

LAW OFFICES

LOWENSTEIN, NEWMAN, REIS, AXELRAD & TOLL

1025 CONNECTICUT AVENUE, N. W.

WASHINGTON, D. C. 20036

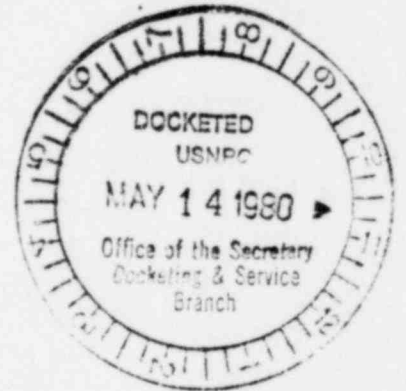
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ROBERT LOWENSTEIN
JACK R. NEWMAN
HAROLD F. REIS
MAURICE AXELRAD
DAVID R. TOLL
KATHLEEN H. SHEA
J. A. BOURNIGHT, JR.
MICHAEL A. BAUSER

E. GREGORY BARNES
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PETER G. FLYNN
WILLIAM J. FRANKLIN
STEVEN P. FRANTZ
FREDERIC S. GRAY
DOUGLAS G. GREEN
DAVID B. RASHIN

DOCKET NUMBER
PROPOSED RULE PR-19 (32)
(45 FR 19564)

May 12, 1980



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

Attn: Docketing and Service Branch

Dear Mr. Chilk:

On Wednesday, March 26, 1980, the Federal Register published a notice of proposed rulemaking related to amendments to 10 CFR §§ 19.2 and 19.14. (45 Fed. Reg. 19,564.) These comments on the proposed amendments are offered on behalf of Puget Sound Power & Light Co. and Iowa Electric Light & Power Co.

At present 10 CFR § 19.2, which relates to the presence of representatives of a licensee and of workers during inspections, pertains only to holders of operating licenses insofar as production and utilization facilities are concerned. The proposed amendment would extend the scope of the provision to holders of construction permits and limited work authorizations. We have no objection to this change.

However, it is also proposed to amend 10 CFR § 19.14 by adding a new subsection, which would read as follows:

§ 19.14 Presence of representatives of licenses [sic] and workers during inspections.

* * * *

(h) At the request of the NRC inspector, an informal conference with a representative of licensee (including holders of construction

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permits and limited work authorizations) management shall be held at any time during an inspection to discuss tentative inspection findings, complaints of individuals involved in the licensed activities concerning radiological working conditions, safety, safeguards and environmental impacts and resolution [sic] of matters pertaining to inspection findings. The NRC inspector and the licensee shall each have the option of inviting, as either determines appropriate, individuals with legitimate interests in matters pertaining to the inspection. (Action taken under this subparagraph shall not affect the option of confidentiality afforded any individual who provides information to the NRC, to the extent authorized by law.)

The notice states:

The intent of this proposed rulemaking is twofold: first, to codify in the regulations the current practice of holding meetings with licensee representatives during NRC inspections and second, to allow NRC inspectors to invite to these meetings, individuals with specific and legitimate interest in the inspection.

(45 Fed. Reg. 19,564.) The notice also explains the basic purpose of interviews as follows:

These meetings are necessary for an orderly and complete inspection process, and are used by the NRC inspectors to clarify inspection objectives and procedures and discuss inspection findings, including the resolution of apparent items of noncompliance with regulatory requirements.

(Id.)

We agree with this description of the objectives of the meetings. However, the objectives as so described cannot be achieved unless there is a free and frank discussion among the parties. This appears to be a consideration which the Commission recognizes. The notice states that "corrective

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actions" and "management control procedures" are often discussed at exit interviews and that, depending upon who is present, the licensees may be hesitant to discuss such matters. (45 Fed. Reg. 19,565.) For this reason, the notice states that the regulation has been framed so as to obviate such problems. Id. However, we believe that, unless a change is made in the regulation as proposed, such problems will, in fact, remain.

The proposed regulation would permit the presence at the exit interview of "individuals with legitimate interests in matters pertaining to the inspection." Although the phrase is nowhere defined, the notice suggests -- as examples only -- that individuals with such interests would include a "representative of workers who has made a request for an inspection under 10 CFR § 19.16" or a "worker who has expressed an interest in the inspection which has been brought to the attention of the NRC according to §§ 19.15 or 19.16 of the regulations," i.e., a worker who has provided an inspector with information or has requested an inspection. However, these examples do not purport to be a complete enumeration of the kinds of persons who could fall within the phrase "individuals with legitimate interests in matters pertaining to the inspection." That phrase is expansive and imprecise and could, for example, be read to include an individual who is opposing the construction or operation of a plant in an administrative or judicial proceeding, or a worker who has asserted a claim related to the subject matter of the exit interview.

In short, the regulation as drafted would give the NRC inspector sole discretion to invite individuals to exit interviews even where the relationship of such an individual to the licensee is so adverse that a full and frank discussion could not be expected. The notice suggests that such "problems should be obviated by the fact that the NRC inspector and licensee would have the prerogative of inviting only persons with legitimate specific interests." (45 Fed. Reg. 19,565.) However, it is difficult to see why this would be so when persons with such "legitimate specific interests" could very well be persons with adverse interests.

We believe that the problem can be avoided if the proposed regulation were amended to recognize the right of each of the parties, the NRC and the licensee, to object to individuals who are not employees of the other from attending. One way of accomplishing this would be to, (1) eliminate the phrase "as either determines appropriate" in the proposed new

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paragraph (h) and substitute the phrase "subject to the agreement of the other;" plus, (2) add the following sentence to the end of the same paragraph:

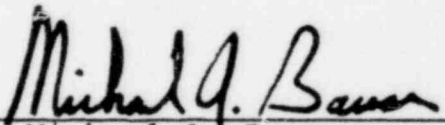
For the purposes of this section, a licensee (including holders of construction permits and limited work authorizations) may object, for example, to the presence of an individual who is opposing construction or operation of the facility, which is the subject of the inspection, in an administrative proceeding, or who has asserted a claim which is adverse to the licensee and to which the inspection is relevant.

It is our view that the right to exclude individuals the other party desires to have present at meetings will not be exercised often. In this connection, we are aware that the notice states that on several occasions licensees have rejected the attendance at meetings of workers or representatives of workers with legitimate interests and that this "resulted in greater difficulty in resolving health and safety considerations." (45 Fed. Reg. 19,565.) We submit that analysis will reveal that this has occurred only infrequently. In any event, the "greater difficulty" referred to will hardly be reduced if NRC inspectors can insist upon having individuals with adverse interests present.

We appreciate the opportunity to provide these comments.

LOWENSTEIN, NEWMAN, REIS, AXELRAD
& TOLL

By:



Michael A. Bauser

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