

The Light company

Houston Lighting & Power P.O. Box 1700 Houston, Texas 77001 (713) 228-9211

October 1, 1982
ST-HL-AE-892
File No. G3.15

DOCKETED
USNRC

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

Attention: Docketing and Service Branch

Dear Mr. Chilk:

DOCKET NUMBER
PROPOSED RULE

46
PR-50

(47 FR 33980)

Comments Regarding the Proposed Rule
Concerning Personnel with Unescorted
Access to Protected Areas; Fitness for Duty

On August 5, 1982, the NRC published a notice of proposed rulemaking entitled, "Personnel with Unescorted Access to Protected Areas; Fitness for Duty". (47 Fed. Reg. 33,980.) Houston Lighting & Power Company has reviewed the proposed rulemaking and offers the following comments.

Houston Lighting & Power Company opposes the requirements of this proposed rulemaking. We agree it is of utmost importance to observe individuals for alcohol and drug abuse, to observe individuals for mental or temporary physical impairments that could affect their performance, however, these responsibilities are already a part of each supervisor's responsibilities in the normal performance of his duties. The use of blood tests, breath tests, etc., to routinely verify that individuals are not under the influence of drugs or alcohol or otherwise unfit for duty may create a negative effect on the morale of licensee and contractor personnel. This, and the increased costs associated with the equipment and personnel needed for the operations and maintenance of such a program is not consistent with the threat.

In lieu of the currently proposed rulemaking, Houston Lighting & Power Company proposes that each utility be allowed to design and implement fitness for duty programs in accordance with the potential real threats applicable to their individual facilities. In addition, any program implemented by a utility should apply to all personnel with unescorted access to protected areas of that facility. Allowing exceptions (such as for NRC personnel) will only decrease the effectiveness of a facility's program.

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add B. Manschaff
5650 NL

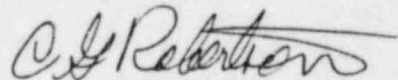
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Although we believe that requirements for fitness for duty programs are best established by individual utility programs, rather than being established by the NRC, it is important to recognize that requirements (regardless of who establishes them) be based on identifying suspected individuals who are unfit for duty rather than basing requirements on identifying individuals who are fit for duty. Identifying individuals who are fit for duty would be counter-productive to the purpose of a fitness for duty program in that personnel already fit for duty would be subjected to various tests (breath tests, etc.), when the purpose of a fitness for duty program is to single out suspected individuals and identify those who are are unfit for duty.

Very truly yours,



C. G. Robertson
Manager
Nuclear Licensing

TAP/na

cc: G.W. Oprea, Jr.
J. H. Goldberg
J. G. Dewease
B. Perkowski
W. Wunderlich
L. J. Klement
T. W. Blackburn



MISSISSIPPI POWER & LIGHT COMPANY

Helping Build Mississippi

P. O. BOX 1640, JACKSON, MISSISSIPPI 39205

NUCLEAR PRODUCTION DEPARTMENT

October 4, 1982

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

Attention: Docketing and Service Branch

Dear Sir:

SUBJECT: Grand Gulf Nuclear Station
Units 1 and 2
Docket Nos. 50-416 and 50-417
License No. NPF-13
File: 0260/L800.0
Fitness for Duty
AECM-82/428

DOCKETED
USNRC

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OFFICE OF SECRETARY
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47

DOCKET NUMBER

PROPOSED RULE

PR-50

47 FR 33980

Mississippi Power & Light Company has reviewed the proposed rule on "Personnel with Unescorted Access to Protected Areas: Fitness for Duty," appearing in the Federal Register on August 5, 1982, 47FR33980, et. seq., and is submitting the attached comments.

Thank you for the opportunity to extend these comments. If you have any questions please advise.

Yours truly,

L. F. Dale
Manager of Nuclear Services

PJR/JDR:sap
Attachment

- cc: Mr. N. L. Stampley (w/o)
- Mr. R. B. McGehee (w/o)
- Mr. T. B. Conner (w/o)
- Mr. G. B. Taylor (w/o)

Mr. Richard C. DeYoung, Director (w/a)
Office of Inspection & Enforcement
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Mr. J. P. O'Reilly, Regional Administrator (w/a)
Office of Inspection and Enforcement
U.S. Nuclear Regulatory Commission
Region II
101 Marietta St., N.W., Suite 3100
Atlanta, Georgia 30303

Acknowledged by card 10/8/82 emp

Member Middle South Utilities System

DS10
add: G. Merschoff
5650 NW

COMMENTS TO
NRC PROPOSED RULE
10 CFR PART 50
"PERSONNEL WITH UNESCORTED ACCESS TO
PROTECTED AREAS; FITNESS FOR DUTY"

GENERAL

We have studied the documentation associated with the proposed rule, and are not convinced that a problem exists in the magnitude required to justify a new rule, especially in light of existing programs of a similar nature at all licensed facilities of which we are aware.

The Statement of Consideration and other documentation associated with the proposed rule cite statistics for reported drug-related incidents in which licensee or contractor employees were arrested or terminated over the past three years. There is little analysis of the statistics. The analysis that has been made available can be summarized as follows:

- o The number of incidents has been increasing (from 1 in 1979 to 3 in 1980 to 12 in 1981).
- o Licensee or contractor employees were involved.
- o Three types of incidents are involved: on-site use of drugs, on-site possession of drugs, and reporting for work under the influence of controlled substances.
- o Marijuana was the most frequently involved controlled substance, but six other controlled substances were also involved in the incidents.

We believe that a much more detailed analysis needs to be made to determine if there is a problem of the magnitude requiring the imposition of yet another

rule directed at licensee and contractor personnel. We believe the analysis should be directed toward answering at least the following questions:

- o Has there in fact been an increase in the number of incidents, or only in the number of reported incidents? Has the increase in the number of reported incidents been the result of implementing new programs for detecting incidents, such as security or employee observation programs, or the result of an actual increase in the use or possession of controlled substances?
- o How were the incidents detected? Were they the result of a licensee program, such as screening, employee observation, or physical security, or were they the result of independent law enforcement activity? Is there reason to believe that these programs are inadequate, or that they are not in effect throughout the licensed industry? Is there any evidence to indicate that the proposed rule would establish programs that would enhance detection of drug-related incidents?
- o Assuming that there has been an increase in the use and possession of controlled substances by licensee and contractor personnel, is the magnitude of the problem greater than would be expected in spite of any program? Given that no segment of American society today is drug-free, is the number of incidents in that segment working at licensed facilities so great relative to other segments that a new rule is required to deal with it? Given the thousands of licensee and contractor employees with unescorted access to licensed facilities in 1981, are 12 incidents of enough concern to institute a new federal program?

- o Exactly who were the employees involved? Were they at plants under construction or at operating plants? What percentage were licensee employees and what percentage contractor employees? What prior screening had been done on these employees? For example, were the employees involved comparable in terms of qualifications, training, and screening to those employees who have unescorted access to operating plants?
- o What is the breakdown of the incidents in terms of on-site use, onsite possession, and reporting for work under the influence? Given that the proposed rule is directed at on-site use and reporting for work under the influence, are on-site possession incidents relevant since they are not addressed by the proposed rule? For those incidents involving on-site use, what is meant by "onsite" and when did they occur? For example, did any "onsite use" incidents occur in the parking lot after duty hours? If so, are they relevant to "fitness for duty"?
- o Given that marijuana and other controlled substances were involved in the incidents, what percentage of the incidents actually involved use of these drugs to the degree that the user's faculties were affected in a way "contrary to safety"? Were the quantities of controlled substances sufficient in each incident to pose a safety problem? Was the treatment given to controlled substances similar to that given to alcohol (i.e., ingestion up to certain limits is not treated as an incident, but over those limits it is an incident), or was any use of a controlled substance, no matter how small a dosage or intake, treated as an incident?

- o Exactly what is meant by an "incident"? For example, if a discovery was made of two or more employees sharing a marijuana cigarette, was it counted as one incident or did each employee involved count as an incident? If the reported incident statistics include any multiple employee situation that was reported as a single incident, how many employees were actually involved in the reported incidents?

We believe that existing programs at licensed facilities are fully adequate to counter any problem that may exist. NUREG-0983, "Survey of Industry and Government Programs to Combat Drug and Alcohol Abuse," examined the programs currently being implemented by ten licensees and discussed the matter with their personnel. The findings reflect that programs similar to that in the proposed rule are in effect, and that a Commission rule on the topic was unnecessary. Several quotes from the NUREG, which was just published in June 1982, call into serious questions the need for the proposed rule at this time:

"Several utilities cautioned the NRC not to overreact to the recent rise in reported drug-related incidents."

"Several utilities emphasized the effect that some NRC regulations are already having on operating staff morale."

"Several utilities argued that the NRC should not impose any more requirements restrictive of individual freedom that may be construed to suggest that NRC doesn't trust licensee personnel."

"One utility indicated that such a program would be interpreted by plant personnel as a statement that 'they don't trust me' and might well 'become a self-fulfilling prophecy.'"

"More than one utility felt that there was no stronger deterrent to drug and alcohol abuse than full exercise of company policy, including termination, for violations of company policy."

We can find nothing in the NUREG which would justify the imposition of the proposed rule.

SPECIFIC COMMENTS

Assuming that a detailed analysis of drug-related incidents has been made and that a program in the nature of the proposed rule is necessary to counter the problem, we wish to make the following specific comments: the standard set by the proposed rule is impossible to attain; the terminology "using any drug" is inappropriate; there is no assurance that specific criteria and methods will not be imposed on licensees in the future, and the record-keeping requirements is unduly burdensome.

1. Standard

The standard proposed in the rule is that the written procedures will be designed to "ensure" that personnel are fit for duty. Any set of procedures that attempted to meet this standard would necessarily have to rely on daily physical tests on all persons before unescorted access was granted. From the Statement of Consideration for the proposed rule and other related documents, it is clear that the Commission did not intend to impose such a requirement on the licensees. Therefore, the proposed rule should be changed so the standard for the required procedures is that they be designed to "provide reasonable assurance."

Recommendation: Change Section 50.54(x)(1) from "written procedures designed to ensure" to "written procedures designed to provide reasonable assurance."

2. Drugs

The proposed rule speaks only of "alcohol" and "drugs". The term "drugs" is susceptible to many definitions, and, in fact, usually includes alcohol. The term "drugs" is not defined in the proposed rule or in any of the associated documentation. We believe the term is too broad for the intended regulatory purpose, especially in the context where it is used in the proposed rule. The term is used in Section 50.54(x)(1)(ii): "Using any drugs that affect their faculties in any way contrary to safety." Although the Statement of Consideration states that the problem being addressed by the proposed rule is the use of "controlled substances," this does not come through in the rule when the broad term "drugs" is used instead of "controlled substances." "Controlled substances" is a legal term used to refer to those "drugs of abuse" which fall within the categories of narcotics, depressants, stimulants, hallucinogens, and cannabis. In addition to those drugs for which there is no proven medical use, and are therefore illegal, controlled substances include many over-the-counter and prescribed medications, which are illegal to use or possess only if legal controls are violated. Although differentiating between types of drugs adds complication to the rule, we believe it is necessary to clarify what is actually intended by the rule. Differentiation should be made between illegal controlled substances, any use of which may render a person unfit for duty, and legal controlled substances and other medications, any use of which would render a person

unfit for duty only if they affect his faculties in any substantial way contrary to safety. Most prescribed medication, and even some over-the-counter drugs such as antihistamines, would fail a test written in the terms of the proposed rule: that the user's faculties not be affected "in any way." Therefore, we propose rewriting the proposed rule to address "drugs" from two aspects: 1) under the influence of any illegal controlled substance, and 2) under the influence of any medication that adversely affects the faculties in any substantial way which may affect safety.

It will be noted that we have recommended changing the term "using" to "under the influence." We recommend this change for two reasons.

- a. Use of a phrase "using any drugs" confuses the purpose of the Fitness for Duty Rule with the purpose of the Access Authorization Rule. As we understand the intended purposes of the two rules, the Fitness for Duty Rule is directed at determining capability to perform, while the Access Authorization Rule will be directed at determining reliability. An employee who uses illegal controlled substances is unreliable both because he is engaged in an illegal activity and because such use may affect his mental and physical activities while on duty, but at any given point in time, he may be fit for duty. The situation is analogous to an employee who uses alcohol. Although the use of alcohol is not illegal, an employee who continually uses alcohol to excess may be considered unreliable, although at any given point in time, he may be fit for duty. The point is that the use of alcohol or controlled substances may reflect on reliability, but it reflects on fitness for duty only if the use has left the employee under the influence of the alcohol or controlled substance while on duty.

- b. Changing the term "using" to "under the influence" also clarifies the intent of the proposed rule. As the proposed rule now reads, the licensee would only have to "ensure" that "while on duty," the personnel are not "using any drugs." It is not the use of drugs while on duty that is the problem being addressed, but the fitness for duty when under the influence of drugs, whether used on or off duty.

Recommendation: Renumber Section 50.54(x)(1)(iii) to be Section 50.54(x)(1)(iv), and rewrite the current Section 50.54(x)(1)(ii) into two sections as follows:

"(ii) Under the influence of any illegal controlled substance;

"(iii) Under the influence of any prescribed or over-the-counter medication that affects their faculties in any substantial way contrary to safety, or"

3. Record Keeping

The proposed rule required maintaining "written records of these procedures for the life of the plant." The rationale for this requirement is not discussed in the Statement of Consideration for the proposed rule or any other documentation pertaining to it. In the absence of any justification for the continuous maintenance of records, a two-year period should be imposed.

Recommendation: In Section 50.54(x)(2) change "for the life of the plant" to "for two years."

SOLICITED COMMENTS

The Commission invited comments on six specific topics. Each is addressed below.

1. Should specific fitness criteria, such as the Federal Aviation Administration's proposed regulation for civil aircraft crew members, be established?

No. According to our information, the proposed FAA regulation is specific only with regard to alcohol. Alcohol has been defined as the primary problem for the FAA, but according to the Statement of Consideration, the proposed rule is based on the identification by the Commission of a problem with controlled substances at licensees' facilities. Because of the wide variety of controlled substances, and their vastly different effects on the user, establishing specific criteria for controlled substances would be a far greater undertaking and subject to much greater legal and medical dispute than criteria for alcohol.

2. Should specific methods of implementation of the Fitness for Duty Rule, including the use of breath test, background investigations, psychological test, behavioral observation programs, and other possible measures, be established?

No. The list of methods is widely divergent, but all are objectionable.

- a. Breath Test. Breath tests are used to detect the use of alcohol. Again, although use of alcohol is included in the proposed rule, the identified problem to which the rule is directed is the use of controlled substances. To require the use of breath tests simply

because they are available and easy to administer would misdirect the activities under the proposed rule. Actually, the required use of any test is objectionable. The use of tests for alcohol or other drug use is usually done for legal or medical purposes, not for making a labor management decision. Although licensees may elect to use various tests, when they will be used and who will administer them should be left to the licensees. Each licensee that decides to use such tests must ensure that such use conforms to company personnel policy, union contracts and agreements, individual state law, federal law, and prescribed medical standards. The costs of such tests must also be taken into consideration. Depending on the extent of testing done, a test may cost in the approximate range of \$25 to \$100, which would quickly amount to a significant sum if testing were done on a wide scale. Any licensee that determines that testing is legal and useful for its program must then determine if the benefit of testing is justified by the cost, versus the cost of countering the problem through other means.

- b. Background Investigations and Psychological Test. The appearance of these items on the list of possible "specific methods of implementation of the Fitness for Duty Rule" is surprising. It has been the industry's understanding that these methods were to be a part of an Access Authorization Rule to be published in the future. To propose that they be a part of the Fitness for Duty Rule is to confuse the purpose of the two rules. The Access Authorization Rule should be aimed toward determining a person's reliability, while the Fitness for Duty Rule is aimed toward determining a reliable

person's immediate capability. Background investigations and psychological examinations are predictive in nature, while methods used to implement the Fitness for Duty Rule should be detective in nature.

- c. Behavioral Observation Programs. It has been the industry's understanding that the behavioral observation programs were also to be a part of the Access Authorization Rule. With the advent of the proposed Fitness for Duty Rule, it would seem that whatever "behavioral observation program" that was previously envisioned to be a part of the Access Authorization Rule has now been duplicated by the Fitness for Duty Rule, since the latter is largely a behavioral observation program. Indeed, if the Fitness for Duty Rule is approved, any future Access Authorization Rule should concern itself with initial authorization and periodic updating. Any program for withdrawal of access authorization for cause should be integrated into the Fitness for Duty Rule. This would clearly demarcate the predictive program from the detective program.
 - d. Other Possible Implementation Methods. There is no need to establish any implementation methods. The industry is aware of the possible methods that can be used to determine fitness for duty, and each licensee is capable of selecting those that meet its needs.
3. Should the scope of the rule be limited to personnel with unescorted access to vital areas?

No. Most persons with access to the protected area will have access to

one or more vital areas. The Fitness for Duty Rule is a common sense management rule that would be applied, in principle at least, to all persons granted entry to a licensed plant, whether they have unescorted access to vital areas or unescorted access to the protected area only. To state in the proposed rule that the Commission is concerned only with vital areas may leave the impression that persons under the influence of alcohol or drugs are acceptable in the protected area.

4. What level of specificity should be included in the proposed rule?

We believe that a broad rule in the nature of that proposed is all that is needed and acceptable. The Commission should not dictate to its licensees how to handle their employees. It is the duty of the Commission to establish minimum qualifications for personnel at licensed facilities. However, employment decisions and procedures which are in the nature of job performance evaluation, medical or counselling referrals, suspensions, and firings still should remain the prerogative of the licensees.

5. Should the proposed rule also apply to NRC personnel?

Yes. First, as stated in the Statement of Consideration, "any person with unescorted access to a protected area may have the opportunity to affect adversely affect the health and safety of the public through an unobserved act, whether intentional or inadvertent." "Any person," of course, includes NRC personnel. Second, there is no reason to believe that NRC personnel are any less susceptible to arriving at a licensed

facility under the influence of alcohol or drugs than any other person. Third, and most important, is the morale problem. For the Commission to impose this type of rule on licensee and contractor personnel, but to exclude its own personnel, is to exacerbate an existing situation that causes poor morale stemming from other NRC regulations that are viewed by licensee employees as questioning their honesty, integrity, and reliability. It is inconsistent to make licensee and contractor personnel the subjects of this type of rule, while excluding NRC personnel (and other federal personnel, including OSHA and EPA inspectors) who may be at a licensed plant under exactly the same circumstances (i.e., with unescorted access). Fourth, to exclude NRC personnel is to lend the appearance that authorized NRC and other federal personnel may, or even must, be granted unescorted access to protected areas even if they are "under the influence of alcohol, using any drugs..., or otherwise unfit for duty."

6. Should specific blood alcohol level limits be established?

No. As previously stated, alcohol is not the sole problem. The problem encompasses controlled substances, alcohol, and other drugs. To set blood alcohol limits, but to ignore standards for controlled substances and other drugs, is to misdirect the proposed rule. Also, as previously stated, each licensee should be left to its own procedural devices to establish the specific criteria and methods that will be used to implement the proposed rule.



**Consumers
Power
Company**

David J VandeWalle
Nuclear Licensing Administrator

General Office: 1945 West Parnall Road, Jackson, MI 49201 • (517) 788-1635

October 4, 1982

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DOCKET NUMBER **PR-50**
PROPOSED RULE

DOCKETED
USNRC

Samuel J Chilk
Secretary of the Commission
US Nuclear Regulatory Commission
Washington, DC 20555

(47 FR 33980)

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ATTN: Docketing and Service

Consumers Power Company appreciates the opportunity to comment on the proposed rule which would require nuclear power plants to establish and implement controls to assure that personnel with unescorted access are fit for duty (47 FR 33980, 8/5/1982). After careful review and evaluation by various Consumers Power Company personnel, we offer the following comments:

1. The requirement should include "all persons granted access to the protected and vital areas."
2. The phrase "under the influence" should be defined.
3. Currently, the continued observation program would cover the necessary observation required for identifying mental impairments.
4. The final rule should be written with consideration given to union/labor relation laws, and state's "Right to Privacy" laws. It appears that more legal research is necessary.
5. It is believed that implementing the use of breath tests or chemical analysis would be impractical. Sophisticated analyzing equipment would be necessary at considerable costs. The costs would include not only the equipment, but the use of highly trained personnel. Delays in processing the findings would also be a significant time consideration.
6. A sound employee awareness program coupled with expanded continued observation responsibilities would be the most responsible method used to fulfill the intent of this regulation.

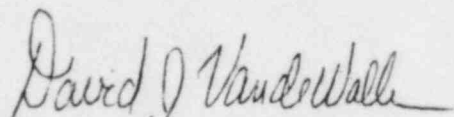
Based upon the broad language of the proposed rule, it is Consumers Power Company's conclusion that the plant operations experience and practices, as well as our corporate policies and procedures meet the intent of the proposed rule. It is also our conclusion that the proposed rule should be eliminated; or modified to include specific definitions and instructions. If the latter option is adopted, a reasonable effort should be made to ensure efficient utilization of limited resources, setting realistically achievable schedules and optimizing present policies and procedures.

DS 10
add: E. Merschhoff
5650 NW

Acknowledged by card 10/18/82 emp

Samuel J Chilk, Secretary
Docketing Service

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David J Vandewalle
Nuclear Licensing Administrator

cc Administrator, Region III, USNRC
NRC Resident Inspector-Big Rock Point