

SHAW, PITTMAN, POTTS & TROWBRIDGE

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

2300 N STREET, N. W.
WASHINGTON, D. C. 20037

TELEX/CABLE
89 2693 (SHAWLAW WSH)

TELEPHONE
(202) 663-8063

VIRGINIA OFFICE
1501 FARM CREDIT DRIVE
MCLEAN, VIRGINIA 22102
(703) 790-7900

TELECOPIER
(202) 223-3760 & 223-3761

JAY E. SILBERG, P.C.

April 18, 1988



Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
Attention: Docketing and Service Branch

Re: Proposed Rule - Licensee Announcements
of Inspectors, 53 Fed. Reg. 8924

Gentlemen:

On March 18, 1988, the Nuclear Regulatory Commission published in the Federal Register a proposed rule which would require that a licensee or construction permittee ensure that its employees and contractors do not announce or otherwise communicate to other persons the arrival and presence of an NRC inspector at the reactor site unless specifically requested to do so by that inspector. 53 Fed. Reg. 8924 (1988). The Supplementary Information accompanying the proposed rule claims that this new prohibition is needed because of instances where the ability of NRC inspectors to carry out unannounced inspections was compromised by employees who informed others at the facility of the inspectors' presence.

On behalf of Baltimore Gas and Electric Company, The Cleveland Electric Illuminating Company, Duquesne Light Company, Georgia Power Company, GPU Nuclear Corporation, Indiana & Michigan Electric Company, Louisiana Power & Light Company, Northern States Power Company, Pennsylvania Power & Light Company, The Toledo Edison Company, Union Electric Company, and Wolf Creek Nuclear Operating Corporation (operating agent of Kansas Gas and Electric Company, Kansas City Power & Light Company, and Kansas Electric Power Cooperative, Inc.), all of whom hold operating licenses for nuclear power reactors, we are pleased to provide the following comments.

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We strongly oppose the proposed rule as written. It is overly broad, unworkable, contrary to other NRC regulatory requirements, and generally bad policy. The Commission has also failed to adequately describe the need for any new regulatory requirement. The proposed rule should therefore be withdrawn.

There can be no question that properly badged NRC inspectors should have the same degree of access in the nuclear power plant that regular plant employees have. Such unfettered access does not, however, require that NRC impose on plant employees the regulatory muzzle contemplated by the proposed rule. NRC must first better define the circumstances which led to the Commission's belief that a new rule is needed. Only then can it propose an appropriate, carefully focused response to the problem.

In its current form, the proposed rule prohibits any licensee employee or any employee of any contractor from informing any other person at the facility that an NRC inspector has arrived or is present at the facility. This prohibition would apply in all cases except where the NRC inspector had specifically requested that his arrival or presence be announced. As written, the rule would create the following types of unreasonable results:

- An NRC inspector from the Regional Office arrives on site and is cleared for access by security personnel. The NRC resident inspector calls the security personnel and asks whether the Regional inspector has arrived. The security officer will violate the proposed rule if he truthfully answers. If he does not, he could even be charged with a material false statement.
- An NRC inspector at the site during the course of an unannounced inspection asks a plant employee to provide a particular piece of information. The employee, in seeking to retrieve the information from other individuals is asked why the information is needed. The requesting employee would violate the rule by truthfully responding.

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- Senior station management, as part of its general plant oversight, broadly inquires of plant personnel on activities in the plant (or even specifically asks if any NRC personnel are on-site). The proposed rule would require the plant personnel to lie; otherwise the proposed rule would be violated.
- Security computers at power reactors generally keep track of those individuals within the plant at any given time. NRC inspectors would typically be included. Access to this information by anyone other than the security officer granting access to the inspector would violate the rule. To "ensure" that this information was not accessed by anyone else, the licensee would undoubtedly have to reprogram the computer system.

Another example of the proposed rule's unworkability is its requirement that the licensee "ensure" that the prohibited communications do not take place. A requirement for absolute perfection in an area which is totally unsuited for such levels of behavior is unreasonable. How, for example, can a licensee guarantee that employees for a contractor will not mention to someone else at the facility that he saw an NRC inspector? No reasonable training program could possibly produce the kind of abnormal interpersonal behavior that the proposed rule contemplates.

Wholly apart from these unreasonable results which the proposed rule would cause, the prohibition is bad management. Senior site management is responsible for the safe operation of the facility. It is inappropriate that they be kept in the dark as to any matters involving the plant. If the NRC were to believe that senior site management were interfering with NRC inspection functions, the ramifications should be severe enough without the need for any new rules. The prohibition is also inconsistent with the licensees' safety responsibilities. For example, in the event of an accident, the licensee must be able to establish accountability for all individuals who are on-site. See, NUREG-0654, Rev. 1, "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants," Planning Standard J.1, at 59.

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And the proposed rule is inconsistent with human nature. To expect that individuals will not talk with one another about events and individuals that they may have seen is totally unreasonable. Finally, the proposed rule is a further step towards unnecessary adversarialism in the relationship between the regulators and the regulatees.

If the proposed rule is indeed a response to a significant problem, the NRC's first step should be to better explain the nature of the problem and the factual situations in which it has arisen. Once that information has been shared with interested parties, it will be possible to comment more meaningfully on the suggested corrective actions. In the absence of that information, and without conceding that any new regulations are needed, we would offer the following suggestions to modify the rule as proposed:

1. The prohibition on announcement or communication should only extend to a deliberate announcement or other communication throughout the plant or a significant part thereof that an unannounced NRC inspector has arrived, or is present, i.e., an intentional effort to defeat the purpose of an unannounced inspection.
2. The prohibition applies to an individual only if he or she has received from the NRC inspector an affirmative, unambiguous statement that the inspector's arrival or presence is not to be announced or communicated.
3. The prohibition should not extend to one-on-one, individual conversations.

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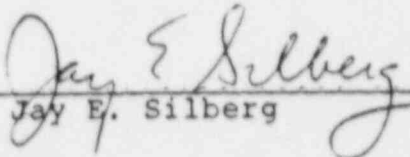
4. The prohibition should be limited in time, so that the prohibition does not extend for unreasonable lengths of time.

We appreciate the opportunity to submit these comments.

Very truly yours,

SHAW, PITTMAN, POTTS & TROWBRIDGE
2300 N Street, N.W.
Washington, D.C. 20037
(202) 663-8000

By:


Jay E. Silberg

JES:dj