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November 18, 1988

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

Attention: Docketing and Service Branch

Re: Proposed Rule - Fitness For Duty Program  
53 FR 36795 (September 22, 1988)  
Request for Comments

Dear Mr. Chilk:

These comments are respectfully submitted on behalf of Niagara Mohawk Power Corporation ("NMPC"), Syracuse, New York, in response to the request of the U. S. Nuclear Regulatory Commission ("NRC") for comments on the NRC proposed Fitness-for-Duty Program.

NMPC, a licensee authorized to operate a nuclear power reactor, is committed to providing a safe working environment and promoting high standards of employee health for all of its workers. Indeed, NMPC employees have participated in an effective Fitness-for-Duty Program for several years. In no other unit of NMPC has Fitness-for-Duty received greater emphasis than in the Nuclear Division. Yet, NMPC recognizes that improvements in the Fitness-for-Duty Program can enhance these goals especially as they relate to nuclear operations where safety and security are top priority.

Accordingly, NMPC endorses the NRC's stated purpose of the proposed regulations to rectify shortcomings of existing Fitness-for-Duty Programs and to establish uniform standards to promote public health and safety.

However, NMPC objects to several particulars of the proposed rules. NMPC is a member of the Nuclear Management and Resource Council ("NUMARC") and NMPC representatives participated in the development of the NUMARC comments on the Fitness-for-Duty proposal. NMPC fully supports those comments and urges the NRC Staff to accord full consideration to NUMARC's detailed and thoughtful remarks.

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Internal review and discussion of the proposed rules has generated much interest and concern, especially in regard to seven issues. NMPC takes this opportunity to briefly comment on these matters to emphasize their importance to NMPC employees.

1. Alcohol Abuse

Of utmost importance to NMPC is NUMARC's general recommendations regarding alcohol abuse; if it is to be regulated it must be treated separately. The Employee Assistance Program ("EAP") and other procedures and remedies of the proposed rules are inappropriate to alcohol, a legal and socially accepted drug. Furthermore, the industry must be allotted adequate time to respond to any concrete proposals on alcohol forthcoming from the NRC.

2. Random Drug Testing

The testing rates proposed give insufficient consideration to the substantial deterrent effect of a random testing program. Analogy to the experience of the Navy in attacking its drug problems is irrational, as stated by NUMARC. NMPC security personnel firmly agree that 100% annual testing recommended by NUMARC will provide more than adequate deterrence to drug abuse.

3. Implementation Time

Management personnel at the nuclear stations indicate that it would be unduly burdensome to set up new training, renegotiate contracts, secure additional personnel, adapt the EAP, set up record keeping and other administrative adjustments in 90 days and then be ready to start testing in 90 more days. At least 180 days, if not 365 days, must be provided to implement the regulatory changes.

4. Tracking of Personnel Denied Access

This sensitive area of employee relations must be left to management. A primary concern here is the inhibition of self-referrals to EAP. The rules as drafted will not only have a negative impact on worker morale, but will undermine the primary objective of the FFD Program.

5. Escort Training

There is no rational basis for the proposed level of escort training. The situation when an escort is called upon to use special training for detection of drug abuse is hypothetical

at best. Substantial time and resources can be redirected to address existing problems if this proposal is deleted.

6. Reporting Requirements

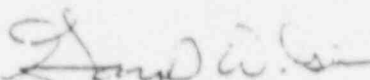
When security is diminished due to a Fitness-for-Duty event, the occurrence is reportable under the 24-hour notice provision of 10 CFR Part 73. Compliance with a 24-hour notice provision for routine Fitness-for-Duty events is unrealistic because management rarely ascertains arrest information and the like in such short time. Except where security is actually impaired, the 30 days reporting requirement should suffice.

7. Cost of Fitness-for-Duty Program

While no dollar value can be placed on a safe, healthy and drug-free working environment at a nuclear power plant, NMPC's estimate of the cost of implementing the Fitness-for-Duty Program is at least \$1,000,000 in the first year alone - more than twelve times the \$80,000 estimated in the NRC's Draft Backfit Report. This underestimation is indicative of the NRC's insensitivity to the financial ramifications of its regulatory actions. NUMARC highlights specific omissions and errors of the NRC's accounting of the financial impact of its rules.

Thank you for giving these remarks your thoughtful review. We would be happy to supply further information or comments as needed.

Very truly yours,

  
Gary D. Wilson  
Senior Attorney