

Wayne H. Jens  
Vice President  
Nuclear Operations

**Detroit  
Edison**

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DOCKETED  
USNRC

September 30, 1982

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OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

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

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-50

(47 FR 33980)

Attention: Docketing and Service Branch

Re: Notice of Proposed Rulemaking;  
Fitness for Duty of Personnel with Unescorted Access  
to Protected Areas

Dear Mr. Chilk:

In response to the Commission's notice of proposed rulemaking regarding personnel fitness for duty, published at 47 Fed Reg 33980, August 5, 1982, The Detroit Edison Company wishes to make the following comments.

The Company agrees with the need to develop and implement procedures to assure the fitness for duty of personnel at nuclear power stations. Detroit Edison supports the Commission's decision to allow each licensee to design its own individual program, and agrees with the Commission's rationale that this approach provides the necessary flexibility to implement procedures that are effective for each particular plant, and that are fair to its employees.

We recommend, however, that the Commission limit the applicability of its proposed rule only to vital areas within nuclear power stations. This limitation in no way jeopardizes the primary concern that personnel who are unfit for duty should not be allowed in areas where their performance could adversely impact the health and safety of the public. Moreover, this limitation will not diminish the licensee's ability to determine personnel fitness. On the contrary, by narrowing the scope of fitness procedures to only vital areas of the plant a licensee has greater control over fewer personnel, thereby providing a higher degree of assurance that personnel who are truly unfit for duty will be identified.

DS 10  
add: E Merschhoff  
5650 NL

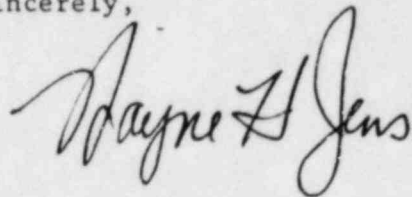
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Acknowledged by card 10/8/82 emp

Samuel J. Chilk  
September 30, 1982  
Page 2

Finally, Detroit Edison suggests that the proposed rule change to 10 CFR Part 50 be extended to cover NRC employees in addition to licensee and contractor personnel. Surely NRC personnel are capable of being affected by stress and emotional problems, possibly leading to substance abuse, just as readily as other professionals. We fail to see any convincing reason why public health and safety concerns justify a distinction between personnel who have access to a critical area in a plant based merely by whom they are employed.

Sincerely,

A handwritten signature in cursive script, appearing to read "Wayne H. Jones". The signature is written in dark ink and is positioned to the right of the word "Sincerely,".

VPNO-82-204

WISCONSIN PUBLIC SERVICE CORPORATION



P.O. Box 1200, Green Bay, Wisconsin 54305

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USNRC

September 30, 1982

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BRANCH

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

FILED -50  
(47 FR 33980)

Attention Docketing and Service Branch

Dear Sir:

Docket 50-305  
Operating License DPR-43  
Kewaunee Nuclear Power Plant  
Proposed 'Fitness for Duty' -Rule, 10CFR 50.54

Reference: 1) Personnel with Unescorted Access to Protected Areas; Fitness For Duty, Proposed Rule 10CFR 50.54, Federal Register Vol. 47, No. 151, August 5, 1982

We have reviewed the proposed 'Fitness for Duty' rule as published in the Federal Register of August 5, 1982, (Reference 1). The proposed rule would require that procedures be established and implemented to assure personnel with unescorted access to protected areas are 'fit for duty.' We are in agreement that a utility should establish a policy and develop implementing procedures to deny unescorted access to persons detected to be under the influence of alcohol or drugs or otherwise unfit for duty. We offer the attached comments for your consideration.

Very truly yours,

C. W. Giesler  
Vice President - Nuclear Power

smv

Attachment

cc - Mr. Robert Nelson, NRC Sr Resident Inspector  
RR #1, Box 999, Kewaunee, WI 54216

JS 10  
add: E. Merschhoff  
5650 NL

Acknowledged by card 10/7/82 emp

## ATTACHMENT

### COMMENTS TO THE PROPOSED RULE ON FITNESS FOR DUTY - 10CFR 50.54

#### Comment No. 1

The current proposed rule specifically excludes persons not in the direct employment of the utility such as Federal inspectors. We strongly disagree with this aspect of the rule and request that it be revised to include all persons with unescorted access to protected areas. The ultimate responsibility for safety and security is in the hands of the licensee, and we do not believe the Commission should exempt anyone with unescorted access to a protected area from the 'fitness for duty' rule. In addition, there is no reason to believe that persons not in the employment of the utility are immune to having problems which may result in being 'unfit for duty.'

#### Comment No. 2

The current wording of the proposed rule "shall establish, document, and implement adequate written procedures designed to ensure that, while on duty . . ." does not recognize the obvious limitations of any written procedures because of the need to balance the licensee's policy with the rights of individuals to unwarranted invasion of privacy. The way the rule is presently worded, the failure to detect a person later determined to have been 'unfit for duty' could result in a violation of regulatory requirements. We suggest that the wording be revised to "shall establish, document, and implement adequate written procedures designed to provide reasonable assurance that, while on duty . . .".

#### Comment No. 3

Section 2 of 10CFR 50.54 reads: 'Each licensee shall maintain the written records of these procedures for the life of the plant.' This statement is ambiguous; i.e., it is not certain if it refers to the written procedures alone, or to the written procedures as well as all records generated as a result of the implementation of the procedures. We suggest that Section 2 be clarified to alleviate any ambiguities which may exist.

In addition, the requirement that all records pertaining to 'fitness for duty' procedures be retained for the life of the plant is inconsistent with the Kewaunee Nuclear Plant technical specifications. Record retention is addressed in Section 6.10. Section 6.10.1 requires various records be retained for at least five years. These records contain safety-significant information whose long-term history is inconsequential. Section 6.10.2 lists records which must be retained for the duration of the plant operating license. The long-term history of these records is of safety significance. Ten or fifteen-year-old records would surely not be instrumental in

determining an employee's present state of fitness. In addition, retaining records beyond the employment of plant personnel certainly has no significance.

Comment No. 4

The Commission is also soliciting comments on whether the scope of the rule should be limited only to personnel with unescorted access to vital areas. The proposed rule as presently written applies to personnel with unescorted access to protected areas. This category of personnel was chosen because the Commission believes "that any person with unescorted access to a protected area may have the opportunity to affect adversely the health and safety of the public through an unobserved act, whether intentional or inadvertent." However, Title 10 of the Code of Federal Regulations defines a vital area as any area which contains any equipment, system, device, or material, the failure, destruction, or release of which could directly or indirectly endanger the public health and safety. Thus, we believe that the present scope of the proposed rule goes beyond its intent of protecting against an act which may adversely affect the health and safety of the public, and should be limited to vital areas.

# EDISON ELECTRIC INSTITUTE

The association of electric companies

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'82 OCT -4 P4:20

October 4, 1982

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Mr. Samuel J. Chilk, Secretary  
Office of the Secretary of the Commission  
U.S. Nuclear Regulatory Commission  
1717 H Street, N.W.  
Washington, D.C. 20555

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DOCKET NUMBER PR-50  
PROPOSED RULE (47 FR 33980)

Subject: Proposed Rule, Personnel With Unescorted  
Access to Protected Areas; Fitness for  
Duty, 47 Fed. Reg. 33980 (August 5, 1982)

Dear Secretary Chilk:

The Edison Electric Institute (EEI) submits the following comments in response to the Proposed Rule of the Nuclear Regulatory Commission (NRC) entitled "Personnel With Unescorted Access to Protected Areas; Fitness for Duty." 47 Fed. Reg. 33980 (August 5, 1982). EEI is the national association of investor-owned electric utility companies in the United States. Its members serve 99.6 percent of all customers of the investor-owned segment of the utility industry and 77 percent of the nation's electricity users. EEI's members currently operate 69 of the nation's 80 nuclear power plants licensed to operate by the NRC and expect to operate an additional 61 units now under construction or in planning. In 1981, EEI member companies produced 231,197 million net kilowatt-hours, or 85 percent, of the total nuclear power generated in the United States. Therefore, EEI and its member companies have a substantial interest in the issues raised by the Proposed Rule.

DS10  
add: E. Merschoff  
5850 NL

10/7/82 emp

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EEI's members support the general objectives of the proposed rule and share the NRC's concern that personnel with unescorted access to protected areas of commercial and industrial facilities licensed under 10 C.F.R. §50.22 not be under the influence of alcohol or drugs or otherwise unfit for duty. Because of its concern, our members have developed programs to address potential problems in this area. These programs include company policy statements on the possession and use of alcohol and drugs, background investigations, use of psychological tests, behavioral observation programs and employee assistance programs. A poll of the EEI Security Committee conducted in September 1982 indicated that of the 29 nuclear utilities with representatives present, 29 had programs to determine whether employees have alcohol or drug abuse problems or problems which would otherwise impair their fitness for duty.

NRC research, conducted by an NRC Task Force and issued as NUREG-0903 ("Survey of Industry and Government Programs to Combat Drugs and Alcohol Abuse"), has indicated that the utilities examined are keenly aware of the potential threat of drug and alcohol abuse, have developed clear, firm policies and are taking disciplinary action under these policies when warranted. See, NUREG-0903, Section II, pp. 1-8. Additionally, the Continual Behavioral Observation Program of the as-yet-unissued Access Authorization Rule (Proposed 10 C.F.R. §73.56) which would require licensees to establish continual behavioral observation programs (designed to detect changes in an individual's on-the-job performance, judgement

level or behavior) would address many of the concerns upon which this proposal rule focuses. Consequently, we believe that if the Commission determines that action must be taken in the fitness for duty area, the most cost-effective and practical approach would be the issuance of a general policy statement, rather than a regulation.

Although we believe that Commission action in this subject matter area should not presently extend beyond the issuance of a general policy statement, we would like to call attention to several features of the proposed rule which we believe present serious problems.

The proposed rule states, in part, that

"Each licensee with an operating license issued under § 50.21(b) or § 50.22 shall establish, document, and implement adequate written procedures designed to ensure that, while on duty, the licensee's and its contractors' personnel with unescorted access to protected areas are not--

- (i) Under the influence of alcohol;
- (ii) Using any drugs that affect their faculties in any way contrary to safety; or
- (iii) Otherwise unfit for duty because of mental or temporary physical impairments that could affect their performances in any way contrary to safety..." (Emphasis added)

1. The proposed rule would require a licensee to "ensure" that personnel granted unescorted access are fit for duty. However, to guarantee (or ensure) that each individual who enters the protected area is in all regards fit for duty is manifestly



impossible. For instance, the detection of drugs in the human body can only be established with any degree of certainty through laboratory analysis of body fluids. It is clearly unreasonable to require analysis of body fluids each time an individual enters the protected area. It is equally unreasonable, and in fact impossible, to guarantee that an individual is not otherwise unfit for duty because of mental or temporary physical impairments that could affect their performance in any way contrary to safety. As presently worded, the proposed rule would place upon licensees a responsibility which is impossible to fulfill. Consequently, it should not be adopted as presently written. If the Commission decides to proceed with issuance of a regulation, and that regulation is in the form of a general descriptive regulation, that regulation's objectives should be reasonably attainable. Therefore, the word "ensure" should be deleted from paragraph (x)(1) and the words "provide reasonable assurance" substituted therefor.

2. Section 50.54(x)(1)(iii) of the rule addresses the issue of personnel "otherwise unfit for duty because of mental or temporary physical impairments that could affect their performance in any way contrary to safety." Since implementation of this section

would most practically be accomplished by means of a continual observation program, it is unnecessary to include this section in the rule for two reasons. First, a continued observation program is currently required under NUREG 0220 ("Interim Acceptance Criteria for a Physical Security Plan for Nuclear Power Plants"), which interprets 10 C.F.R. §73.55. This NUREG document references ANSI Standard ANSI N18.17(1973) (which requires a continued observation program) as a minimum standard to be met by licensees. Second, the Continual Behavioral Observation Program section of the yet-to-be-issued Access Authorization Rule (Proposed 10 C.F.R. §73.56) would in its current form (or with slight modification) appear to accomplish the objectives of this part of the proposed rule. Consequently, should the Commission proceed with issuance of a rule along the lines of that proposed, it should delete subparagraph (iii), recognizing that current requirements as specified in NUREG 0220, as well as the nascent Access Authorization Rule, cover the same territory.

3. We do not recommend the expansion of the proposed rule to cover NRC inspection personnel, although we believe that, with this exception, the rule should apply to all individuals granted unescorted access.

The NRC must assume primary responsibility for assuring that its personnel are fit for duty and we are concerned that expanding the proposed rule to include NRC personnel would place the utility industry in the untenable position of policing inspectors. However, the fitness for duty of NRC personnel is unquestionably an important issue and, granting that the NRC is primarily responsible for this and should formulate a fitness for duty program for its personnel, we would be happy to cooperate and assist the NRC with its program in any way. We do, however, recommend that the NRC certify, in a manner similar to the present procedure for granting unescorted access for NRC personnel under 10 C.F.R. §73.55, that its personnel are fit for duty.

4. Section 50.54(x)(2) of the proposed rule would require that each licensee "maintain the written records of these procedures for the life of the plant." We believe that, if this provision is intended to apply to security records relating to individuals, no valid purpose is served by maintaining such records for so long a period of time. We would propose that the retention period be similar to that required for security records required

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to be maintained by NUREG 0220 ("Interim Acceptance Criteria for A Physical Security Plan for Nuclear Power Plants").

We believe, for two reasons, that if the NRC decides to proceed by promulgating a regulation and decides to include detailed specifications in that rule that it would be useful and productive for NRC staff to first meet with knowledgeable industry security personnel. First, the issues involved in developing a rule containing specific, detailed, and yet flexible, requirements are complex. Secondly, there has been no previous formal or informal NRC-industry dialog on the issues covered by this proposed rule. The purpose of such a meeting (or series of meetings) would be to explore the nature, extent, and most effective means of dealing with the issues addressed by this proposed rule. EEI would be pleased to form a Task Force to be composed of members of its Security Committee and other appropriate personnel to discuss current company fitness for duty policies and programs, as well as to aid in the evaluation of specific program requirements.

Because this rule has been proposed in general terms, without details as to specific requirements, we feel that if the NRC determines that a rule containing specific program requirements is appropriate, it should repropose the rule as reformulated to enable EEI and others to comment in an informed and complete manner on the details of that proposal. Such reproposal is necessary in order to comply with the requirements of Section 553(b) of the

Administrative Procedure Act, 5 U.S.C. §553(b), which provides that general notice of a proposed rulemaking must include, among other things, "either the terms or substance of the proposed rule or a description of the subjects and issues involved." Section 553(c) of the Administrative Procedure Act, 5 U.S.C. §553(c), provides that after notice is issued, "the agency shall give interested persons an opportunity to participate in the rulemaking through submission of written data, views, or arguments...." In order to enable the public to participate effectively in the rulemaking process, the notice must be "sufficiently descriptive of the 'subjects and issues' involved so that interested parties may offer informed criticism and comment." Ethyl Corp. v. EPA, 551 F.2d 1, 48 (D.C. Cir. 1976). The rule as currently proposed is so vague and lacking in details that it is impossible to anticipate details as to specific requirements that the NRC might choose to adopt, let alone offer informed criticism and comment on those details. If the NRC determines that it should adopt a final rule which contains detailed program requirements, EEI and other interested parties would have been deprived of reasonable opportunity to comment upon the details of that rule, unless the NRC presents its views in the form of a new proposed rule which is subject to public comment.

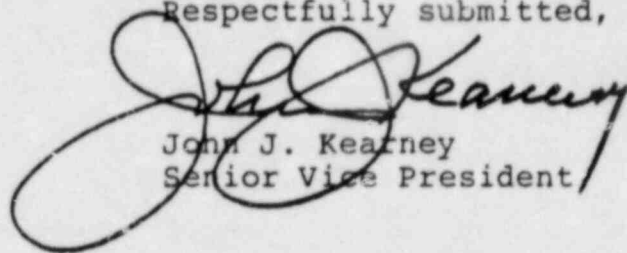
In conclusion, we reemphasize that, if the NRC determines to take action in the fitness for duty area, such action should be limited to issuance of a general policy statement.

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EEI appreciates the opportunity to comment on this rule.

Respectfully submitted,



John J. Kearney  
Senior Vice President

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