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PROPOSED RULE

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Alabama Power
the southern electric system

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BRANCH

Docket Nos. 50-348
50-364

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

ATTN: Docketing and Service Branch

Dear Mr. Chilk:

Re: Comments on Proposed Rule to Prohibit Licensee
Announcement of Presence of NRC Inspector
(53 Fed. Reg. 8924 (March 18, 1988))

On Friday, March 18, 1988, the Nuclear Regulatory Commission ("NRC") published in the Federal Register a notice inviting public comments on a proposed rule which would amend its regulations to prohibit licensees and their contractors from intentionally giving notice to employees of the arrival and presence of an NRC inspector at a facility, unless specifically permitted to do so by the inspector. See 53 Fed. Reg. 8924 (March 18, 1988). This proposed rule is intended to ensure that NRC inspectors are granted immediate and unannounced access to licensed facilities, following proper identification and compliance with applicable access control procedures. The NRC's goal is to make it possible for inspectors to have immediate access to ongoing activities without accompaniment and without advance knowledge by licensee personnel involved in the activity. Alabama Power Company submits the following comments on the proposed rule.

While we recognize the value to the NRC of unannounced inspections and are supportive of the NRC's goal of improving its ability to conduct such inspections, we do not believe that the rule as proposed would be either effective or enforceable. Nor do we believe that there is even a need for the proposed rule. The success of the NRC is not embodied in these type operations, but rather in open discussions, observations and findings. Rather than take the course described in the proposed rule, the NRC should discuss its concerns with the management of utilities with which it is experiencing difficulty in performing inspections.

It should be pointed out that unannounced inspections are capable of being carried out at the present time. The NRC maintains resident inspectors at nuclear plant sites, and these inspectors currently have the ability to conduct unannounced inspections. Their presence on site is expected and does not give rise to comment by employees. As a result, they are able to travel freely throughout a facility conducting whatever inspections they deem necessary. Consequently, it would seem that ensuring unannounced access for other NRC inspectors is not absolutely crucial.

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The rule as proposed would also create conflicts with the general, and appropriate, practices of the nuclear utility industry. Standard among the practices designed to ensure safe and reliable operation are long-accepted measures to ensure that individuals are allowed on-site only if they are properly authorized and are engaged in the conduct of appropriate activity. Underlying these practices is the justification that a utility ought to know, for reasons of both security and good administration, who is on its plant site. Since the proposed rule conflicts with good practices designed to bolster plant security, we feel that the NRC's concerns regarding inspections should be resolved in some other way.

The proposed rule would also create problems due to the implication that plant management could not communicate the presence of an NRC inspector to personnel even for legitimate reasons. This would severely detract from management's efforts to communicate the status of ongoing activities, milestones, and significant events to its employees. Thus, the proposed rule would be counterproductive to open dialogue between management and employees. More importantly from the NRC's point of view, information requested by an inspector previous to an inspection would have to be gathered without an explanation of purpose. Station personnel have a responsibility to provide accurate and meaningful information to the NRC, but they cannot fulfill this obligation if they are not informed of the need for the information in advance. Advising employees of the presence of an NRC inspector on site to conduct a particular investigation encourages employees to be attentive and to cooperate with that inspector.

The rule's enforceability also causes great concern. 10 C.F.R. §50.70(b)(4), as created, would read:

The licensee or construction permit holder shall ensure that the arrival and presence of an NRC inspector, who has been properly authorized facility access as described in paragraph (b)(3) of this section, is not announced or otherwise communicated by its employees or contractors to other persons at the facility unless specifically requested to do so by the NRC inspector.

This regulation is vague in the extreme, and would create enormous enforcement problems. The licensee receives no guidance as to how it "shall ensure" that no communication is made. It is unclear what steps, if any, could be taken to effectively regulate such communications. For example, the large number of plant personnel involved in pre-inspection activities (e.g., HP and security training, badging, NRC entrance meeting participants, licensing personnel) would make enforcement extremely difficult. Further, NRC inspectors are frequently recognized by plant personnel due to their distinctive hard hats and badges. The proposed rule could be interpreted to prohibit casual comments between employees who notice the presence of inspectors, and to hold the licensee responsible for such casual comments. Therefore, only by maintaining constant surveillance of all employees could a licensee hope to prevent impermissible communications from taking place. For these reasons, we question how a licensee could implement, or the NRC enforce, such a regulation.

We believe that the foregoing points demonstrate significant deficiencies in the proposed rule, and we thus submit that the rulemaking should be terminated. If the NRC proceeds with the rulemaking, in spite of these points, we recommend the following modifications be made:

1. The rule should be revised so that the presence of an NRC inspector could be communicated unless the inspector explicitly requests that his presence not be announced. Otherwise, a situation could easily arise in which a majority of the inspections require secrecy, either intentionally or by omission of the inspector. The request should be made in writing in order to protect employees who may be forced to violate plant security procedures by complying with the inspector's request.
2. If the intent of the rule is to prevent notification only of special inspections or inspections conducted at times other than normal working hours, the rule should be changed to clarify this point.
3. The proposed rule states that the presence of an NRC inspector should not be communicated to "other persons at the facility." This statement should be revised to explain whether all other persons at the facility are included in this prohibition, or whether some employees are not included. If some employees may receive notification, the rule should specify who is included in this group.
4. Clarification should be provided as to the length of time the rule applies after the NRC inspector enters the facility.

In conclusion, we feel that the proposed rule would fail to improve the ability of NRC inspectors to conduct unannounced inspections. Further, the rule would be extremely difficult for licensees to police and for the NRC to enforce. Consequently, in lieu of this rule, alternative methods of attaining the NRC's goal of preventing advance notice of the presence of an inspector should be examined.

Respectfully submitted,

ALABAMA POWER COMPANY



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