



May 27, 1980

BUCKET NUMBER
PROPOSED RULE **PR-19 (53)**
(45 FR 19564)

DR. DONALD F. KNUTH
President

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

ATTN: Docketing and Service Branch

Re: Proposed Rulemaking -- 10 CFR Part 19
Informal Conference During Inspection

Dear Sir:

In the March 26, 1980 Federal Register, the Commission published a notice of proposed rulemaking concerning 10 CFR Part 19 (45 Fed. Reg. 19564). KMC, Inc., as a consultant to utilities on physical security matters, and the utilities in the Physical Security Coordinating Group (identified in the Attachment to this letter) who own and operate and/or are constructing nuclear power plants, are pleased to submit the following comments on the proposed rule.

In general, the proposed amendments would codify in NRC regulations the practice of holding meetings with licensees during NRC inspections and would allow NRC inspectors to invite to these meetings individuals determined by the inspector to have legitimate interests in the inspection.

Our comments are directed to one aspect of the proposed rule -- its potential impact on the disclosure of material exempted from disclosure including information relating to physical security plans. We express no views on the other implications of the rule.

As noted above, the proposed rule would allow an NRC inspector to invite any persons whom the inspector determines have "legitimate interests in the matters pertaining to the inspection." As explained in the Supplementary Information accompanying the proposed rule, the new language would give the inspector the "prerogative" of having "interested individuals" present at inspection meetings. The licensee would be required to attend these meetings and could not object to attendance by persons invited by the inspector.

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Material described in §2.790, including physical security plans, can be the subject in inspection meetings. Obviously, the physical security plans and procedures of the facility should not be discussed in a public forum. It goes without saying that public disclosures can compromise plant security. Yet the proposed rule would allow an inspector to invite individuals to meetings at which such matters are to be discussed even if those individuals are not authorized to receive that information.

The Supplementary Information recognizes the problem by noting that a licensee "would not choose to discuss these matters in an open meeting." It goes on to conclude that

"These problems should be obviated by the fact that the NRC inspector and the licensee would have the prerogative of inviting only persons with legitimate, specific interests."

The "legitimate, specific interest" test does not solve the problem. NRC decisions have held that almost everyone residing within fifty miles of the plant has a sufficient "interest" to intervene in a licensing proceeding. Someone unaffiliated with the licensee might assert a "legitimate, specific interest" in a matter otherwise exempted from disclosure -- e.g., an interest in physical security of the plant because of an alleged concern over plant sabotage. Even journalists could conceivably fall within this standard.

Although we have no doubt that the vast majority of NRC inspectors would exercise their discretion wisely in inviting persons to inspection meetings concerned with sensitive information, we believe that an appropriate limitation should be written into the proposed rule. Such a restriction could be in the form of the underscored language, added to the last sentence of proposed §19.14(h):

"(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, and shall not

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cause the disclosure of material exempt from dis-
closure under §2.790, to individuals not authorized
by the licensee to receive such information)."

Thank you for the opportunity to submit these comments.

Sincerely,

Donald F. Knuth

Donald F. Knuth

Attachment

PHYSICAL SECURITY COORDINATING GROUP

Arizona Public Service Company

Baltimore Gas & Electric Company

Carolina Power & Light Company

Commonwealth Edison Company

Consumers Power Company

Detroit Edison Company

Duke Power Company

Duquesne Light Company

Florida Power & Light Company

GPU Service Corporation

Nebraska Public Power District

Niagara Mohawk Power Corporation

Northeast Utilities Service Company

Northern States Power Company

Pennsylvania Power & Light Company

Portland General Electric Company

Public Service Electric & Gas Company

Rochester Gas & Electric Corporation

Sacramento Municipal Utility District

South Carolina Electric & Gas Company

Southern California Edison Company

Wisconsin Electric Power Company

Wisconsin Public Service Corporation

Yankee Atomic Electric Company