

DOCKET NUMBER

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PROPOSED RULE

PR-50

(47 FR 33980)

NOS 82-909

ARIZONA



PUBLIC SERVICE COMPANY

STA. 1740

P.O. BOX 21666 - PHOENIX, ARIZONA 85036

September 27, 1982

G. CARL ANDOGNINI
VICE PRESIDENT
ELECTRIC OPERATIONS

DOCKETED
USNRC

'82 OCT -1 P1:27

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

OFFICE OF REGULATORY
DOCKETING & SERVICE
BRANCH

Attention: Docketing and Service Branch

Reference: 10 CFR Part 50 - Personnel with Unescorted Access
to Protected Areas; Fitness for Duty:
Advanced Notice of Proposed Rule
47FR33980, August 5, 1982

Gentlemen:

Arizona Public Service Company (APS), as principal owner and
Operating Agent of the Palo Verde Nuclear Generating Station,
appreciates this opportunity to comment on the above referenced
notice.

APS requests careful consideration of the attached comments
and if there are any questions, please contact Mr. Steven R.
Frost at (602) 271-3348.

Sincerely,

/ml
File: 82-056-026
Attachment

8210130396 820927
PDR PR
50 47FR33980 PDR

DS 10
add: E. Gierschaft
5650 NL

Acknowledged by card... 10/7/82 emp

COMMENTS OF
ARIZONA PUBLIC SERVICE COMPANY

ON

PERSONNEL WITH UNESCORTED ACCESS TO PROTECTED AREAS:

FITNESS FOR DUTY

October 4, 1982

The proposed rule is to require licensees to establish and implement controls designed to ensure that personnel with unescorted access to protected areas are not under the influence of drugs or alcohol and are not otherwise unfit for duty. While we certainly are against anyone being unfit for duty, we are against the implementation of a regulation on this subject for the following reasons:

The NRC established a Task Force to survey licensees to determine the extent of any drug or alcohol problems and what was being done about it. NUREG-0903 "Survey of Industry and Government Programs to Combat Drug and Alcohol Abuse" has been published by this task force. The survey indicated the Utilities were aware of the problem and had developed clear firm policies and were implementing disciplinary action where warranted.

Based on the foregoing, the necessity for regulation as proposed or, in fact, any regulation at all is questioned for the following reasons:

This regulation is unnecessary because the NRC's own study reflects that the industry is aware of the problem and has already developed policies for action and is implementing these policies.

The relatively few incidents, twenty-four (24) over more than a five (5) year period (a tiny percentage of the overall work force in the industry) do not justify regulatory action, which, as written, is impossible to comply with, may substantially increase operating cost, and may significantly impact business decisions which should solely be within the purviews of licensee management.

The proposed regulation requires the licensee to "ensure" (guarantee) that each person granted unescorted access to a Protected Area and while working within that area are not (1) "under the influence of alcohol"; (2) using any drugs (emphasis added - all drugs illegal, prescribed by a physician or over-the-counter are apparently considered) that affect their faculties in any way contrary to safety; or (3) "otherwise unfit for duty because of mental or temporary physical impairments that could affect their performance in any way contrary to safety". To guarantee any of the above in every case is impossible.

The guarantee burden of meeting the "otherwise unfit for duty" portion of the proposed regulation is equally impossible. We know of no type of medical or psychological examination which can be validated as being able to "ensure" or guarantee that an individual has no "mental or temporary physical impairments that could affect their performance in any way (emphasis added) contrary to safety."

Due to the impossibility of compliance with this regulation as proposed, the licensee is placed in a position of violation of the regulation with any after-the-fact disclosure or determination of alcohol, drug use, mental or temporary physical impairment.

Additional consideration must be given to the exposure of licensees in attempting to implement this regulation as proposed and the National Labor Relations Board's "joint employer" doctrine. This proposed regulation, as well as others, continues to force licensees, using contractors which in turn use craft union labor, into a position where the licensee is actually controlling the terms of employment of contractor employees to the extent that the licensee may be determined to be a joint employer of the contractor employee. The consequence of such a finding is that collective bargaining and other obligations may accrue to the licensee as well as the employer. The NRC must exercise due care to avoid placing licensees in a position where business decisions properly within the purview of licensee management are not subrogated by government regulation. The proposed regulation may well require the licensee to effectively control the terms of employment of employees of another employer to the extent that the licensee is further pushed toward co-employer status.

If a rule is to be established, the NRC's decision to write a broadly worded rule is considered the more satisfactory as opposed to specific fitness criteria.

The limiting of the scope of the proposed regulation to those personnel with unescorted access to vital areas would seem, on the surface, to provide some relief. The administrative burden of applying a rule to this group of personnel may prove to be excessive and would, in all probability, be considered prejudicial by those against whom it was applied. Should a rule be promulgated, however, an exclusion clause for those personnel with no conceivable need to enter vital areas would be in order.

As the licensee must be ultimately responsible for the safe operation of the licensed facility, the licensee must have the ability to apply imposed standards for access evenly to all authorized unescorted access. Should one group of personnel, such as NRC personnel, be excluded, an exclusion based solely on the identity of an employer as opposed to an individual's fitness, the logic of the need for the rule itself would seem to fail.

Record keeping relating to individuals should be commensurate for record retention relating to background checks.

In conclusion, the regulation as proposed with its guarantee burden renders compliance impossible and, as such, is of no value. We disagree that the promulgation of a rule is less burdensome than acceptable alternatives, such as a policy, as stated in the Value Impact Assessment. Great latitude for implementation, even though voluntary and without regulatory basis for enforcement, would, in all probability, provide a better end product than would a rule that defies compliance.

As the NRC has provided no indication that utilities 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, the most cost effective and practical approach may be the inclusion of a policy statement covering this subject in the proposed Access Authorization Rule, proposed 10 CFR 73.56. Background investigations, behavioral observation programs and related programs already in force and contemplated to be addressed more fully in an access authorization rule are the most effective and practical means of dealing with the problem when coupled with a policy statement and background and guidance such as that set forth in NUREG 0903.