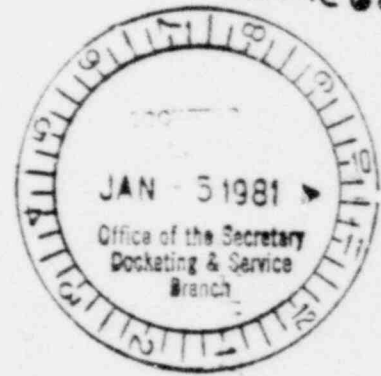


PROPOSED RULE PR 2
45 FR 66754
(100)

UNITED STATES
NUCLEAR REGULATORY COMMISSION

Proposed Policy Statement on)
Enforcement Policies and Procedures)



COMMENTS OF WISCONSIN
PUBLIC SERVICE CORPORATION

In response to the notice published October 7, 1980, Wisconsin Public Service Corporation ("WPSC") hereby submits its written comments to the Commission's proposed policy statement on enforcement policies and procedures. WPSC notes that it joins in the comments being submitted by the Nuclear Utility Group on Enforcement ("NUGOE") (of which it is a member) and is submitting these comments as a supplement to NUGOE's.

WPSC perceives the proposed statement as part of the Commission's continuing effort to provide concrete guidance to its staff and the licensees and to limit by rule of law the discretion exercised by particular officials. The Commission has succeeded only partly, at best, in achieving these goals. The level of guidance given to licensees is tenuous. The words used to define the various severity levels have neither well-established common meanings nor technical references to explain them. Because few or no examples of meaning are given in some cases, it is difficult to ascertain what the new position is. While this

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situation also existed under the old policy, it seems useless to adopt an explanatory policy which only heightens the confusion.

The problem of creating a "rule of law" for enforcement is more involved. The structure of the Commission staff, coupled with the proposed policy, means that the decision whether to seek a civil penalty (as opposed to some other enforcement action) is an uncontrolled discretionary decision. A licensee who has been nettlesome to the staff can be unduly punished while others may be let off without even a formal notice of violation for a similar event. The vagueness of severity level definitions exacerbates this problem. The ability to manipulate characterization of various events to up- or down-grade the seriousness of a situation in terms of the severity levels is almost limitless.

This area of unfettered discretion is contrasted by the inexplicable rigidity created by Table 1. Even with the possibility of going up 25% or down 50%, the "magic" of creating "proper" fines by listing numbers in a table seems questionable. Surely, it cannot be suggested that all events fitting the definitions of severity levels I and II, involving the same class of licensee, have the same potential seriousness so as to justify wooden application of the same base penalty figure. It is hard to see, too, for example, how overexposure of a single employee differs in

seriousness depending on the type of licensee, rather than the cause of the overexposure. The table, even with adjustments, fails to allow for consideration of mitigating circumstances. By choosing numbers based solely on the severity level characterization, the Commission has precluded itself from taking a more measured and fair approach to individual situations.

WPSC understands that it is the intent of the policy to treat as a single penalty matter all violations occurring together to create an event. It is hoped that this will relieve the problem of "overcharging" violations simply to accumulate a large total fine. If reasonably applied, it should also provide a more useful regulatory analysis of claimed deficiencies in licensee performance.

As WPSC understands the severity level definitions, application of them to likely operational situations creates the possibility of extremely heavy fines being imposed for relatively innocuous conduct even in severity levels IV and V.

It leaves open to interpretation and dispute such vague citations as "failure to follow procedures," "inadequate review," "failure of management to provide adequate direction or supervision," "any other matter," "inadequate procedures," "other violations," and "violations."

The clarification statements "a system designed to prevent or mitigate serious safety events not being able to perform its intended safety function," "a system designed to prevent or mitigate a serious safety event not being able to perform its intended function under certain conditions" or "degradation of a system designed to prevent or mitigate a serious safety event" could by manipulation be interpreted to include the failure to start diesels, drift of set points and failure of service water auxiliary feedwater pumps with attendant extremely heavy fines.

It is the firm belief of WPSC that the severity levels as prescribed in this new policy reach far too low and, as such, escalate to heavy fine levels events all out of proportion to their significance.

Finally, WPSC believes that the enforcement policy together with the continuing imposition of massive and changing regulatory requirements under the stated justification of the new post-TMI NRC mind-set creates unfair pressure by potential jeopardy to comply with unsupported staff positions on technical issues. The present rules of practice allow no speedy and timely mechanism for impartial resolution of legitimate disputes as to the meaning, scope, and bases of technical requirements and no method for challenging the technical justifications for staff positions. By the time such issues come to a head under present practices, a licensee is disabled from

pressing the challenge because continued operation under the license may be jeopardized or a draconian fine may be the result of a technical assessment found incorrect in hindsight. Technical errors by the staff which cause unnecessary expenditures and installations of equipment are generally uncorrectable after the fact.

Imposition of heavy penalties for what in many instances may be judgmental disagreements over the interpretation of vague language or technical engineering disputes does not aid the cause of assuring public safety. Indeed, the entire thrust of the enforcement policy may be questioned in terms of its effect on public safety. By raising to such great prominence the single matter of literal, technical compliance with existing virtually unfathomable regulations, the Commission may have lost sight of the forest. In general tone, the enforcement policy opts for technical compliance rather than true commitments to safety. Creating an image of tough enforcer may be an important public relations gesture for the Commission, but it does little to assure safer nuclear activities. The absence of any similar penalty system in other areas of regulated business activity, subjecting individuals and organizations to huge fines in non-accident situations, is to be contrasted with the demoralizing impact of the proposed policy. WPSC believes the policy will most surely be responsible in high measure for driving the qualified,

dedicated people out of the industry, making the staffing of nuclear facilities even more difficult.

Respectfully submitted,

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