the ramifications of the proposal. On balance EEI believes whatever benefits may realistically result from this proposal are outweighed by the negative effect the proposal will have on the present beneficial informal conference procedures. Should NRC, nevertheless, decide to adopt a final rule on this subject, EEI urges the Commission to incorporate the amendments we recommend here. Such amendments are designed to retain in a formal "informal conference" procedure as many of the benefits of the present informal conference as possible.

Respectfully submitted,


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Edison Electric Institute

May 12, 1980

PBK/ vlw