



Commonwealth Edison
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DOCKET NUMBER

PROPOSED RULE PR 2

(55 FR 12370)

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June 15, 1990

DOCKETED
USNRC

'90 JUN 20 P2:15

Mr. Samuel Chlik
Secretary of the Commission
Nuclear Regulatory Commission
Washington, DC 20555

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Attn: Docketing and Service Branch

Subject: 1) Notice of Proposed Rulemaking: Revision to Procedures
to Issue Orders (Federal Register Vol. 55 No. 64 4/3/90)
2) Notice of Proposed Rulemaking: Willful Misconduct by Unlicensed
Persons (Federal Register Vol. 55, No. 64 4/3/90)

Dear Sir:

This provides Commonwealth Edison Company's comments on the Nuclear Regulatory Commission's (NRC) proposed rule revising procedures to issue orders and the proposed rule relating to enforcement actions for willful misconduct by unlicensed persons. CECO believes that the proposed revisions significantly increase the potential for individual exposure to personal liability without providing adequate protection against agency actions which might be arbitrary or unduly burdensome. Accordingly, CECO does not support the revisions as proposed. Procedurally, if the NRC distinguishes between orders requiring action and demands to show cause, there should be some procedural mechanism available to a person responding to a show cause demand to enable him to object to, or request clarification of, the demand to protect him from an unduly burdensome request. If the NRC explicitly includes unlicensed persons in the class of persons subject to NRC enforcement action, the rule should provide clearer guidance on the type of activity that could subject an individual to personal liability.

The NRC proposes to modify 10 CFR Part 2 by providing that orders may be issued to unlicensed persons when the NRC determines that further control over their activities subject to NRC jurisdiction is necessary or desirable to protect the public health and safety. In addition, the NRC proposes to distinguish among "orders" requiring action and "demands to show cause" and to deny hearing rights for such "demands to show cause". The NRC believes that the authority for these revised procedures lies in its broad authority to issue orders with respect to activity authorized by the Atomic Energy Act and to define the scope of its proceedings.

These proposed revisions increase the potential for individual liability but fail to protect the individual even in circumstances where protection would be justified. The proposed rule should provide an opportunity for a respondent to object, either orally or in writing, to demands that are unreasonable, oppressive, excessive in scope or unduly burdensome. Furthermore the rule should provide that a demand to show cause must describe the material to be produced with such definiteness and certainty as to permit such material to be fairly identified. If there is no right to a hearing, the Commission should be required to show the general relevance and reasonable scope of the information sought, and the respondent should be entitled to seek additional clarification or guidance on the specific information which would satisfy the Commission in each case.

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The proposed rule should also indicate that a person responding to a show cause demand may make the requested information available for inspection and copying by the NRC. If such an option is unavailable, the burden, in terms of time and expense, of reproducing and transporting to NRC all of the information possibly responsive to a show cause demand would often be excessive and unnecessary. The proposed rule should also ensure that the time given for assembling the materials demanded is reasonable, given the possibility of demands which call for voluminous amounts of information.

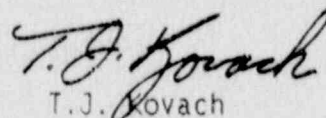
In connection with the revisions authorizing the issuance of orders to unlicensed persons, the NRC proposes to adopt a new rule which would enable it to take enforcement action against unlicensed persons for willful misconduct which could result in the violation of NRC requirements by others or that places in question the reasonable assurance of public health and safety. Moreover, the proposed rule would broaden the enforcement discretion of the NRC staff, allowing it to draw inferences regarding the "willfulness of an individuals misconduct". This is an area outside the agency's expertise. This proposal significantly increases any individual's exposure to personal liability through NRC enforcement actions.

In view of these potentially drastic consequences, the vagueness of the proposed rule fails to give individuals adequate notice of the activities for which they may be held personally responsible. As the proposed rule is currently worded, willful misconduct that places a licensee in violation of any NRC requirement or that places in question reasonable assurance of adequate protection of public health and safety would be grounds for enforcement action against an unlicensed individual. The phrase "places in question reasonable assurance" is far too broad in its potential sweep. Moreover, it would permit the NRC to take enforcement action against an individual event if that individual's actions did not actually result in or cause a violation of NRC requirements. Therefore, if adopted, the proposed rule should clearly specify the actions which meet this vague standard. The rule should also clarify the level of severity of the threat to public health and safety which would trigger NRC enforcement action.

The effect of the combination of both proposed rules is to significantly expand the exposure of unlicensed persons without a corresponding check against arbitrary and burdensome agency action. Given the potentially significant impact that the rule could have on individuals and individual rights, the proposed rules should incorporate procedural safeguards and clear, substantive standards to ensure the incorporation of a commensurate level of individual protection.

Commonwealth Edison appreciates the opportunity to comment on these proposed rules.

Sincerely,



T.J. Kovach
Nuclear Licensing Manager