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54FR30049

KEY WORD: RULEMAKING COMMENTS

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PAGE 1 OF 2 STATUS OF RULEMAKING RECORD 1 OF 1

PROPOSED RULE: PR-030,040,050,60,70,72,150

RULE NAME: PRESERVING THE FREE FLOW OF INFORMATION TO THE COM MISSION

PROPOSED RULE FED REG CITE: 54FR30049

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PRESS ESC TO SEE ADDITIONAL RULES, (E) TO EDIT OR (S) TO STOP DISPLAY

PAGE 2 OF 2 HISTORY OF THE RULE

PART AFFECTED: PR-030,040,050,60,70,72,150

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PROPOSED RULE SECY PAPER: 89-157	PROPOSED RULE SRM DATE:	06/29/89	DATE PROPOSED RULE SIGNED BY SECRETARY: 07/12/89
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PRESS PAGEUP TO SEE STATUS OF RULEMAKING
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DOCKET NO. PR-030,040,050,60,70,72,150
(54FR30049)

In the Matter of

PRESERVING THE FREE FLOW OF INFORMATION TO THE COM
MISSION

DATE DOCKETED	DATE OF DOCUMENT	TITLE OR DESCRIPTION OF DOCUMENT
08/03/89	05/01/89	COMMENT OF MARVIN LEWIS (1)
07/13/89	07/12/89	FEDERAL REGISTER NOTICE - PROPOSED RULE
08/03/89	07/25/89	NRC MEMO FROM CRUTCHFIELD TO TREBY TO CONSIDER THE MAY 1, 1989 LETTER FROM LEWIS (COMMENT 1) TO BE CONSIDERED AS A COMMENT FOR THE PR.
08/11/89	08/09/89	COMMENT OF PAUL E. SIECK (2)
08/28/89	08/24/89	COMMENT OF BOB N. LEACH (3)
08/28/89	08/24/89	COMMENT OF SVERDRUP CORPORATION (JAMES BYCOTT, ATTORNEY) (4)
08/31/89	08/25/89	COMMENT OF ADVANCED NUCLEAR FUELS CORPORATION (C. W. MALODY, MANAGER) (5)
09/08/89	08/25/89	COMMENT OF HARTFORD STEAM BOILER INSPECTION (R. E. FEIGEL, DIRECTOR) (6)
09/14/89	09/07/89	COMMENT OF SANDVIK SPECIAL METALS (K. C. BOWLES, MANAGER) (7)
09/18/89	09/12/89	COMMENT OF STEPHEN SLACK (8)
09/18/89	09/12/89	COMMENT OF DETROIT EDISON (B. RALPH SYLVIA, VICE PRESIDENT) (9)
09/18/89	09/14/89	COMMENT OF FLORIDA POWER & LIGHT COMPANY (C. O. WOODY, VICE PRESIDENT) (10)
09/18/89	09/15/89	COMMENT OF SOUTH CAROLINA ELECTRIC & GAS COMPANY (O. S. BRADHAM, VICE PRESIDENT) (11)
09/18/89	09/15/89	COMMENT OF COMMONWEALTH EDISON COMPANY (LESLIE HOLDER, REGULATORY ENGINEER) (12)

DOCKET NO. PR-030,040,050,60,70,72,150 (54FR30049)

DATE DOCKETED	DATE OF DOCUMENT	TITLE OR DESCRIPTION OF DOCUMENT
09/18/89	09/14/89	COMMENT OF NEBRASKA PUBLIC POWER DISTRICT (G. A. TREVORS, DIVISION MANAGER) (13)
09/18/89	09/18/89	COMMENT OF NUMARC (JOE COLVIN,EXECUTIVE VICE PRESIDENT) (14)
09/18/89	09/18/89	COMMENT OF AT&T BELL LABORATORIES (G. M. WILKENING,RADIATION COMMITTEE) (15)
09/18/89	09/18/89	COMMENT OF GEORGIA POWER COMPANY (W. G. HAIRSTON, III, VICE PRESIDENT) (16)
09/18/89	09/18/89	COMMENT OF ALABAMA POWER COMPANY (W. G. HAIRSTON, III, VICE PRESIDENT) (17)
09/19/89	09/13/89	COMMENT OF SEQUOYAH FUELS CORPORATION (SCOTT KNIGHT, VICE PRESIDENT) (18)
09/19/89	09/15/89	COMMENT OF MARSHALL UNIVERSITY (RICHARD PETIT) (19)
09/19/89	09/15/89	COMMENT OF JILL SMITH BEED (20)
09/19/89	09/15/89	COMMENT OF NEW HAMPSHIRE YANKEE (TED FEIGENBAUM, VICE PRESIDENT) (21)
09/19/89	09/18/89	COMMENT OF PHILADELPHIA ELECTRIC COMPANY (G. A. HUNGER, DIRECTOR) (22)
09/19/89	09/18/89	COMMENT OF CONSOLIDATED EDISON COMPANY OF NEW YORK (STEPHEN B. BRAM, VICE PRESIDENT) (23)
09/19/89	09/18/89	COMMENT OF ILLINOIS DEPARTMENT OF NUCLEAR SAFETY (TERRY LASH, DIRECTOR) (24)
09/19/89	09/18/89	COMMENT OF WISCONSIN ELECTRIC POWER COMPANY (JAY SILBERG, ESQUIRE) (25)
09/19/89	09/18/89	COMMENT OF DUKE POWER COMPANY (ALBERT CARR, ASSOC. GENERAL COUNSEL) (26)
09/20/89	09/20/89	MEMORANDUM FOR THE RECORD FROM E. JULIAN WHICH INDICATES THAT COMMENT #27 WAS PART OF A LETTER ADDRESSED TO SENATOR JOHN BREAUX
09/20/89	09/14/89	COMMENT OF JOHN CORDER (27)
09/20/89	09/18/89	COMMENT OF CONNER & WETTERHAHN, P.C. AND CLIENTS (ROBERT RADER, ESQUIRE) (28)

DOCKET NO. PR-030,040,050,60,70,72,150 (54FR30049)

DATE DOCKETED	DATE OF DOCUMENT	TITLE OR DESCRIPTION OF DOCUMENT
09/20/89	09/19/89	COMMENT OF YANKEE ATOMIC ELECTRIC COMPANY (DONALD EDWARDS, DIRECTOR) (29)
09/21/89	09/19/89	JOE COLVIN, ON BEHALF OF NUMARC, SUBMITTED ANOTHER COMMENT LETTER TO REPLACE THE EARLIER COMMENT LETTER(#14) DATED 9-18-89 WHICH HAD AN ERROR
09/22/89	09/15/89	COMMENT OF GENERAL ELECTRIC NUCLEAR ENERGY (P.W. MARRIOTT, MANAGER OF LICENSING) (30)
09/22/89	09/18/89	COMMENT OF CAROLINA POWER & LIGHT COMPANY (L. I. LOFLIN, MANAGER OF LICENSING) (31)
09/22/89	09/18/89	COMMENT OF CLEVELAND ELECTRIC ILLUMINATING COMPANY (AL KAPLAN, VICE PRESIDENT) (32)
09/22/89	09/18/89	COMMENT OF WASHINGTON PUBLIC POWER SUPPLY SYSTEM (G. C. SORENSON, MANAGER) (33)
09/22/89	09/18/89	COMMENT OF ARIZONA PUBLIC SERVICE COMPANY (WILLIAM CONWAY, VICE PRESIDENT) (34)
09/25/89	09/18/89	COMMENT OF TU ELECTRIC (WILLIAM CAHILL, VICE PRESIDENT) (35)
09/25/89	09/20/89	COMMENT OF WESTINGHOUSE ELECTRIC CORPORATION (WILLIAM JOHNSON, MANAGER) (36)
09/25/89	09/20/89	COMMENT OF HADDAM NECK & THE THREE MILLSTONE UNITS (E. MROCZKA, VICE PRESIDENT) (37)
09/28/89	09/25/89	COMMENT OF BILLIE PIRNER GARDE (38)
10/02/89	09/27/89	COMMENT OF TENNESSEE VALLEY AUTHORITY (M. J. RAY, MANAGER) (39)
10/02/89	09/28/89	COMMENT OF OHIO CITIZENS FOR RESPONSIBLE ENERGY (SUSAN HIATT, OCRE REPRESENTATIVE) (40)
10/06/89	09/28/89	COMMENT OF WESTINGHOUSE ELECTRIC CORPORATION (E. K. REITLER, MANAGER) (41)
12/15/89	12/15/89	COMMENT OF NUMARC (JOE COLVIN, VICE PRESIDENT) (42)
03/20/90	03/15/90	FEDERAL REGISTER NOTICE - FINAL RULE
12/17/90	12/05/90	COMMENT OF AMERICON HOLDING COMPANY, INC. (CHERYL A. SKILES, QUALITY ASSURANCE) (43)

Americon Holding Company, Inc.

Babcock & Wilcox a McDermott company

3333 Copley Road
Copley, Ohio 44321
(216) 666-8841

December 5, 1990

Secretary, U.S. Nuclear Regulatory Commission
Washington, DC 20555
Attn: Docketing and Service Branch

Subject: Comment to Proposed Rule Making Part 30

Gentlemen:

While the intent of the proposed rulemaking may be justified, restrictions and added procedural/notification requirements for licensees is overly bureaucratic and cumbersome to implement. Notification requirements would, in many cases, raise more questions than are intended to be answered. The universal applicability to all Part 30 licensees, for example is questionnable.

I agree with Commissioner Roberts views of the proposed rule making. Basic requirements (existing rule) are becoming defined ad nauseam by requiring additional implementation of procedures and notification to employees. Adding one more compliance item for licensees -- especially those licensed by NRC and various Agreement States -- is needlessly over-administrative.

Perhaps an alternative would be for NRC inspectors to review the rule and its impact with licensees during periodic inspections. The review could be geared specifically to the licensee's scope of compliance; could be reviewed repeatedly (during each inspection) for applicability; and would more effectively and realistically lead to the desired result, compliance, without adding an administrative nightmare.

Very truly yours,

Cheryl A. Skiles

Cheryl A. Skiles
Quality Assurance

CAS
cc: R. L. Allison
R. M. Hess

[7590-01]

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 40, 50, 60, 61, 70, 72 and 150

RIN: 3150-AD21

Preserving the Free Flow of Information to the Commission

AGENCY: Nuclear Regulatory Commission.

ACTION: Final Rule.

SUMMARY: The Nuclear Regulatory Commission is revising its rules governing the conduct of all Commission licensees and license applicants. The final rule prohibits the imposition of conditions in settlement agreements under Section 210 of the Energy Reorganization Act, or in other agreements affecting employment, that would prohibit, restrict, or otherwise discourage any employee or former employee from providing the Commission with information on potential violations or other hazardous conditions. This rule is necessary to prohibit the use of provisions which would inhibit the free flow of information to the Commission in agreements related to employment.

pub. 3/21/90
55 FR 10397

EFFECTIVE DATE: April 20, 1990.

FOR FURTHER INFORMATION CONTACT: Stuart A. Treby, Assistant General Counsel, Rulemaking and Fuel Cycle Division, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; Telephone (301) 492-1636.

SUPPLEMENTARY INFORMATION:

Background

Section 210 of the Energy Reorganization Act of 1974, as amended, was added as a new section to that Act in 1978 (Pub. L. 95-601). Section 210 offers protection to employees of a Commission licensee, or of a contractor or a subcontractor of a Commission licensee or applicant. The protection afforded is to those who have been fired or discriminated against as a result of the fact that, among other things, they have testified or given evidence on potential violations, or brought suit under Section 210 of the Energy Reorganization Act. Employees who have been discriminated against for raising safety or other issues have the right to file complaints with the Department of Labor for the purpose of obtaining a remedy for the personal harm caused by the discrimination. Following the filing of a complaint, the Department of Labor performs an investigation. If either the employee or the employer is not

satisfied with the outcome of the investigation, a hearing can be held before an Administrative Law Judge, with review by the Secretary of Labor. The Secretary of Labor can issue an order for the employee to be rehired, or otherwise compensated if the employee's case is justified.

In many cases, the employee and the employer reach settlement of the issues raised in the Department of Labor proceeding before completion of the formal process and a finding by the Secretary of Labor. In general the Commission supports settlements as they may provide appropriate remedies to employees without the need for litigation. However, a recent case has brought to the Commission's attention the potential for settlement agreements negotiated under Section 210 to impose restrictions upon the freedom of employees or former employees protected by Section 210 to testify or participate in NRC licensing and regulatory proceedings or to otherwise provide information on potential violations or other hazardous conditions to the Commission or the NRC staff. See Texas Utilities Electric Co., (Comanche Peak Steam Electric Station Units 1 and 2), CLI-88-12, 28 NRC 605 (1988); Texas Utilities Electric Co., (Comanche Peak Steam Electric Station Units 1 and 2), CLI-89-06, 29 NRC 348 (1989). The Commission's follow-up to the above case has confirmed that other instances of questionable restrictions do exist in a variety of settlement agreements, not limited to Section 210 proceedings.

The Commission has concluded that a Section 210 settlement agreement, or any other agreement affecting employment, which restricts the freedom of an employee or former employee from freely and fully communicating with the

Nuclear Regulatory Commission about potential violations or other hazards falling within NRC's regulatory responsibility is unacceptable. These provisions may have a chilling effect on communications about nuclear safety, security, or other matters, and would restrict, impede, or frustrate full and candid disclosure to the Nuclear Regulatory Commission about matters of regulatory significance. Any such agreement under which a person contracts to withhold safety significant information or testimony from the Nuclear Regulatory Commission could itself be a threat to safety and therefore jeopardize the execution of the Agency's overall statutory duties. The same would be true of other information bearing on NRC's regulatory responsibilities, for example information regarding security or safeguards issues.

Accordingly, on July 18, 1989 (54 FR 30049), the Commission published a proposed rule amending its regulations to require licensees and license applicants to ensure that neither they, nor their contractors or subcontractors, impose conditions in settlement agreements under Section 210 of the Energy Reorganization Act, or in other agreements affecting employment, that would prohibit, restrict, or otherwise discourage an employee from providing the Commission with information on potential violations or hazardous conditions.

The NRC has received 43 comments on the proposed rule from a variety of Commission licensees, private individuals, and industry organizations. A summary of those comments and the Commission's responses to those comments follows. Before discussing those comments, however, two additional events

have occurred which, along with the comments, have resulted in changes in the content of the final rule.

First, on July 18, 1989, the Secretary of Labor issued a decision in a case filed under Section 210 of the Energy Reorganization Act which addressed restrictive settlement agreements. See Pollizi v. Gibbs & Hill, Inc., 87-ERA-38 (July 18, 1989). In that decision, the Secretary of Labor found unenforceable a clause in a settlement agreement which had the effect of drying-up channels of communication which were essential for Government agencies to carry out their responsibilities. Specifically of significance for this rulemaking, the Secretary found that Department of Labor Administrative Law Judges had a duty to review parties' settlement agreements before dismissing cases and that a restriction on voluntary appearance as a witness in an NRC proceeding was against public policy and, therefore, unenforceable. Particularly notable is the fact that the Secretary found the restrictive provision of the Pollizi settlement agreement unenforceable in spite of the fact that the provision in question explicitly stated that, other than appearing voluntarily as a witness in an NRC proceeding, Mr. Pollizi could bring all his safety concerns to the NRC.

The second event of significance to this rulemaking is that the Commission has received the replies of various licensees to the Commission's April 27, 1989, letter to nuclear power plant licensees, their contractors, and major nuclear materials and fuel cycle facility licensees concerning the existence of other settlement agreements with restrictive clauses. Although

some licensees were expanding the scope of their reviews and may identify additional agreements in the future, initially more than a dozen agreements were identified that contained either restrictive language or questionable language concerning the provision of information to the NRC. The responses included not only agreements settling Section 210 complaints, but also other agreements settling law suits in State and Federal Courts.

As will be discussed in responding to specific comments and suggested changes, the above two events, in combination with the comments received by the Commission, have resulted in modifications to the proposed rule, while at the same time confirming the Commission's view that a specific rule concerning settlement agreements should be adopted.

Summary of Public Comments

Of the 43 comments received by the Commission on the proposed rule, no one indicated satisfaction with the rule as written. Thirty-six commenters specifically opposed the rule for a variety of reasons. Seven commenters favored the rule subject to certain modifications. It is noteworthy that virtually all commenters indicated their support for the Commission's goal of assuring the free flow of information to the Commission. A summary of comments with the Commission's responses appears below.

1. The Proposed Rule As Drafted Is Much Too Broad In Scope.

Almost half the commenters complained that the scope of the rule was much too broad, rendering its implementation both unnecessary and impractical. The two areas most frequently mentioned as being too broadly written were the rule's reference to "contractors and subcontractors" and the application of the rule to "all settlement agreements." Each of those issues is individually addressed below.

a. Application of the rule to contractors and subcontractors.

Commenters that exhibited the most concern for the application of the rule to contractors and subcontractors were materials licensees, such as hospitals, whose overall activities involve only a small percentage of licensed activities. Given the extensive use of contractors in the conduct of licensed activities, a rule that applied only to conduct by licensees, and not to licensed activities carried out on their behalf by their contractors or subcontractors, would be of little value. Accordingly, the rule prohibition is broadly worded to cover all persons conducting licensed activities.

A separate but related concern is that, as proposed, the rule would require that licensees have procedures to oversee employee/employer agreements for hundreds of contractors and subcontractors that had nothing to do with their limited licensed activities. It is well established in Commission precedent that an applicant or licensee cannot avoid responsibility for compliance with the Atomic Energy Act or the Commission's regulations by

delegation of performance of license related activities to independent agents or contractors. See Virginia Electric and Power Company, (North Anna Power Station, Units 1 and 2) ALAB-324, 3 NRC 347 (April 15, 1976); Illinois Power Company, (Clinton Power Station, Unit 1) LBP-81-61, 14 NRC 1735 (December 16, 1981). In fact, the Commission has specifically noted the responsibility of licensees for the conduct of their contractors with respect to cases of harassment by contractors of contractor employees. Metropolitan Edison Company et. al. (Three Mile Island Station, Unit 1) CLI-85-2, 21 NRC 282, 329 (February 25, 1985).

Therefore, it is not necessary for the Commission to specifically require licensees to have procedures for assuring that their contractors and subcontractors comply with the Commission's regulations. Enforcement actions can be, and have been, taken against licensees for the misconduct of their contractors and subcontractors which results in violations of the Commission's regulations, including violation by contractors of employee discrimination regulations. Thus, the Commission need not require that formal procedures be developed to monitor contractor and subcontractor activity in order for licensees to be responsible for their contractors' and subcontractors' actions.

The Commission did not intend to create an unwieldy system which would require some licensees performing limited licensed activities to establish a system to monitor the employer/employee relations of hundreds of contractors and subcontractors who are not directly involved in licensed activities.

Accordingly, the final rule has been modified to directly prohibit agreements which prohibit, restrict, or otherwise discourage an employee from engaging in protected activity as defined in the Commission's employee protection regulations. Although the final rule requires that licensees notify contractors and subcontractors of this regulation's restrictions, the final rule has not retained the requirement that licensees develop specific procedures to assure compliance by contractors or subcontractors. However, the Commission reemphasizes the precedent noted above with respect to licensees' responsibilities for conduct of licensed activities by their contractors and subcontractors. The Commission will hold licensees responsible for violations of NRC regulatory requirements by contractors and subcontractors performing work related to the activities which are the responsibility of the licensee under the applicable statutes, regulations, orders, or licenses. The selection of means to ensure that violations do not occur, which could include development of written procedures, will be left to licensees.

b. Application of the rule to all settlement agreements.

The second area in which commenters were concerned with the scope of the proposed rule was in its application to all "agreements affecting the compensation, terms, conditions and privileges of employment." A number of commenters believe that the rule should be limited to settlement of complaints alleging violations of Section 210 of the Energy Reorganization Act. The Commission finds no merit in this criticism of the proposed rule.

On April 27, 1989, the NRC staff requested nuclear power plant licensees and their contractors, and major nuclear materials and fuel cycle facility licensees, to review all settlement agreements or other agreements related to compensation, terms, conditions, and privileges of employment to which they were a party for potentially improper restrictive clauses. Although several of the licensees had not fully completed their review of all such agreements, initial responses to the Commission's inquiry identified more then a dozen agreements that contained language that was either restrictive in nature or was at least questionable concerning the provision of information to the NRC. These agreements were not, in fact, limited to Section 210 complaints. They contained several settlements of cases filed on a variety of grounds before State and Federal Courts. The Commission has concluded that these agreements adequately demonstrate the potential for impeding the flow of information to the Commission through avenues other than Section 210 agreements. The Commission is, therefore, maintaining in the final rule the application of its prohibitions to all agreements affecting the compensation, terms, conditions, and privileges of employment.

2. The Rule Is Unnecessary Because It Is Redundant.

Commenters advancing this position generally cited the already existing restrictions in the Commission's regulations concerning Section 210 of the Energy Reorganization Act. These include the requirement in 10 CFR Part 19 that a "Form 3" be posted at all work sites informing employees of their right

to bring safety concerns to the NRC and the requirement in 10 CFR Part 21 creating an obligation on directors and responsible officers of licensees and vendors to report defects to the NRC. The commenters believe that it would be redundant to add a restriction on settlement agreements to the regulations.

The courts have not explicitly addressed the issue of whether Section 210 of the Energy Reorganization Act would prohibit restrictive settlement agreements and the Commission's own regulations do not specifically address the issue either. In the Pollizi case the Secretary of Labor did not specifically find that the restrictive provisions in the settlement agreements violated Section 210. Rather, the Secretary indicated that the agreement's provisions were invalid because the provision was against public policy and was, therefore, unenforceable. See Pollizi v. Gibbs & Hill, Inc., 87-ERA-38, Slip Opinion at 7 (July 18, 1989). In addition, based on the number of agreements already identified which contain questionable provisions, it would not appear that current regulations have prevented potentially improper agreements from being executed.

Rather than relying on the judgment of a variety of individuals attempting to determine which clauses might violate public policy, the Commission believes it is prudent to specifically prohibit by regulation all settlement agreements or other agreements affecting the compensation, terms, conditions and privileges of employment from restricting employees from bringing safety concerns to the attention of the NRC.

3. Comments Concerning The Reporting And Monitoring Aspects Of The Proposed Rule.

A number of commenters raised problems with the requirements in the proposed rule that contractors and subcontractors inform licensees of each Section 210 complaint filed against the contractor or subcontractor, and that the licensee or license applicant have prior review of Section 210 settlement agreements. Commenters generally felt that this procedure was unnecessary and would make it more difficult to settle cases. Given that settlements are generally encouraged, actions making it more difficult to settle cases would be detrimental to all parties involved in these disputes.

The Commission has determined that, as a result of the Secretary of Labors' decision in the Pollizi case, these requirements should be dropped. The reason for the Commission dropping this aspect of the proposed rule primarily results from two parts of the Pollizi decision. First, the Secretary in that case reiterated a decision in Funcko and Yunker v. Georgia Power Co., 89-ERA-9, 10, (Secretary's Order to Submit Settlement Agreement issued March 23, 1989, at 2), that it was error for an Administrative Law Judge in a Department of Labor case to dismiss a case without reviewing a proposed settlement agreement. Pollizi slip op. at 2. In addition, the Secretary found that an agreement that restricted voluntary participation in NRC proceedings, even though it specifically noted that Mr. Pollizi was not in any manner restricted from providing information to the Commission on safety concerns, was against public policy and would not be enforceable. As a result

of these two findings it is evident that the Department of Labor will be giving close scrutiny to Section 210 settlement agreements. Licensees will be held responsible for contractor violations of the rule. All settlement agreements by contractors will be subject to the restrictions the Commission is adopting today. Licensees may use a variety of methods, such as notification to licensees of all contractor settlement agreements, placing requirements in contracts with individual contractors to prohibit restrictive agreements, or other procedural mechanisms to assure that their contractors comply with this requirement. The Commission is not specifying the method or methods that licensees should use. The Commission emphasizes, however, that licensees will be held responsible for violations associated with their licensed activities, whether or not they are specifically aware of a contractor's failure to comply with regulatory requirements. The Commission does not believe that the rule needs to prescribe procedures whereby contractors will report on, and licensees will monitor, the filing and settlement of Section 210 cases.

Although the primary motive for these modifications to the proposed rule results from the Pollizi decision, a number of commenters identified additional problems created by the proposed requirement which support the modifications to the proposed rule. The Commission is including below a brief summary of those comments.

a. The administrative burden to monitor hundreds of contractors and subcontractors is onerous.

b. Small contractors may cease nuclear work rather than taking on the additional administrative burden.

The Commission has removed the most burdensome administrative aspects of the proposed rule. Although the Commission does not necessarily agree with some commenters views of the magnitude and affect of the burden that would have been imposed under the proposed rule, the Pollizi decision reduces the need to impose a monitoring burden on licensees and license applicants, or a reporting requirement on contractors and subcontractors, with respect to Section 210 settlement agreements. However, the Commission reminds licensees and license applicants that the final rule will prohibit all agreements which restrict the bringing of safety or other concerns to the NRC. They are still responsible for assuring that regulated activity is performed in accordance with Commission regulatory requirements. The hiring of contractors or subcontractors to perform work will not relieve licensees or license applicants of that burden.

c. The NRC is exceeding its authority by forcing licensees to become involved in third party contracts.

d. The requirement that licensees and license applicants become involved in third party contracts will result in licensees fully litigating claims rather then settling claims. This will be detrimental to the employee.

e. It is inappropriate to require licensees to intrude into contractor employee negotiations.

The Commission does not agree that it is beyond its authority or it is improper to require licensees to be responsible for the actions of third parties, which they directly or indirectly cause to be involved in licensed activity. As noted previously, it is well established that licensees and license applicants cannot delegate away their responsibility to comply with Commission requirements for performance of licensed activities. The Commission does not believe that the final rule intrudes into third party activities such that it will significantly, if at all, affect the ability of employees to obtain settlements in Section 210 or similar cases.

f. Contractors and subcontractors who are also licensees should not be covered by the rule's monitoring requirements because they will already be covered by the principal licensee.

The Commission does not agree that contractors or subcontractors who are also licensees should have a reduced burden by virtue of the fact that they are being employed by another licensee. The final rule has eliminated the requirements for licensees to review settlement agreements in Section 210 cases prior to their being executed. Nevertheless, licensees are responsible for assuring that regulated activities they are performing under their license are in accordance with NRC regulatory requirements and this responsibility

cannot be delegated away. The fact that several entities within the chain of responsibility may be licensees does not relieve any of them from the responsibility of assuring that activities performed under their licenses are performed in accordance with NRC regulatory requirements.

g. Contractor working for multiple licensees might require multiple approvals to execute a settlement agreement.

The Commission agrees that, as originally drafted, the proposed rule could have resulted in a contractor having to obtain multiple reviews of proposed settlement agreements. This could have been a hindrance to an employee obtaining a satisfactory settlement. The Commission's desire was not to restrict the ability of employees to reach satisfactory settlement agreements with their employers. The Commission believes the objective of assuring that settlement agreements do not contain improper restrictions on employees bringing information to the NRC can be obtained without the need for multiple entities reviewing Section 210 settlement agreements. The final rule has eliminated the requirement that licensees have a prior review of their contractors' Section 210 settlement agreements.

4. One Instance Is Not A Sufficient Basis For Adopting A Rule.

Several commenters believed that the one instance that was noted by the Commission in the proposed rulemaking was not sufficient to justify modifying

the regulations. In fact, at the time the proposed regulation was published, the Commission had already learned that other agreements, apparently containing restrictive clauses, might have been executed. Concurrently with the proposed rulemaking, nuclear power plant licensees, their contractors, and major nuclear materials and fuel cycle licensees were requested pursuant to an April 27, 1989, letter from the NRC staff to review existing agreements to determine if they contained possibly impermissible restrictions. As a result of that review licensees initially identified more than a dozen additional agreements with language which could be interpreted as restricting communications with the NRC.

The Commission believes that the information received as a result of the staff's April 27, 1989, letter confirms the Commission's original belief that the problem of restrictive settlement agreements is serious enough to be directly addressed in our regulations.

5. The Proposed Rule Could Abrogate Proprietary Agreements.

The Commission understands this comment to have been concerned with the rule's provisions requiring licensees to review proposed settlement agreements of their contractors and with concerns about employee communications with the NRC. The NRC has regulations to specifically protect proprietary information received by the Commission. See 10 CFR 2.790, 9.17, and 9.104. Thus, the Commission sees little merit to the concern that employees must be made to

follow certain procedures before they can bring proprietary information to the Commission. In fact, such a restriction would be likely to inhibit an employee from coming to the NRC. With respect to communications with the NRC, employers should do no more than require employees to inform the NRC that information being provided may be proprietary so that the NRC can appropriately handle the information to prevent any inappropriate public disclosure.

With respect to concern over licensees reviewing contractor/employee settlement agreements that may contain proprietary information, the final rule has eliminated the specific requirement for such reviews. But, to the extent that, in a licensee's judgment, compliance with the rule requires that it obtain access to proprietary information from its contractors, then access must be provided. In NRC's view, assuring free flow of safety information overrides commenters concerns about disclosure of proprietary information to licensees.

6. A Backfit Analysis Is Required.

As originally drafted, the proposed rule specifically required that licensees develop procedures to ensure that licensees' contractors and subcontractors did not place in settlement agreements any restrictions on employees coming to the NRC with information. This included specifically requiring that licensees have procedures to require contractors to notify them if a Section 210 complaint was filed with the Department of Labor and that any

proposed settlement be forwarded to the licensee prior to its execution. Several commenters believed that this requirement for changes in procedures amounted to a backfit requiring a backfit analysis. Given the Secretary of Labor's decision in the Pollizi case that such agreements are against public policy, there is some question as to whether the proposed regulation would have imposed a new requirement on licensees or contractors. In any event, the final rule has eliminated any specific requirement for procedural changes.

The final rule declares, consistent with the Pollizi decision, that agreements which place restrictions on employees communicating information with the NRC are prohibited. Licensees may or may not choose to modify existing procedures to assure compliance with the final rule's requirements. Some licensees may, in fact, already have procedures in place addressing these issues as a result of the staff's April 27, 1989, letter notifying them of the NRC's concerns. It is for licensees themselves to decide how the prohibition on restrictive agreements is to be implemented.

With the requirement to develop procedures removed, the rule merely prohibits potential barriers to communication with NRC. As such it does not fall within the definition of backfit in § 50.109. The backfit rule does not apply to NRC information requests (see § 50.54(f)) and it would be anomalous to apply the backfit rule to similar NRC measures to ensure that information is brought to its attention.

7. The Commission Should Issue A Policy Statement Instead Of A Rule.

One commenter suggested that a policy statement was sufficient to accomplish the Commission's purposes and that the rule was unnecessary. The Commission does not agree that a policy statement would be appropriate in this instance. This is not an area in which the Commission needs to gain experience with application of a policy statement before a final rule can be developed. The Commission is not aware of any other reason that might make a policy statement preferable to a rule in this case. The Commission concludes that it is appropriate to proceed with formal rulemaking to address this issue.

8. Add Language To The NRC Form 3 Concerning Settlement Agreements.

Under 10 CFR Part 19, licensees are required to post an NRC Form 3 at all work sites. This form informs employees of their rights and protections in bringing safety information to the NRC. One commenter has suggested that the NRC add language to this form telling workers that settlement agreements may not impose restrictions on their bringing safety information to the NRC. The NRC will consider adding such language to the NRC Form 3 in future revisions of the form to reflect the restrictions contained in this rulemaking.

9. The Proposed Rule Would Interfere With The Duty Of Employees To Inform Their Management Of Safety Issues.

The Commission believes it is preferable for employees to bring safety or other concerns to the attention of their management. It is the employees' management that can most promptly act to address these issues. Thus, if an employee lacks confidence in his management and feels compelled to come to the NRC first, a delay in addressing a safety issue will inevitably result. However, in those cases where employees do not feel that they can talk about a safety problem with their management, they must be free of any restriction which would prevent their raising the issue with the NRC. The proposed rule does not introduce any unwarranted intrusion into the employer/employee relationship. The rule does not prohibit employees from going to management first with their safety concerns. It is up to licensees to create a work atmosphere in which employees feel confident in bringing safety concerns directly to their management.

10. Responses To The Questions In The Proposed Rule.

The majority of commenters did not specifically comment on the two questions posed by the Commission in the proposed rule. To a large extent their comments on the proposed rule itself superseded any need to specifically

address the questions proposed. The Commission summarizes below the specific comments that were received on the questions presented in the proposed rule.

a. Should the rule prohibit all restrictions on information to the Commission, or should limitations on an individual appearing before a Commission adjudicatory board (e.g., requiring an individual to resist a subpoena) be permissible as long as other avenues for providing information to the Commission are available?

Five commenters believed that some restrictions should be allowed if there is at least one avenue open to communicate with the NRC. Four commenters believed that no restrictions on communications should be allowed.

The Commission believes that no restrictions on bringing information to the Commission should be allowed. In the Pollizi decision the Secretary of Labor noted that, even when a provision specifically included a statement that safety information could be brought to the NRC's attention, restrictions on voluntarily appearing as a witness in NRC proceedings would be against public policy. Given the numerous possible restrictions that could be put into settlement agreements, it would be difficult, if not impossible, to design guidance which could differentiate between a "good" restriction and a "bad" restriction, even if the Commission were inclined to do so. The Commission has chosen to ban all restrictions on coming to the NRC with information bearing on its regulatory responsibilities rather than engaging in that attempt.

b. Should the rule impose an additional requirement that licensees and license applicants must ensure that all agreements affecting employment, including those of their contractors or subcontractors, contain a provision stating that the agreement in no way restricts the employee from providing information to the Commission?

Of the comments received on this question, four commenters opposed requiring an affirmative statement in all settlement agreements and four commenters favored requiring such a statement. For the most part, those opposing the requirement felt it was unduly burdensome and would unnecessarily interfere with the employee/employer relationship. Those in favor of this requirement felt that it would be beneficial in clarifying for employees what their rights were and it would also remove any ambiguity caused by other parts of the settlement agreement.

The Commission has decided not to require a specific clause in settlement agreements. The utility of such a clause is somewhat suspect given that a clause specifically providing that the employee had the right to bring safety concerns to the NRC was not sufficient to make the restrictive clause in the Pollizi case acceptable. In addition, given that the Commission already requires that employees be notified through the posting of an NRC Form 3 that they have the right to come to the NRC, it is not evident that the benefit to be gained by requiring such a clause in settlement agreements would justify this type of intrusion into the employer/employee relationship.

12. Additional Comments And Revisions.

One commenter provided a detailed discussion of the Commission's policies with respect to enforcement of the current NRC regulations on employee protection. Those comments, although related, go beyond the scope of the specific action being considered in this rulemaking. However, those specific comments have been forwarded to the NRC Office of Enforcement for its consideration.

In addition, comments included suggestions to file all settlement agreements in the docket for the facility in question; to require that the ban on restrictions apply to communications by an employee with anyone, not just NRC; and to require that all future contracts by a licensee with contractors or subcontractors contain contractual obligations to prohibit restrictive agreements.

The Commission has considered these suggestions and has concluded that the most efficient method of achieving the goal of the rulemaking, which involves the minimum necessary intrusion on the employee/employer relationship and the relationship between licensees and their contractors or subcontractors, is to simply prohibit provisions in a settlement agreement with an employee which would in any way restrict that employee from coming to the NRC with safety information bearing on NRC regulatory responsibilities. The Commission is not convinced that requiring the filing of agreements in the NRC docket files, prohibiting restrictions on communications with entities other

than the NRC, or requiring specific clauses in licensee/contractor contracts would significantly improve the Commission's ability to achieve the goals of this rulemaking.

The last line of the first paragraph being added to Parts 30, 40, 50, 60, 61, 70, and 72 of the regulations has been modified by referencing the definition of "protected activity" which appears in each part of the regulations. This was done to assure that the employee protection provisions consistently protect the same employee conduct.

Finally, in publishing the proposed rule, comparable revisions to 10 CFR Part 61 were inadvertently not included in the proposed rule. Part 61 contains, at §61.9, comparable restrictions with respect to employee protections as appear in the other Parts of the Commission's regulations. Accordingly, the appropriate revisions to Part 61 are included in this final rulemaking.

Additional Comments of Commissioner Curtiss

While I am reluctantly supporting the approach adopted in this rule, particularly in view of the fact that the Department of Labor has adopted the argument that the NRC championed in our letter of May 3, 1989, I nevertheless remain concerned about the potential precedential scope of this approach and of the rationale that underpins the final rule. Specifically, I am not persuaded that a logical case has been -- or can be -- made to support the

distinction between settlement agreements arising out of an employer-employee relationship and settlement agreements where no employer-employee relationship exists. If we are troubled by the imposition of any restriction on an individual's right to communicate with the Commission -- even where the individual nevertheless retains the right to communicate in some manner with the Commission -- the fact that those restrictions arise out of the settlement of an employer-employee dispute seems to me to be irrelevant to the ultimate objective that we are seeking to accomplish in this rule -- preserving the Commission's ability, unencumbered, to obtain information on health and safety matters. 1/ Indeed, in view of the decision that the Commission has reached here, I find it most improbable that the Commission would -- or could -- accept a settlement agreement that restricted in any way an individual's ability to communicate with the Commission, on the ground that the settlement agreement did not involve an employer-employee relationship. In short, the logic of this rule appears to compel the conclusion that any restriction on an individual's right to communicate with the Commission contained in a settlement agreement -- whether or not an employer-employee relationship exists -- is unacceptable. While this rule, by its terms, does not address this

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1/ If the Commission is seeking to ensure that the channels of communication for health and safety information remain unencumbered, the fact that one individual is an employee and another is not should have no bearing on whether we would countenance any restrictions on the communication of such information to the Commission, even though it may ultimately turn out that the employee's information is more accurate or valuable because of the special access that such an individual might have.

situation, we nevertheless should recognize that our action here moves us in that direction.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule falls within the scope of the actions described in categorical exclusion 10 CFR 51.10(d). This amendment provides the Commission with the ability to take enforcement action for agreements which have already been declared to be against public policy. Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

Existing requirements were approved by the Office of Management and Budget approval numbers 3150-0017, 3150-0020, 3150-0011, 3150-0127, 3150-0009, 3150-0132, and 3150-0032.

Regulatory Analysis

The final rule prohibits provisions in agreements affecting employment that restrict employees from providing information to the Commission. The

objectives of the final rule are to ensure that such agreements do not restrict the free flow of safety or other information to the Commission and that the intent of Section 210 of the Energy Reorganization Act is not frustrated. The Commission believes that the clearest and most effective method of achieving these objectives, and avoiding potential uncertainty and conflict regarding the interpretation of specific provisions, is to prohibit provisions in these agreements that in any way restrict the flow of information to the Commission, the Commission's adjudicatory boards, or the NRC staff. The alternative of imposing an additional requirement on licensees and license applicants to require any agreement affecting employment to include a provision stating that the agreement in no way restricts the employee from providing information to the Commission was rejected as unnecessary to achieve the objectives of the rule. The final rule will not impose any substantial costs on licensees or license applicants.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. Although the proposed rule would have imposed procedural requirements on a wide range of Commission licensees of varying size, the final rule prohibits agreements that restrict employees who are performing or have performed work related to licensed activities from providing information to the Commission on potential violations or hazards. The final rule does not require licensees to develop

detailed procedures for review of all contractor and subcontractor settlement agreements. The Commission believes that the final rule does not impose a significant economic impact on Commission licensees who would be considered "small entities."

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule and, therefore, that a backfit analysis is not required for this final rule because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects

10 CFR Part 30

Byproduct material, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Penalty, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 40

Government contracts, Hazardous materials - transportation, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 50

Antitrust, Classified information, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 60

High-level waste, Nuclear power plants and reactors, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Waste treatment and disposal.

10 CFR Part 61

Low-level waste, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Waste treatment and disposal.

10 CFR Part 70

Hazardous materials - transportation, Nuclear materials, Packaging and containers, Penalty, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 72

Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

10 CFR Part 150

Hazardous materials - transportation, Intergovernmental relations, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Security measures, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Parts 30, 40, 50, 60, 61, 70, 72 and 150.

PART 30 - RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

1. The authority citation for Part 30 is revised to read as follows:

AUTHORITY: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 30.3, 30.7(g), 30.34(b), (c) and (f), 30.41(a) and (c), and 30.53 are issued under secs. 161b, 161i, and 161o, 68 Stat. 948, 949, and 950 as amended (42 U.S.C. 2201(b), 2201(i), and 2201(o)); and §§ 30.6, 30.9, 30.36, 30.51, 30.52, 30.55, and 30.56(b) and (c) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 30.7, the introductory text of paragraph (c) is revised and a new paragraph (g) is added to read as follows:

§ 30.7 Employee protection.

* * * * *

(c) A violation of paragraph (a) or paragraph (g) of this section by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant may be grounds for--

* * * * *

(g) No agreement affecting the compensation, terms, conditions and privileges of employment, including an agreement to settle a complaint filed

by an employee with the Department of Labor pursuant to Section 210 of the Energy Reorganization Act of 1974, may contain any provision which would prohibit, restrict, or otherwise discourage, an employee from participating in protected activity as defined in paragraph (a)(1) of this section, including, but not limited to, providing information to the NRC on potential violations or other matters within NRC's regulatory responsibilities.

PART 40 - DOMESTIC LICENSING OF SOURCE MATERIAL

3. The authority citation for Part 40 is revised to read as follows:

AUTHORITY: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95-604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86-373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97-415, 96 Stat. 2067 (42 U.S.C. 2022).

Section 40.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§40.3, 40.7(g), 40.25(d)(1)-(3), 40.35(a)-(d) and (f), 40.41(b) and (c), 40.46, 40.51(a) and (c), and 40.63 are issued under sec. 161b, 161i and 161o, 68 Stat. 948, 949, and 950 as amended (42 U.S.C. 2201(b), 2201(i), and 2201(o)); and §§40.5, 40.9, 40.25(c), (d)(3), and (4), 40.26(c)(2), 40.35(e), 40.42, 40.61, 40.62, 40.64, and 40.65 are issued under sec. 161c, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

4. In § 40.7, the introductory text of paragraph (c) is revised and a new paragraph (g) is added to read as follows:

§ 40.7 Employee protection.

* * * * *

(c) A violation of paragraph (a) or paragraph (g) of this section by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant may be grounds for--

* * * * *

(g) No agreement affecting the compensation, terms, conditions and privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to Section 210 of the Energy Reorganization Act of 1974, may contain any provision which would prohibit, restrict, or otherwise discourage, an employee from participating in

protected activity as defined in paragraph (a)(1) of this section, including, but not limited to, providing information to the NRC on potential violations or other matters within NRC's regulatory responsibilities.

PART 50 - DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

5. The authority citation for Part 50 is revised to read as follows:

AUTHORITY: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd) and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80

through 50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§50.7(f), 50.46(a) and (b), and 50.54(c) are issued under sec. 161b, 161i, and 161o, 68 Stat. 948, 949, and 950 as amended (42 U.S.C. 2201(b), 2201(i), and 2201(o)); §§ 50.7(a), 50.10(a)-(c), 50.34(a) and (e), 50.44(a)-(c), 50.46(a) and (b), 50.47(b), 50.48(a), (c), (d), and (e), 50.49(a), 50.54(a), (i), (i)(1), (l)-(n), (p), (q), (t), (v), and (y), 50.55(f), 50.55a(a), (c)-(e), (g), and (h), 50.59(c), 50.60(a), 50.62(c), 50.64(b), and 50.80(a) and (b) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§50.49(d), (h), and (j), 50.54(w), (z), (bb), (cc), and (dd), 50.55(e), 50.59(b), 50.61(b), 50.62(b), 50.70(a), 50.71(a)-(c) and (e), 50.72(a), 50.73(a) and (b), 50.74, 50.78, and 50.90 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

6. In § 50.7, the introductory text of paragraph (c) is revised and a new paragraph (f) is added to read as follows:

§ 50.7 Employee protection.

* * * * *

(c) A violation of paragraph (a) or paragraph (f) of this section by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant may be grounds for--

* * * * *

(f) No agreement affecting the compensation, terms, conditions and privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to Section 210 of the Energy Reorganization Act of 1974, may contain any provision which would prohibit, restrict, or otherwise discourage, an employee from participating in protected activity as defined in paragraph (a)(1) of this section, including, but not limited to, providing information to the NRC on potential violations or other matters within NRC's regulatory responsibilities.

PART 60 - DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTES IN GEOLOGIC REPOSITORIES

7. The authority citation for Part 60 is revised to read as follows:

AUTHORITY: Secs. 51, 53, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 929, 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2071, 2073, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95-601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332); secs. 114, 121, Pub. L. 97-425, 96 Stat. 2213g, 2228, as amended (42 U.S.C. 10134, 10141).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§60.9(f), 60.10, 60.71 to 60.75 are issued under secs. 161i and 161o, 68 Stat. 949 and 950, as amended (42 U.S.C. 2201(i) and 2201(o)).

8. In § 60.9, the introductory text of paragraph (c) is revised and a new paragraph (f) is added to read as follows:

§ 60.9 Employee protection.

* * * * *

(c) A violation of paragraph (a) or paragraph (f) of this section by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant may be grounds for--

* * * * *

(f) No agreement affecting the compensation, terms, conditions and privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to Section 210 of the Energy Reorganization Act of 1974, may contain any provision which would prohibit, restrict, or otherwise discourage, an employee from participating in protected activity as defined in paragraph (a)(1) of this section, including, but not limited to, providing information to the NRC on potential violations or other matters within NRC's regulatory responsibilities.

PART 61 - LICENSING REQUIREMENTS FOR LAND DISPOSAL OF RADIOACTIVE WASTE

9. The authority citation for Part 61 is revised to read as follows:

AUTHORITY: Secs. 53, 57, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2073, 2077, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95-601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273; Tables 1 and 2, §§61.3, 61.9(f), 61.24, 61.25, 61.27(a), 61.41 through 61.43, 61.52, 61.53, 61.55, 61.56, and 61.61 through 61.63 are issued under secs. 161b, 161i and 161o, 68 Stat. 948, 949, and 950 as amended (42 U.S.C. 2201(b), 2201(i) and 2201(o)); §§61.9a, 61.10 through 61.16, 61.24 and 61.80 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201 (o)).

10. In § 61.9, the introductory text of paragraph (c) is revised and a new paragraph (f) is added to read as follows:

§ 61.9 Employee protection.

* * * * *

(c) A violation of paragraph (a) or paragraph (f) of this section by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant may be grounds for--

* * * * *

(f) No agreement affecting the compensation, terms, conditions and privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to Section 210 of the Energy Reorganization Act of 1974, may contain any provision which would prohibit, restrict, or otherwise discourage, an employee from participating in protected activity as defined in paragraph (a)(1) of this section, including, but not limited to, providing information to the NRC on potential violations or other matters within NRC's regulatory responsibilities.

PART 70 - DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

11. The authority citation for Part 70 is revised to read as follows:

AUTHORITY: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93-377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§70.3, 70.7(g), 70.19(c), 70.21(c), 70.22(a), (b), (d)-(k), 70.24(a) and (b), 70.32(a)(3), (5), (6), (d), and (i), 70.36, 70.39(b) and (c), 70.41(a), 70.42(a) and (c), 70.56, 70.57(b), (c), and (d), 70.58(a)-(g)(3), and (h)-(j) are issued under secs. 161b, 161i, and 161o, 68 Stat. 948, 949, and 950 as amended (42 U.S.C. 2201(b), 2201(i), and 2201(o)); §§70.7, 70.20a(a) and (d), 70.20b(c) and (e), 70.21(c), 70.24(b), 70.32(a)(6), (c), (d), (e), and (g), 70.36, 70.51(c)-(g), 70.56, 70.57(b) and (d), and 70.58 (a)-(g)(3) and (h)-(j) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§70.5, 70.9, 70.20b(d) and (e), 70.38, 70.51(b) and (i), 70.52, 70.53, 70.54, 70.55, 70.58(g)(4), (k), and (l), 70.59, and 70.60(b) and (c) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

12. In § 70.7, the introductory text of paragraph (c) is revised and a new paragraph (g) is added to read as follows:

§ 70.7 Employee protection.

* * * * *

(c) A violation of paragraph (a) or paragraph (g) of this section by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant may be grounds for--

* * * * *

(g) No agreement affecting the compensation, terms, conditions and privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to Section 210 of the Energy Reorganization Act of 1974, may contain any provision which would prohibit, restrict, or otherwise discourage, an employee from participating in protected activity as defined in paragraph (a)(1) of this section, including, but not limited to, providing information to the NRC on potential violations or other matters within NRC's regulatory responsibilities.

PART 72 - LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

13. The authority citation for Part 72 is revised to read as follows:

AUTHORITY: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86-373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332); Secs. 131, 132, 133, 135, 137, 141, Pub. L. 97-425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100-203, 101 Stat. 1330-235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100-203, 101 Stat. 1330-232, 1330-236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97-425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100-203, 101 Stat. 1330-235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97-425, 96 Stat. 2202, 2203, 2204, 2222, 2224 (42 U.S.C. 10101, 10137(a), 10161(h)).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§72.6, 72.10(f), 72.22, 72.24, 72.26, 72.28(d), 72.30, 72.32, 72.44(a), (b)(1), (4), (5), (c), (d)(1), (2), (e), (f), 72.48(a), 72.50(a), 72.52(b), 72.72(b), (c), 72.74(a), (b), 72.76, 72.78, 72.104, 72.106, 72.120, 72.122, 72.124, 72.126, 72.128, 72.130, 72.140(b), (c), 72.148, 72.154, 72.156, 72.160, 72.166, 72.168, 72.170, 72.172, 72.176, 72.180, 72.184, 72.186 are

issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§72.10(a), (e), 72.22, 72.24, 72.26, 72.28, 72.30, 72.32, 72.44(a), (b)(1), (4), (5), (c), (d)(1), (2), (e), (f), 72.48 (a), 72.50(a), 72.52(b), 72.90(a)-(d), 72.92, 72.94, 72.98, 72.100, 72.102(c), (d), (f), 72.104, 72.106, 72.120, 72.122, 72.124, 72.126, 72.128, 72.130, 72.140(b), (c), 72.142, 72.144, 72.146, 72.148, 72.150, 72.152, 72.154, 72.156, 72.158, 72.160, 72.162, 72.164, 72.166, 72.168, 72.170, 72.172, 72.176, 72.180, 72.182, 72.184, 72.186, 72.190, 72.192, 72.194 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§72.10(e), 72.11, 72.16, 72.22, 72.24, 72.26, 72.28, 72.30, 72.32, 72.44(b)(3), (c)(5), (d)(3), (e), (f), 72.48(b), (c), 72.50(b), 72.54(a), (b), (c), 72.56, 72.70, 72.72, 72.74(a), (b), 72.76(a), 72.78(a), 72.80, 72.82, 72.92(b), 72.94(b), 72.140(b), (c), (d), 72.144(a), 72.146, 72.148, 72.150, 72.152, 72.154(a), (b), 72.156, 72.160, 72.162, 72.168, 72.170, 72.172, 72.174, 72.176, 72.180, 72.184, 72.186, 72.192 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

14. In § 72.10, the introductory text of paragraph (c) is revised and a new paragraph (f) is added to read as follows:

§ 72.10 Employee protection.

* * * * *

(c) A violation of paragraph (a) or paragraph (g) of this section by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant may be grounds for--

* * * * *

(f) No agreement affecting the compensation, terms, conditions and privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to Section 210 of the Energy Reorganization Act of 1974, may contain any provision which would prohibit, restrict, or otherwise discourage, an employee from participating in protected activity as defined in paragraph (a)(1) of this section, including, but not limited to, providing information to the NRC on potential violations or other matters withn NRC's regulatory responsibilities.

PART 150 - EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274

15. The authority citation for Part 150 continues to read as follows:

AUTHORITY: Sec. 161, 68 Stat. 948, as amended, sec. 274, 73 Stat. 688 (42 U.S.C. 2201, 2021); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Sections 150.3, 150.15, 150.15a, 150.31, 150.32 also issued under secs. 11e(2), 81, 68 Stat. 923, 935, as amended, secs. 83, 84, 92 Stat. 3033, 3039

(42 U.S.C. 2014e(2), 2111, 2113, 2114). Section 150.14 also issued under sec. 53, 68 Stat. 930, as amended (42 U.S.C. 2073). Section 150.15 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 150.17a also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 150.30 also issued under sec. 234, 83 Stat. 444 (42 U.S.C. 2282).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§150.20(b)(2)-(4) and 150.21 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §150.14 is issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§150.16-150.19 and 150.20(b)(1) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

16. In § 150.20, the introductory text of paragraph (b) is revised to read as follows:

§ 150.20 Recognition of Agreement State licenses.

* * * * *

(b) Notwithstanding any provision to the contrary in any specific license issued by an Agreement State to a person engaging in activities in a non-Agreement State or in offshore waters under the general licenses provided in this section, the general licenses provided in this section are subject to the provisions of §§ 30.7(a) through (g), 30.9, 30.14(d), 30.34, 30.41, 30.51 to

30.63, inclusive, of Part 30 of this chapter; §§ 40.7(a) through (g), 40.9, 40.41, 40.51, 40.61, 40.63 inclusive, 40.71 and 40.81 of Part 40 of this chapter; and §§ 70.7(a) through (g), 70.9, 70.32, 70.42, 70.51 to 70.56, inclusive, §§ 70.60 to 70.62, inclusive, and § 70.7 of Part 70 of this chapter; and to the provisions of 10 CFR Parts 19, 20 and 71 and Subpart B of Part 34 of this chapter. In addition, any person engaging in activities in non-Agreement States or in offshore waters under the general licenses provided in this section:

* * * * *

Dated at Rockville, MD, this 15th day of MARCH, 1990.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,
Secretary of the Commission.

Document Name:
FREE FLOW FINAL

Requestor's ID:
COPELAND

Author's Name:

Document Comments:

NUCLEAR MANAGEMENT AND RESOURCES COUNCIL

1776 Eye Street, N.W. • Suite 300 • Washington, DC 20006-2496
(202) 872-1280

Joe F. Colvin
Executive Vice President &
Chief Operating Officer

(42)

'89 DEC 15 P5:08

DOCKET NUMBER PR 30,40,50,60,72,150
PROPOSED RULE
(54FR 30049)

December 15, 1989

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

Attention: Docketing and Service Branch

RE: Proposed Rule - Preserving the Free Flow of Information to the Commission
54 Fed. Reg. 30049 (July 18, 1989)
Request for Comments

Dear Mr. Chilk:

On July 18, 1989, the U. S. Nuclear Regulatory Commission ("NRC") published a notice of proposed rulemaking entitled "Preserving the Free Flow of Information to the Commission" (54 Fed. Reg. 30049). On September 19, 1989, Nuclear Management and Resources Council, Inc. ("NUMARC") submitted comments on behalf of the nuclear industry on that proposed rule.

On November 8, 1989, Sen. John B. Breaux, Chairman of the U. S. Senate Subcommittee on Nuclear Regulation of the Committee on Environment and Public Works, sent a letter to NUMARC expressing concern about some of the statements made in NUMARC's comment letter to the NRC. On December 4, 1989, a meeting was held with staff of Sen. Breaux and the Subcommittee to better enable us to understand the concerns the Senator had expressed. As a result of the additional information provided us and the insight gained from that meeting, we concluded that certain statements that we made in our comments could be misinterpreted and were in need of clarification. In particular, we decided that these supplemental comments should be submitted to clarify our views in two specific areas to ensure that the record in this docket appropriately reflects our position on these subjects.

At the outset, NUMARC reiterates its strong support of the underlying policy of the proposed rule, that is, to facilitate the free flow of information to the NRC. With respect to the first of two areas we want to clarify in these supplemental comments, the comments we had filed on September 19, 1989, stated our concern that the NRC appeared to be proceeding with this rulemaking on the basis of a single case being cited in the record and that the NRC had promulgated the proposed rule without waiting for licensee responses to the NRC letter to licensees dated April 27, 1989, requiring the identification of any agreements that might include clauses which could, or could be interpreted to, restrict the ability of employees to provide information to the NRC. Since the submittal of our comments, we obtained

DEC 31 1989
Acknowledged by card.

from the NRC Public Document Room a letter from the NRC to Sen. Breaux dated August 29, 1989, regarding the responses submitted by licensees. In that letter the NRC stated that 18 agreements had been identified by licensees as containing clauses that could be construed to be restrictive. Even though the specific circumstances of those agreements have not be made public because of the confidentiality provisions of those agreements, it is now clear that there exists more than a single case which the NRC can evaluate to determine whether, and if so what, additional regulations may be required, and we withdraw our comment on this point.

The second major area where concern was expressed that the NUMARC comments could be misconstrued dealt with the legal permissibility of settlement agreements to resolve disputes so that the time and expense of protracted litigation could be avoided. We now understand the position of the Subcommittee regarding the inclusion of restrictive clauses in such settlement agreements and the limits that are applicable to such clauses. In Sen. Breaux's comments on the Senate floor on November 8, 1989, he referred favorably to the type of agreement that Northeast Utilities had described in a letter to Sen. Breaux dated September 8, 1989. We have reviewed the proposed settlement agreement language referenced by the Senator and believe that such an approach is consistent with the principles that we support and attempted to describe in our September 19, 1989, comments to the NRC.

We hope that these supplemental comments will eliminate any misunderstanding of the industry's position on this important matter. We ask that these comments be included in the public record in this proceeding and be taken into account by the Commission in its deliberations on a final rule to address this issue.

As we stated in our September 19, 1989, comments, the nuclear industry supports the concept of full, and timely, disclosure to the NRC of safety or other regulatory concerns. In that submittal we provided recommendations that we believe would effectuate the policy underlying the proposed rule in a more balanced and reasonable manner. We reiterate our request that the NRC consider these recommendations, and we stand ready to assist the NRC in achieving the desired goals of the NRC, the nuclear industry, and the Congress.

Sincerely,

Joe F. Colvin

JFC/RWB:bb

(41)

Westinghouse Electric Corporation
Commercial Nuclear Fuel Division

RE-EKR-89-052
Drawer R
Columbia SC 29250
(803) 776 2610

September 28, 1989

Secretary
U. S. Nuclear Regulatory Commission
Washington, DC 20555

Gentlemen

REFERENCE: Proposed Rule Change to 10CFR Parts
30, 40, 50, 60, 70, 72 and 150,
Preserving the Free Flow of Information to the
Commission

We believe that this proposed regulation is unnecessary and much too broad in application. Existing regulations in 10CFR21 have been effective in providing a free flow of information to the Commission.

We support Commissioner Roberts separate views on this matter.

Sincerely,

WESTINGHOUSE ELECTRIC CORPORATION

Edward Reitler

E. K. Reitler, Manager
Regulatory Engineering

lm
WP3039E:3p.34

(40)

September 28, 1989

COMMENTS OF OHIO CITIZENS FOR RESPONSIBLE ENERGY, INC. ("OCRE") ON PROPOSED RULE, "PRESERVING THE FREE FLOW OF INFORMATION TO THE COMMISSION", 54 FED. REG. 30049 (JULY 18, 1989)

The Commission is proposing a rule change which would prohibit licensees, their contractors, and subcontractors from imposing conditions in settlement agreements under Section 210 of the Energy Reorganization Act or other agreements affecting employment which would prevent, restrict, or discourage employees from providing information to the NRC regarding potential safety violations. OCRE supports this rulemaking and commends the NRC for proposing this measure.

The Commission has posed two questions for public comment. First, the Commission asks if the rule should prohibit all restrictions on providing information to the NRC, or if limitations on an individual's appearing before an adjudicatory panel are acceptable if there are other avenues for bringing the information to the NRC. OCRE strongly supports an absolute prohibition on all restrictions on providing information to the NRC and its adjudicatory boards. The Commission's adjudicatory boards must make the crucial decision, based upon a full and complete evidentiary record, on whether to authorize issuance of a license. The Appeal Board has made it clear that it wants a full and complete factual record on which to base its decisions, and expects to be kept informed by the parties on all matters which may be relevant to the proceeding. Indeed, the parties are under an affirmative duty to keep boards advised of developments relevant to the proceeding. Duke Power Co. (William B. McGuire Nuclear Station, Units 1 and 2), ALAB-143, 6 AEC 623, 625-26 (1973); Georgia Power Co. (Alvin W. Vogtle Nuclear Plant, Units 1 and 2), ALAB-291, 2 NRC 404, 408 (1975); Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-355, 4 NRC 397, 406 at n.26 (1976); Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-675, 15 NRC 1105, 1116 at n.15 (1982). Clearly, restrictions on an individual appearing before an adjudicatory board are inconsistent with the expectation that the boards will be kept informed of all matters relevant to the proceeding.

Such restrictions also violate the hearing rights of participants in NRC proceedings. Under Section 189a of the Atomic Energy Act, a hearing must encompass all issues raised by the requester which are material to the licensing decision. Union of Concerned Scientists v. NRC, 735 F.2d 1437, 1443 (D.C. Cir. 1984) Certainly the quality assurance issues raised by "whistleblowers" are relevant and material to the licensing decision. If a requester raises issues upon which a whistleblower has crucial or even unique knowledge, without the

participation of the whistleblower the contentions either would not be admitted or would not survive summary disposition. Either way the requester would be deprived of the right to a hearing on a material issue.

Such restrictions also deprive the parties of the right to subpoena witnesses under 10 C.F.R. 2.720 and the Administrative Procedure Act, 5 U.S.C. 555(d), and of the right to present their cases by oral or documentary evidence and rebuttal evidence. 5 U.S.C. 556(d).

Second, the Commission asks if the rule should require a provision in all agreements affecting employment that the agreement in no way restricts the employee from providing safety information to the Commission. Such a requirement would be beneficial in that it would serve employees with notice that they are free to provide safety information to the Commission. It would leave no doubt on this matter.

Commissioner Roberts offered separate views for comment. OCRE disagrees with his views, and especially his opinion that the rule constitutes governmental interference in contractual relations. The fact is that Section 210 of the Energy Reorganization Act already limits freedom of contract between licensees and employees, licensees and contractors, and contractors and employees, and rightly so. Licensees and contractors are not free to discriminate against employees who provide information to the NRC. The proposed rule only serves to implement this statutory requirement. Freedom of contract is not absolute. Congress has seen fit, and rightly so, to outlaw discrimination in employment contractual relations on the basis of race, sex, age, and other factors. Congress has seen fit to outlaw the use of polygraphs on employees and job applicants except in special circumstances. Long gone is the day when freedom of contract reigned supreme at the expense of individual rights and the public welfare.

Respectfully submitted,

Susan L. Hiatt

Susan L. Hiatt
OCRE Representative
8275 Munson Road
Mentor, OH 44060
(216) 255-3158

(39)

TENNESSEE VALLEY AUTHORITY
CHATTANOOGA, TENNESSEE 37401
5N 157B Lookout Place

SEP 27 1989

Mr. Samuel J. Chilk, Secretary
ATTN: Docketing and Service Branch
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Chilk:

U.S. NUCLEAR REGULATORY COMMISSION (NRC) - PROPOSED RULE - 10 CFR PARTS 30, 40, 50, 60, 70, 72 AND 150, "PRESERVING THE FREE FLOW OF INFORMATION TO THE COMMISSION"

The Tennessee Valley Authority (TVA) has reviewed and is pleased to comment on the subject proposed rule noticed in the July 18, 1989, Federal Register (54 FR 30049-30054).

TVA is concerned that the breadth of the rule as drafted would cause an undue burden on TVA and would fail to accomplish its regulatory purpose. TVA holds licenses or license applications for nine nuclear units and has thousands of contracts currently in place related to those units. Although the Supplementary Information to the proposed rule states that it "would only apply to agreements that relate to the compensation, terms, conditions, and privileges of employment, including section 210 settlement agreements, and not to agreements in general," as an agency of the Federal Government, TVA's agreements with its contractors contain clauses as required by law which may be construed as relating to the compensation, terms, conditions, and privileges of employment. For example, most TVA contracts for the purchase of supplies or for construction services must contain, as a matter of law, certain provisions requiring the contractor to pay prevailing wages to its employees. Thus, any perceived limitations on the applicability of the proposed rule would have little or no impact on TVA.

TVA agrees with the Nuclear Management and Resources Council's (NUMARC) position that the scope of the proposed rulemaking makes it unworkable. Requiring licensees and license applicants to assure that neither they nor their subcontractors impose restrictions in such a broad range of agreements covering the wide range of activities to which the proposed rule could conceivably apply, provides the licensee with a virtually impossible task. No matter how elaborate a procedural system it devises, the licensee and license applicant is ultimately held responsible for policing its contractors and subcontractors for activities which may only remotely, if at all, be related to its nuclear operations.

SEP 27 1989

Mr. Samuel J. Chilk

We agree with NUMARC's suggestions regarding ways in which the NRC's concerns can be addressed in a reasonable and workable manner.

We appreciate this opportunity to comment.

Very truly yours,

TENNESSEE VALLEY AUTHORITY

M J Ray for

Manager, Nuclear Licensing
and Regulatory Affairs

cc: Mr. Stuart A. Treby
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

(38)

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September 25, 1989

Secretary,
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, Maryland 20852

ATTN: Docketing and Service Branch

RE: Proposed Rule; "Preserving the Free Flow of Information to the Commission."
Fed. Register Vol. 54, No. 136, July 18, 1989

Dear Secretary,

Please consider the following comments in response to the Proposed Rule issued in Federal Register 30049, Vol. 54, No. 36, Tuesday, July 18, 1989 regarding "Preserving the Free Flow of Information to the Commission." [1]

1. PROPOSED RULE

The Nuclear Regulatory Commission ("NRC") has proposed a rule that would "require licensees and license applicants to ensure that neither they nor their contractors or subcontractors, impose conditions in settlement agreements under Section 210 of the Energy Reorganization Act, or in other agreements affecting employment, that would prohibit, restrict, or otherwise

---

[1] These comments are being submitted late with specific permission of the NRC pursuant to a telephone conversation of September 18, 1989.

discourage an employee from providing the Commission with information on potential safety violation." (See Proposed Rule, Summary.)

Under the language of the proposed rule each licensee (or applicant) will be required to adopt procedures to assure that all of its contractors and subcontractors are informed of the new requirements; assure that each licensee (or applicant) is informed of all complaints filed under Section 210 of the Energy Reorganization Act, as amended, and provide for prior licensee (or applicant) review of any Section 210 settlements to assure that the agreements contain no secrecy provisions.

The Commission sought general comments to the proposed rule as well as specific responses to the following questions:

> 1. Should the rule prohibit all restrictions on providing information to the Commission, or should limitations on an individual appearing before a Commission adjudicatory board (e.g., requiring an individual to resist a subpoena) be permissible as long as other avenues for providing information to the Commission are available?
>
> 2. Should the rule impose an additional requirement that licensees and license applicants must ensure that all agreements affecting employment, including those of their contractors or subcontractors, contain a provision stating that the agreement in no way restricts the employee from providing safety information to the Commission?

In addition to these questions Commissioner Roberts offered the following issues for consideration and comment:

> 3. Would a rule to prevent employees from bargaining away some avenues of access to the NRC promote unnecessary litigation before the NRC and the DOL?
>
> 4. Does the proposed rule constitute government interference in the contractual relations between licensees and their contractors that is not needed to

assure adequate protection of public health and safety or of whistleblowers' freedom to bring their safety concerns to the NRC?

II. STATEMENT OF INTEREST

The comments offered in this letter are my own personal views. They do not reflect the opinions or views of any of the individuals or organizations that I do now or have represented or do now or have been employed by. As a plaintiff's attorney specializing in wrongful discharge cases I have represented numerous "whistleblowers" before the Nuclear Regulatory Commission ("NRC") and the Department of Labor ("DOL"), and in state and federal courts. I have also represented and worked with a large number of citizen and public interest organizations that have pursued worker concerns and safety issues about nuclear power reactors through the NRC.

This rule, if adopted, will have a significant impact on the role of nuclear whistleblowers, and antiretaliation litigation under Section 210 which is not fully addressed or considered by the agency in its issuance of this proposed rule.

It is noteworthy for the purpose of consideration of my comments that this proposed rule stems, at least in part, from the public debate and controversy surrounding the settlement of the DOL claim of a worker whom I represented. However, since the issues surrounding the facts and circumstances of that specific settlement are still a matter pending before the Secretary of Labor, (Macktal vs. Brown & Root, 86-ERA-23), and are now also the subject of civil action, (Macktal vs. Garde, et. al., Case

No. 89-2533 U.S. District Court for D.C.), these comments do not address any of the specific of that case.

III. GENERAL COMMENTS

It is my opinion that the proposed rule is far too narrow. The proposed rule falls short of increasing any protection for employees availing themselves of the Employee Protection Provision of the Energy Reorganization Act, as amended, or bringing cases in state or federal courts for retaliatory treatment. It does not address secrecy between contractors and licensees and does little to increase public health and safety. Instead of increasing protection of the public health and safety, I am concerned that the proposed rule will extend employee litigation under the Act, force employees into alternative avenues to remedy their grievances, remove the possibility of settlements, and excuse the NRC's neglect of enforcing the Employee Protection Provision. (10 C.F.R. 50.7)

At the outset I agree with the premise behind the proposed rule that no one, including employees, should ever be restricted from disclosing safety concerns to the NRC as a condition of a settlement of any litigation. Employees, whether involved in lawsuits or not, should be able to pursue their safety concerns about a nuclear facility with the NRC. Employees should also be able to insist that the NRC honor its obligation under 10 CFR 50.7 and respond to situations where harassment, intimidation, and discrimination exist, without compromising any remedy they may be entitled to under various statutes or common law.

However, it is my opinion that the proposed rule does not clarify the NRC's obligations to employees who find themselves in this situation, and thus makes the proposed rule a two edged sword. The proposed rule cuts against employees because it eliminates the possibility that a worker can be satisfied with a resolution of his complaint and fade into the background, while giving the licensee no incentive to do anything but litigate the worker to exhaustion. This dynamic would not be so ominous if the NRC perform in the role of a shield to protect workers from illegal retaliation or exhaustive litigation, however, the NRC has completely failed in its obligation in employee protection and until the NRC is prepared to reexamine its role in the regulatory scheme it will not increase public health and safety to insist, as this proposed rule does, that a worker become a martyr.

In addition the rule, although addressing secrecy in litigation or settlements as evil, doesn't even address the secrecy in major litigation. The proposed rule demonstrates regulatory naivete and a 'knee jerk' response to a long standing problem recently raised in a Senate hearing. The proposed rule doesn't ban all secrecy agreements between subcontractors and licensees, doesn't prevent lawsuits over disclosure of information licensees may classify as proprietary in order to keep something secret, doesn't require major litigation replete with safety information be open to public or regulatory scrutiny, and provides no guidance to the regulatory staff on

which types of secrecy agreements are acceptable and which are not.

It is simply ridiculous for an agency which tolerates a total secrecy agreement in litigation between licensees and their contractors over issues that go to the heart of public health and safety (i.e., Houston Lighting and Power vs. Brown & Root) to find offensive and prohibitive secrecy provisions between workers and licensees.

I find the whole specter of "secrecy agreements" personally offensive to the notion of open government and full disclosure of information that could affect public health and safety, but I am not persuaded that this proposed rule solves any problems in this regard.

IV. THE REGULATORY FRAMEWORK

The Employee Protection Provision of the Energy Reorganization Act, as amended, insists that work environments are free from the potentially disastrous consequences of workers afraid to disclose safety problems. This "chilling effect" results from the successful harassment, intimidation and threats to employees raising concerns. The law states that:

> ...no employer subject to the provisions of [the Act]...may discharge any employee or otherwise discriminate against any employee with respect to the employee's compensation, terms, conditions, or privileges of employment because the employee, ... engaged in any of the activities specified in subsection (b) below:
>
> > (b) Any person is deemed to have violated the particular federal law and these regulations if such person intimidates, threatens, restrains, coerces, blacklists, discharges, or in any other manner discriminates against any employee who has

> (1) commenced, or caused to be commences a proceeding under [the Act] or a proceeding for the administration or enforcement of any requirement imposed under such federal statute;
>
> (2) testified or is about to testify in any such proceeding; or
>
> (3) assisted or participated, or is about to assist or participate in any manner in such a proceeding or in any other action to carry out the purpose of [the Act]. [2]

In passing the ERA Employee Protection provision, Congress was looking to the employees of the industry to help enforce regulations and protect public health and safety.

In his concurring opinion in Rose vs. Secretary of Dept. of Labor, 800 F.2d 563, 565 (6th Cir. 1986) (J. Edwards concurring), Justice George C. Edwards, Jr. wrote that Congress's intent in passing the nuclear whistleblower protection provision, 42 U.S.C. 5851, was to "encourage employees" to report "unsafe practices in one of the most dangerous technologies mankind has invented." Justice Edwards articulately identified the broad remedial purpose behind the whistleblower protection provisions:

> If employees are coerced and intimidated into remaining silent when they should speak out, the results can be catastrophic. Recent events here and around the world underscore the realization that such complicated and dangerous technology can never be safe without constant human vigilance. The employee protection provision involved in this case thus serves the dual function of protecting both employees and the public from dangerous radioactive substances.

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[2] The relevant federal statute to this case is the Atomic Energy Act of 1954, as amended, 42 U.S.C. ss.2011, et.seq.

800 F.2d at 565.

In interpreting and enforcing the Employee Protection Provision of the Energy Reorganization Act, as well as other provisions for protection of employees in industries affecting the public health and safety, the Secretary has developed a specific body of case law to apply. (The other statutes are the Safe Drinking Water Act, 42 U.S.C. 300-9j; the Water Pollution Control Act, 33 U.S.C. 1367; Toxic Substances Control Act, 15 U.S.C. 2622; Solid Waste Disposal Act, 42 U.S.C. 6971; and the Clean Air Act, 42 U.S.C. 7622.)

These laws do not address the impact of harassment and intimidation in a work force, or a licensees obligations under 10 CFR 50.7.

In order for the nuclear worker to establish a prima facie case of discrimination he must prove, by a preponderance of the evidence, that:

(1) the party charged with discrimination is an employer subject to the Act;

(2) that the complainant was an employee under the Act;

(3) that the complaining employee was discharged or otherwise discriminated against with respect to his compensation, terms, conditions or privileges of employment;

(4) that the employee engaged in protected activity;

(5) that the employer knew or had knowledge that the employee engaged in protected activity; and

(6) that the retaliation against the employee was motivated, at least in part, by the employee's engaging in protected activity.

Deford v Secretary of Labor, 700 F.2d. 281, at 286; Mackowiak vs.

University of Nuclear System Inc., 735 F.2d 1159, at 1162 (9th Cir. 1984); Ledford vs. Baltimore Gas and Electric Co., 83-ERA-9, slip op. of ALJ at 9 (Nov. 29, 1983), adopted by SOL.

After discriminatory motive, and other elements are established in the employee's prima facie case the Respondent must then proffer its legitimate nondiscriminatory business reasons in an attempt to demonstrate that the same decision would have been made even if the employee had not engaged in protected activity. Ashcraft vs. Univ. of Cincinnati, 83-ERA-7, slip op. of SOL at 12-13 (Nov. 1, 1984); Mackowiak, at 1164; Consolidated Edison of N.Y. Inc., vs. Donovan, 673 F.2d 61, 62 (2nd Cir. 1982).

Nothing requires the employer or the licence to address what the effect of an action was on the work force in general.

The complainant then may argue that the proffered reasons were either a pretext or that a dual motive of retaliation existed in addition to a legitimate nonretaliatory business reason.

If the legitimate business reason asserted by management did not in fact exist, or was not relied upon, the purported reason for termination will be found to be "pretextual."

> Examination of the evidence may reveal, however, that t h e asserted justification is a sham in that the purported rule or circumstances advanced by the employer did not exist, or was not, in fact, relied upon. When this occurs, the reasons advanced by the employer may be termed pretextual.

Wright Line, a Division of Wright Line Inc., 251 NLRB 1083, 1980, aff'd sub nom. NLRB vs. Wright Line 662 F.2d 899 (1st Cir.

1981), cert. den. on other grounds, 455 U.S. 989 (1982)

If management attempts to meet this burden and demonstrate a "legitimate" non-discriminatory reason for terminating or disciplining the employee, an employee can then put forward evidence of "disparate treatment." The concept of disparate treatment was defined in McDonnell Douglas Corp. vs. Green, 411 U.S. 792, 804 (1973); in an NLRB context in NLRB vs. Wright Line, 662 F.2d 899 (1st Cir. 1981); and in a First Amendment context in Mt. Healthy City School District vs. Doyle, 429 U.S. 274, 287 (1977).

Disparate treatment simply means that an employee who engages in protected activity was treated differently, or disciplined more harshly, than an employee who did not engage in protected activity. Donovan on Behalf of Chacon vs. Phelps Dodge Corp., 709 F.2d 86, 93 (D.C. Cir. 1983). For example, in an NLRA context, where a union organizer and another employee were both caught drinking on the job and the company fired only the union organizer, the court found disparate treatment. Borel Restaurant Corp. vs. NLRB, 676 F.2d 190, 192-93 (6th Cir. 1982). See NLRB vs. Faulkner Hospital, 691 F.2d 51, 56 (1st Cir. 1982); NLRB vs. Clark Manor Nursing Home Corp., 671 F.2d 657, 661-63 (1st Cir. 1982).

If the ALJ finds no legitimate business justification existed for discriminatory or retaliatory action of the Respondent, the employee does not need to prove disparate treatment. Deford, at 286.

The Secretary has held repeatedly under the various antiretaliation statutes that the correct standard for deciding the merits of dual motive employee discrimination complaints in articulated in the case of Wright Line, A Division of Wright Line. Inc., 251 NLRB 1083 (1980), 1980 CCH NLRB #17, 356 (1980), affirmed sub. nom. NLRB vs. Wright Line, 662 F.2d 899 (1st Cir. 1981), cert. den. 455 U.S. 989 (1982).

The Secretary has explained the shifting burdens of proof as applied in dual motive cases under the Act as follows:

> The correct rule is that the employee must prove 'by a preponderance of the evidence that the protected conduct was a motivating factor in the employer's action' for the burden of proof or persuasion to shift to the employer' to show by a preponderance of the evidence that it would have reached the same decision even in the absence of the protected conduct.

The Secretary has held that in a dual motive case the burden shifts to the employer to show that it was motivated by a legitimate, non-discriminatory reason and not the plaintiff's whistleblowing activities. Gulam Shaffi Uddin vs. Baldwin Associates, 85-ERA-25, slip op., 1985. Ashcraft vs. University of Cincinnati, 83-ERA-7, slip op., November 1, 1984.

The shifting burden of proof can be extremely important. If the ALJ determines there were both legitimate and illegitimate motives, but cannot determine whether the employer took discriminatory action against the worker out of the legitimate or illegitimate motives, the worker prevails. The employer bears the risk that "the influence of legal and illegal motives cannot be separated." Mackowiak, quoting the Supreme Court in NLRB vs.

Transportation Management, 462 U.S. at 403. In Transportation Management, the court spelled out the policy reasons for shifting the burden:

> the employer is a wrongdoer; he has acted out of a motive that is declared illegitimate by the statute. It is fair that he bear the risk that the influence of legal and illegal motives cannot be separated because ... the risk was created by his own wrongdoing.
>
> Transportation Management Corp., at 403.

Nothing in this complicated maze addresses the effect of retaliatory action, even if not provable under the case law, has in a work force.

V. THE REGULATORY FRAMEWORK IMPOSES AN INDEPENDENT DUTY ON THE NRC CASES OF ALLEGED RETALIATION FOR WHISTLEBLOWING.

The NRC and the DOL have a memorandum of understanding which provides the regulatory framework for distribution of responsibilities between the DOL and the NRC. Fed. Reg. Vol. 47, No. 233, Dec. 3, 1982 p. 54585.

Under the Memorandum of Understanding the NRC's Executive Director for operations is responsible for implementing the agreement.

> The NRC, though without direct authority to provide a remedy to an employee, has independent authority under the Atomic Energy Act to take appropriate enforcement action against Commission licensees that violate the Atomic Energy Act, the Reorganization Act, or Commission requirements. Enforcement action may include license denial, suspension or revocation or the imposition of civil penalties.

There is nothing in the agreement that suggests a DOL finding or ruling is a prerequisite to the agency taking action in a case. To the contrary, the NRC's action is mandated by their independent responsibilities under the law.

In 1985 the staff spelled out the policy of the NRC in regards to discrimination and/or retaliation against employees for voicing safety concerns. In a June, 1985, decision by James Taylor, then Director of the Office of Inspection and Enforcement the NRC explained it position in response to a request by the Government Accountability Project and the Palmetto Alliance for the issuance of a civil penalty because of the actions of Duke Power Company to a QC Supervisor, 'Beau' Ross. I have included the relevant section of the decision in its entirety below because it articulates the policy that should be implemented:

> I find that discrimination against employees for voicing safety concerns internally is prohibited under 10 CFR 50.7(a) and subjects the licensee employer to the sanctions identified in 10 CFR 50.7(c).
>
> In its response to GAP;s "Enforcement Action Request," Duke Power Company suggests that "the Commission never intended to place itself I the position of determining in the first instance' whether a violation of §50.7 has occurred and, thus, the Commission would find a violation of § 50.7 "only in consequence of findings adverse to an employer initially made by the Department of Labor." DPC Response at 17, 18. Duke Power Company bases it s view on isolated sentences from the Statement of Considerations that accompanied issuance of §50.7 and on remarks in a staff paper to the Commission supporting provisions in legislation that ultimately evolved in Section 210 of the Energy Reorganization Act. If I were to adopt Duke Power Company's view and apply it to this case, I could not find a violation of 10 CFR 50.7 because the Department of Labor did not receive and then act favorably on a complaint from Mr. Ross under Section 210 of the Energy Reorganization Act.
>
> Duke Power Company misperceives the complementary, yet independent, authorities and responsibilities of the Department of Labor and the Nuclear Regulatory Commission in protecting employees from discrimination and retaliation for raising matters pertaining to nuclear safety. Although Section 210 assigns authority to grant employee remedies to the Department of Labor, enactment

of that statute did not limit the Commission's pre-existing authority under the Atomic Energy Act to investigate alleged discrimination and take appropriate action against its licensees to combat it. Union Electric Co. (Callaway Plant, Units 1 & 2), ALAB-527, 9 NRC 126, 132-39 (1979). In urging his colleagues to adopt Section 210, Senator Hart, the Senate floor manager, said

[Section 210] is not intended to in any way abridge the Commission's current authority to investigate an alleged discrimination and take appropriate action against a licensee-employer, such as a civil penalty, license suspension or license revocation. Further, the pendencey of a proceeding before the Department of Labor pursuant to new Section 210 need not delay any action by the Commission to carry out the purpose of the Atomic Energy Act of 1954.

124 Cong. Rec. S15318 (daily ed. Sept. 18, 1978). When the Commission amended its regulations in 1982 to expand the scope of its employee protection regulations (regulations which pre-dated enactment of Section 210) the regulations did not specify that findings by the Department of Labor were a prerequisite to finding a violation of §50.7.

The comments cited by Duke Power Company from the Statement of considerations were made only in the context of (1) Emphasizing that employee discrimination could result in commission sanctions as well as the Department of Labor's award of a direct remedy to an employee and (2) rejecting a proposal that the Commission provide in its rules for imposition of civil penalties against individuals who made frivolous complaints to harass an employer. To be sure, the Department of Labor and the Commission are aware of the need to coordinate their efforts and cooperate in the effective administration of employee protection provisions under Section 210 and the Commission's regulations and to this end the Department and Commission have entered into a Memorandum of Understanding. 47 Fed. Reg. 54585 (dec. 3, 1982). To limit the Commission's power in the fashion Duke Power Company suggests overlooks the reality that an aggrieved employee may decline to file a complaint or any settle a complaint for personal reasons. The Commission's responsibility goes beyond immediate remedial action to the person affected. The Commission must ensure that licensees correct conditions that have resulted in improper discrimination that could affect other employees and prevent the recurrence of such discrimination. This power must be available to the Commission whether or not a

particular employee has exercised his or her rights under Section 210.

VI. THE NRC MUST UPGRADE ITS REGULATORY RESPONSE TO ALLEGED VIOLATION OF 10 CFR 50.7.

Notwithstanding my strong fears that this rule will be misinterpreted by licensees and their contractors as a mandate to legally frustrate the whistleblower protection laws by exhaustively litigating claims, I support adoption of a rule that will insure that employees disclose all their safety concerns to the NRC, and do not use those concerns as bargaining chips in a lawsuit.

However, in order to ensure that the public health and safety is actually enhanced and not harmed, by the passage of this rule it will be necessary for the NRC to greatly improve its response to workers who complain of harassment and intimidation.

The NRC took over four years to develop and implement a manual chapter on dealing with allegers, their safety allegations, and the issues of confidentiality. (See, NRC Manual Chapter 0517.) The manual chapter does not address the response by the NRC to allegations of retaliatory harassment and intimidation, or discriminatory action under Section 210. Further the manual chapter does nothing to insure and preserve the free flow of information from workers to the NRC through other means, i.e., SAFETEAM programs /[3], security departments

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[3] Safe Energy Coalition of Michigan, and Sisters, Servants of the Immaculate Heart Of Mary Congregation v. United States Nuclear Regulatory Commission, and the United states of America, No. 88-1184.

/[4], or in non-related civil litigation in which citizens and their lawyers are "gagged" about safety concerns at the demand of the licensee /[5], or other situations in which proprietary agreements are misused to gag employees absent any litigation.

In fact, it is difficult for me to understand the agency's proposed rule which finds prohibitive language which might be construed as a secrecy clause which endangers public health and safety by withholding information from the NRC, when the agency has done nothing to protect citizens and workers who are being sued or threatened to be sued by licensees to prohibit them from disclosing safety concerns.

For example, in the case of Kansas Gas & Electric vs. Nuclear Awareness Network, et. al., Kansas Supreme Court case No. 88-63127-AS, the licensee has successfully sued the citizens group, and forcibly, by court order, has prohibited them and their lawyers from disclosing safety information it received from dozens of workers years ago. (The case is currently on appeal and the Defendant's are contesting the legality of the non-disclosure order.) The NRC has taken no action in that case, albeit the citizens group sought assistance for years.

In another case, a major contractor threatened an employee with a lawsuit for breach of an alleged proprietary agreement that kept him from disclosing safety concerns for years until an

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[4] Ronald Goldstein vs. EBASCO, 86-ERA-36.

[5] Kansas Gas & Electric vs. Nuclear Awareness Network, et. al., 88-63127-AS.

agreement was negotiated by the Government Accountability Project (GAP) to allow him to pursue his concerns.

The NRC is supposed to insure that the licensees maintain an atmosphere at facilities under their jurisdiction in which individual employees, and the work force in general, feel free to raise any safety related concerns that they may have without fear of reprisals. In passing that law Congress intervened in the normal employee-employer relationship and imposed a duty on the NRC to intervene in that relationship when intimidation became a problem.

However, the NRC is not doing its job in this regard. It has no internal policy, procedure, or standards for evaluating worker harassment for enforcement action or violations of 10 CFR 50.7. Instead, facilities that have problems with harassment and intimidation are allowed to continue for years without being responsive to the impact of harassment and intimidation on the work force in general. Regulatory action, if it comes at all, is too late to stop the "chilling effect" by managers, and is too little to encourage utility management to take seriously their responsibilities toward maintaining an atmosphere free from harassment and intimidation under 10 C.F.R. 50.7.

Since the NRC is, at best, neutral in this debate, and frequently aids and abets the licensee (or applicant) in harming the whistleblower's case, employees and their attorneys, are forced to litigate their claims in a public arena. Thus, "whistleblower" cases get in the newspapers, in front of

legislators and responsible committees, and on investigative journalist programs. The public demands answers to safety related allegations the NRC hasn't looked at, or has not looked at adequately, and the problem of harassment and intimidation gets bifurcated and delegated to the Secretary of Labor.

Licensees legitimately want to get off the front pages and out of the public eye, and are frequently willing to settle cases for that reason alone. That does not necessarily equate money for silence about safety concerns. If the NRC was doing its job in the first place workers wouldn't feel compelled to seek publicity for their causes or in order to get pressure on the NRC to pursue their concerns.

However, the NRC's consistent refusal to get involved in the business of protecting employees leads to confusion and a regulatory vacuum. The agency has no program to determine severity of harassment and intimidation concerns, and they have not provided any specialized training to inspectors or investigators on recognizing or determining whether work environments have been "chilled" by harassment and intimidation. To the best of my knowledge, the agency does not have one person on its entire staff with a background or training in ethical resistance, whistleblower psychology, or managing dissent in a work force. The agency, by default, has all but conceded its responsibility for protecting public health and safety in this area to the Department of Labor (DOL) and has equated its regulatory responses on harassment and intimidation to whether or

not the DOL finds that a particular worker was discriminated against according to a legal standard based in Title VII laws. This is unacceptable. The Secretary of Labor does not know, cannot judge, and doesn't have the issue before her as to whether the termination or disciplinary action of an individual complainant "chilled" a work force or "chilled" a department. That is the NRC's responsibility, it cannot be responsibly delegated to the DOL.

It is not possible to equate resolution of an individual case before the DOL with the consequences to a work force. All too frequently a case will fail for procedural reasons, i.e., timeliness. The 30 day statute of limitations for Section 210 complainants precludes numerous otherwise legitimate complaints. Further, Section 210 isn't an all inclusive net. Workers are free to file internal complaints through unions, ombudsman, or SAFETEAM programs, or decide not to pursue litigation at all. These complaints are not required to be reported to the NRC staff, and are not reported on any type of systematic basis. Further, some workers may choose to pursue their wrongful discharge claims in state or federal court under other wrongful discharge theories. Those cases may go on for years without the knowledge of the NRC, and can be resolved without the knowledge of the NRC regardless of the terms of the settlement.

Several examples of these problems are included in these comments to demonstrate the regulatory loophole that exists, and why this proposed rule will not close it.

One good example is the case of Sam Thompson. (Sam Thompson vs. Detroit Edison, 87-ERA-2). In 1986 Mr. Thompson was a manager for Security at the FERMI II plant who alleged he was transferred to a 'do nothing' job after raising concerns. He filed a Section 210 complaint in 1986. He also raised concerns with the NRC about his substantive safety/security related concerns. The NRC did virtually nothing on his safety issues, and even less on his claims of harassment and intimidation. Several years after Mr. Thompson and Detroit Edison resolved their dispute, Mr. Thompson inquired about what the NRC had done or was doing about his harassment and intimidation concerns. The NRC (Region III) wrote and advised that they were waiting for the SOL to issue a decision. This decision, of course, is never going to be forthcoming. See, letter from the NRC, February 28, 1989, which states in part:

> Mr. Thompson's issue regarding Detroit Edison Company's termination of his employment was considered by the U.S.Department of Labor. That matter is pending before the Secretary of Labor. Upon completion of the Labor Department's deliberations on that matter the NRC will consider appropriate enforcement action.

This inaction is particularly outrageous in the face of another DOL complaint from the same department against the same supervisor in which a DOL Administrative Law Judge ruled that there had been discrimination against the employee for contacting the NRC. The utility appealed. That was in 1987. (Carolyn Larry vs. Detroit Edison, 86-ERA-32) Briefs were completed in the summer of 1987, and no decision has yet been issued by the SOL.

The chilling effect in the security department at Fermi was a problem in 1987. The message that 'going to the NRC could get a person fired' was stamped in the minds of other security employees in 1987. Whatever action the NRC takes now it is too late to help Mr. Thompson, Ms. Larry, or have any effect at the Security Department at Fermi.

Another example is the case of Ronald Goldstein vs. EBASCO, 86-ERA-36. In that case the ALJ ruled that Goldstein had been discriminated against for engaging in protected activity at the South Texas Plant. The hearing record was complete with evidence of the chilling effect on the other employees at South Texas, including Goldstein's supervisor making an example of Goldstein by blackboard effigy. Evidence of wrongdoing and harassment and intimidation was given to the NRC Office of Investigations in April 1987. No NRC action has ever been taken in that case which is pending before the SOL on an appeal from EBASCO.

In each of those cases the workers went to the NRC first for help, were led into believing help was forthcoming, and then left by the NRC to fight a lengthy, expensive battle to prove not only their own case of retaliation, but to protect their colleagues from the chilling effect caused by their discharge and retaliation.

Other recent cases follow the same pattern. John Corder, an STP engineer, repeatedly tried to get the NRC to respond to his complaints of wrongful termination for raising safety concerns internally. No investigation into this issue has yet been

commenced into his concerns, notwithstanding his Section 210 complaint filing and disposition. See, Corder vs. Bechtel, 87-ERA-38.

Noah Jerry Artrip an STP QC inspector, filed a Section 210 complaint after being laid off from STP in December, 1988. Even prior to being laid off, Mr. Artrip had called the NRC and complained that his inspection activities were being interfered with by his supervision. No action was ever taken to investigate those serious concerns, or probe the atmosphere created by his treatment. More importantly the NRC, by untimely processing of a FOIA request, denied Artrip the proof that he engaged in external protected activity prior to his layoff.

Thomas Saporito, an FP&L I&C Specialist, now has a case pending before the SOL. Saporito was terminated from his employment with FP&L last December for refusing to disclose information that he believed was the subject of an NRC inspection/investigation. To the best of his knowledge, no NRC investigation is ongoing into his contention that his termination was a violation of 10 CFR 50.7, and that his well publicized termination has resulted in a chilled atmosphere among other workers at the plant. See, Saporito v Florida Power and Light, 89-ERA-7, 89-ERA-17.

These are only a few examples of cases and workers in which the NRC has knowledge of employees allegations that they have been subjected to harassment and intimidation, and that no action has been taken to insure that consequences of the discrimination

complained of has resulted in a chilling effect at the site.

The last example of prompt regulatory action in this regard was the 1983 shut down order of the Zimmer plant by then Region III Administrator James G. Keppler. His actions came within hours of craft workers dumping buckets of water and human waste on quality control inspectors. His prompt and drastic actions in requiring a shut down of the facility ensured the 10 C.F.R. 50.7 meant something to that applicant and the work force.

Current regulatory practice would have never responded to that situation unless one of the QC inspectors had filed a complaint, proved his case, won on appeal, never settled, and never gave up. The chances of that would be highly unlikely.

Since the NRC has no programmatic approach to charges of harassment and intimidation it is not surprising that employees caught in the middle of long, expensive litigation following retaliation would consider giving up the fight. The proposed rule, without additional measures, sends the message that they might as well not even start the battle. Such a message <u>does not increase</u> public health and safety.

VI. <u>SPECIFIC RESPONSES</u>

ISSUE ONE

> Should the rule prohibit all restrictions on providing information to the Commission, or should limitations on an individual appearing before a Commission adjudicatory board (e.g., requiring an individual to resist a subpoena) be permissible as long as other avenues for providing information to the commission are Available?

Any rule that prohibits some restrictions on providing information to the NRC, should prohibit all restrictions on

providing information to the Commission or the public in any type of lawsuit in recognition of the checks and balances created within the Commission itself to insure that all issues potentially affecting public health and safety are resolved after review.

A blanket prohibition prevents any negotiation that could ever be construed as 'money for silence,' thus eliminating any subtle misunderstanding between attorneys and their clients about what is up for negotiation and settlement in any type of litigation. This should be a blanket prohibition on any issues affecting public health and safety, regardless of the forum they are raised in, or who the parties to litigation are.

ISSUE TWO

Should the rule impose an additional requirement that licensees and license applicants must ensure that all agreements affecting employment, including those of their contractors or subcontractors, contain a provision stating that the agreement in no way restricts the employee from providing safety information to the Commission?

Yes. If the rule is to be imposed and not misused or misinterpreted by some unspecified understanding between clients and attorneys the inclusion of specific language in an agreement will insure that no unwritten understanding attaches to an agreement that will work to silence employees who have safety concerns about a facility.

ISSUE THREE

Would a rule to prevent employees from bargaining away some avenues of access to the NRC promote unnecessary litigation before the NRC and the DOL?

There is no clear answers to this issue. Since Section 210

does not provide for punitive damages, and the NRC has no investigation or enforcement strategy to respond to harassment and intimidation utility licensees and applicants do not have much to fear by litigating any and all claims of wrongful discharge, harassment and intimidation. This type of litigation strategy and approach is in and of itself a deterrent to workers to come forward and seek protection under Section 210. It is my concern that this rule, if enacted without a coinciding regulatory policy on pursuing worker complaints of retaliation will result in protracted litigation and work to the detriment of the Act.

ISSUE FOUR

Does the proposed rule constitute government interference in the contractual relations between licensees and their contractors that is not needed to assure adequate protection of public health and safety or of whistleblowers' freedom to bring their safety concerns to the NRC?

No. Government intervention between contractors and licensees has already been found to be necessary and prudent to protect the pubic health and safety. See, generally, Flanagan vs. Bechtel Power Company, 81-ERA-7, Hill vs. TVA, 87-ERA-23, 87-ERA-24.

VII. CONCLUSION

Where matters of public health and safety are involved there can be and should be no secrets. Where there are lawsuits that affect the nuclear industry, between workers and their employers or utilities and their contractors, there should be a bright line between the terms of a settlement (i.e., monetary award,

reinstatement, credit for work) which can be private and the safety related information contained within the litigation which should be public. No safety information should be sealed and no settlement should buy any sealing of a public record or silence of a worker about his concerns. However, where a worker or a company has disclosed all safety information, and/or such information is available to the NRC, and to the public through various 'sunshine' laws, parties should be afforded some degree of peace and privacy. The proposed rule must be expanded to include all litigation and include the development of a regulatory position and response to charges of retaliation in order to protect the public from the potentially disastrous results of an uncontrolled work environment.

Sincerely,

Billie Pirner Garde (BB)

Billie Pirner Garde

Hard copy sent by Federal Express
on 9-26-89

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NORTHEAST UTILITIES

THE CONNECTICUT LIGHT AND POWER COMPANY
WESTERN MASSACHUSETTS ELECTRIC COMPANY
HOLYOKE WATER POWER COMPANY
NORTHEAST UTILITIES SERVICE COMPANY
NORTHEAST NUCLEAR ENERGY COMPANY

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September 20, 1989

Docket Nos. 50-213
50-245
50-336
50-423
B13367

Re: 54FR30049

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

Attn: Docketing and Service Branch

Haddam Neck Plant
Millstone Nuclear Power Station, Unit Nos. 1, 2, and 3
Comments on Proposed Rulemaking--Preserving the
Free Flow of Information to the Commission

Dear Mr. Chilk:

In accordance with the Commission's request for comments in the above-captioned notice, Northeast Utilities (NU) on behalf of the Haddam Neck Plant and Millstone Nuclear Power Station, Unit Nos. 1, 2, and 3 hereby submits the following comments on the proposed regulation. We would like to say at the outset, that we, like NUMARC, support the concept of full and timely disclosure to the Commission of safety concerns. And, we fully agree that the Commission must zealously guard against impediments to the "full and candid disclosure to the Nuclear Regulatory Commission about nuclear safety matters." We understand the Commission's specific concern that contracts not impede the free flow of information to the Commission. We suggest that any rule directed to the issues now confronting the Commission take into account certain competing concerns and additional objectives, and to that end we provide the following comments.(1)

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(1) NUMARC has advanced reasons as to why the proposed rule is not necessary, in addition to suggesting ways in which a rule on this subject could be crafted to address its concerns. We offer these comments in the event a rule is promulgated.

U.S. NUCLEAR REGULATORY COMMISSION
DOCKETING & SERVICE SECTION
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I. Ensuring Free and Open Access to the Commission While Ensuring Finality to Settlement Agreements

The goal of the proposed rule is to ensure the free flow to the Commission of information regarding matters of nuclear safety. This goal does not necessarily conflict with the objectives of employment agreements generally, and Section 210 settlement agreements specifically. Most employment agreements (e.g., contracts of hire, collective bargaining agreements) historically have not incorporated, and have no reason to incorporate, any provision regarding either party's ability to raise nuclear safety concerns with any person or entity. Employers entering Section 210 settlement agreements, on the other hand, have a legitimate interest in ensuring that the case they are settling is indeed over. Employers have a valid interest in obtaining some guarantee that an employee, having once reported nuclear safety concerns to the Commission and having based a Section 210 action before the Department of Labor on that activity, does not attempt to employ those concerns to obtain some sort of "leverage" over the employer. But we have no objection to a complainant, having once settled a Section 210 action, bringing additional safety concerns to the Commission's attention. Once a matter is reported, however, then settlement agreements should be able to limit further treatment of the issue in prescribed circumstances.

Any rule should also make clear that a settlement agreement may limit avenues of communication to forums other than the Commission, such as the media.(2)

Thus, in answer to the Commission's question as to whether a rule should prohibit all restrictions on providing information to the Commission, or whether some restrictions might be appropriate, we believe that a rule should allow the limited restrictions discussed above.

II. Need for An Affirmative Statement in Employment Agreements

The Commission also poses the question whether the proposed rule should "impose an additional requirement that licensees and license applicants must ensure that all agreements affecting employment, including those of their contractors or subcontractors, contain a provision stating that the agreement in no way restricts the employee from providing safety information to the Commission." We note that the Commission itself has deemed that such a provision is unnecessary to achieve the objectives of the rule, and we agree with that assessment. However, while this may not necessarily be an appropriate part of a rule, individual utilities may, of course, choose to put such affirmative statements into settlement agreements.

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(2) We recognize that nonnuclear safety concerns can arise, and we in no way imply that a settlement agreement may limit an employee's ability to raise such concerns to the appropriate governmental agency (e.g. OSHA).

The proposed affirmative statement is unnecessary for the following reasons. First, employees already are fully notified of their right to bring safety concerns to the attention of the Commission (e.g., Form NRC-3).

Second, the suggested affirmative statement would apply to "all agreements affecting employment." Presumably, this provision would apply only to written contracts, not oral agreements regarding wages, hours, or other terms and conditions of employment. Nevertheless, we agree with NUMARC that the suggested statement is too broad, as it would literally encompass agreements (such as collective bargaining agreements, bids by contractors and subcontractors, and pension plans) in which neither party would, in the usual course of events, have any reason to include such a statement, or to think applicable to the raising of safety concerns.

In summary, we believe the Commission has made the wiser choice to not impose any obligation on private parties to include an affirmative statement in employment agreements.

III. Detailed Analysis of the Proposed Rule's Provisions

The proposed rule would add language to 10 CFR Sections 30.7, 40.7, 50.7, 60.9, 70.7, and 72.10 providing:

> Each licensee and applicant for a Commission license shall assure that neither they nor their contractors or subcontractors impose, as a condition of any agreement affecting the compensation, terms, conditions, and privileges of employment, including an agreement to settle a complaint filed by an employee pursuant to Section 210 ...any provision that would prohibit, restrict, or otherwise discourage, an employee from voluntarily providing to any person within the Commission information about possible violations of requirements imposed under the Atomic Energy Act or the Energy Reorganization Act, and NRC regulations, orders, and licenses.

A. "Any agreement affecting the terms, conditions, and privileges of employment."

We agree with NUMARC that the proposed rule's application to all agreements "affecting the terms, conditions, and privileges of employment" is too broad. There is little reason why the rule should not be limited to agreements between employer and employee resulting from a dispute that in some way directly concerns nuclear safety matters. Section 210 settlement agreements, the type of contract that is the impetus for the proposed rule, fall within this category.

B. "Any provision which would prohibit, restrict, or otherwise discourage, an employee from voluntarily providing to any person within the Commission information about possible violations..."

We believe that the language quoted should be revised for consistency with the suggestions outlined in Section I of our comments.

C. Application to Contractors and Subcontractors

We support the concept that licensees need to be informed of Section 210 complaints filed against contractors or subcontractors [and indeed have taken steps to bring this matter to their attention]. However, we agree with NUMARC that this is too onerous an obligation to place on licensees via rulemaking. Regarding the obligation of licensees to ensure that its contractors or subcontractors are informed of the rule's requirements, we share NUMARC's concern that compliance with this requirement, and the other requirements suggested by subsection (2) of the proposed rule, is unduly burdensome by virtue of the fact that licensees may engage thousands of contractors and subcontractors.

Similarly, with respect to imposing an obligation on licensees to perform prior review of settlement agreements proposed by contractors or subcontractors, we agree with NUMARC that this provision goes too far. The obligation would be overly burdensome in the case of licensees that employ large numbers of contractors and subcontractors. In addition, contractors and subcontractors have a legitimate interest in maintaining the confidentiality of all employment agreements, particularly settlement agreements.

IV. Conclusion

In conclusion, NU believes that, if a rule is promulgated, it can be crafted to support the Commission's goal of full and open access, without undermining the appropriateness of settlement agreements. As the Commission notes, public policy favors such agreements, since they "provide remedies to employees without the need for litigation." As a practical matter, however, settlement agreements are not attractive if, beyond the public policy goals of regulatory pursuit of safety, they cannot preserve a company's right to take reasonable measures toward protecting itself from repetitive legal actions and unwarranted denigration of the company and its employees in the public media.

We trust that the Staff finds these comments combined with those of NUMARC are useful in the finalization of the proposed rule.

Very truly yours,

CONNECTICUT YANKEE ATOMIC POWER COMPANY
NORTHEAST NUCLEAR ENERGY COMPANY

E. J. Mroczka
Senior Vice President

cc: Document Control Desk
W. T. Russell, Region I Administrator
M. L. Boyle, NRC Project Manager, Millstone Unit No. 1
G. S. Vissing, NRC Project Manager, Millstone Unit No. 2
D. H. Jaffe, NRC Project Manager, Millstone Unit No. 3
A. B. Wang, NRC Project Manager, Haddam Neck Plant
W. J. Raymond, Senior Resident Inspector, Millstone Unit Nos. 1, 2, and 3
J. T. Shedlosky, Senior Resident Inspector, Haddam Neck Plant

(36)

Westinghouse
Electric Corporation

Energy Systems

Box 355
Pittsburgh Pennsylvania 15230-0355

September 20, 1989

NS-NRC-89-3458

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

Attention: Docketing and Service Branch

Subject: Proposed Rule - Preserving the Free Flow of Information to the Commission, 54 Fed. Reg. 30049 (July 18, 1989)

Dear Mr. Chilk:

These comments are submitted on behalf of Westinghouse Electric Corporation ("Westinghouse") in response to the Nuclear Regulatory Commission request for comments on a proposed rule entitled "Preserving the Free Flow of Information to the Commission".

Westinghouse believes it is important for the Commission to be fully advised in a timely manner of safety concerns. Current Commission regulations, in our judgement, are appropriate and sufficient to assure that such concerns are brought to the attention of the Commission and/or its licensees, and we do not believe there has been any pervasive breakdown in the Commission's ability to promptly obtain safety information. Thus, Westinghouse believes that no new regulations are required.

Further. the regulations proposed by the Commission in the above-referenced rulemaking are unreasonable and unworkable. Westinghouse supports the comments submitted on the proposed rule by the Nuclear Management and Resource Council, Inc. ("NUMARC") and, in particular, the comments by NUMARC with respect to the broad scope of the rule and the lack of justification for it.

Westinghouse would add the following comments. As we read the proposed regulations, they would apply to all contractors and subcontractors who provide goods or services to a licensee, whether or not such goods or services are safety-related. Moreover, the proposed rule would apply to the contractual relationships a contractor such as Westinghouse might have with both its nuclear and non-nuclear suppliers or customers, even if such relationships have nothing whatever to do with a licensee, the goods and services provided to such licensee, or safety-related goods or services involving such licensee. Furthermore, the proposed rule extends to "any agreement affecting the compensation, terms, conditions and privileges of employment" of any licensee,

contractor or subcontractor. Thus, the rule by its terms is not limited to settlements involving issues related to nuclear safety but, rather, would reach settlement of disputes of all types relating to fundamental employer-employee relationships. It would appear to require review review by each and every nuclear utility customer of Westinghouse of every employment agreement, union agreement, agreement for the settlement of employee disputes (including workman's compensation cases) and other employee-related contracts and dispute settlements. Westinghouse has thousands of agreement with suppliers, contractors, subcontractors and vendors, as well as thousands of agreements with employees both within and outside of its nuclear operations. The proposed regulations thus present an unmanageable and unreasonable task, and constitute an invasion of the rights of Westinghouse, its employees, and its customers.

Additionally, the proposed rule would strike at the very heart of proprietary information agreements and the ability to maintain such information as proprietary. As presently drafted, the proposed rule lacks safeguards for the preservation of proprietary agreements and could negate those proprietary agreements which, for example, require certain procedures to be undertaken by employees so as to maintain the confidentiality of information. Moreover, it would involve review by licensees of Westinghouse proprietary agreements with its employees and others - a task clearly not appropriate for licensees to undertake. If a rule is promulgated, it must provide procedures binding on the Commission which assure that safety information submitted to the Commission remains confidential until such time as it is either returned to its rightful owner or said owner is afforded an opportunity to establish that the information is entitled to proprietary protection under current Commission regulations. Otherwise, the proposed rule could be confiscatory of proprietary information.

The genesis of the proposed rule seems to be a concern of the Commission with the provisions of a settlement agreement reached under Section 210 of the Energy Reorganization Act. Westinghouse suggests that, if Commission action is necessary with respect to Section 210 settlement agreements (which appears to be the sole justification for the rule), the proposed rule should be limited in scope to such Section 210 settlement agreements. Further, there is a much more direct approach available in this regard. We respectfully recommend that the Commission re-review its agreements with the Department of Labor, so as to provide for better communications with the Commission regarding proposed Section 210 settlement agreements and to involve the Commission in the review process for such agreements so that the Commission can make certain that they do not obstruct the free flow of information to the Commission. The rule should not establish licensees as policemen over the contractual and employee relations of their contractors and subcontractors.

Westinghouse appreciates the opportunity to comment on the proposed rule. If desired by the Commission, we would be pleased to present additional information to the Commission on the onerous burdens and the potential threat to proprietary information embodied in the proposed rule.

Very truly yours,
WESTINGHOUSE ELECTRIC CORPORATION

William J. Johnson, Manager
Nuclear Safety Department

RAW/hs

(35)

Emile Julian, SECY —
This comment on a proposed rule was sent to us by mistake. Please docket and record accordingly. Thanks,
DAVID Meyer, ADM: DFIPS: RPB
x 28424

TUELECTRIC

Log # TXX-89696
File # 10186

September 18, 1989

W. J. Cahill
Executive Vice President

U. S. Nuclear Regulatory Commission
Regulatory Publications Branch
Division of Freedom of Information
and Publication Services
Office of Administration
Washington, D. C. 20555

SUBJECT: COMANCHE PEAK STEAM STATION (CPSES)
DOCKETT NOS. 50-445 AND 50-446
PROPOSED RULE, PRESERVING THE FREE FLOW OF INFORMATION TO THE COMMISSION

Gentlemen :

The Nuclear Regulatory Commission, has on July 18, 1989 issued for public comment a proposed rule entitled "Preserving the Free Flow of Information to the Commission". The following comments are made regarding the proposed rule.

The proposed rule seeks to ensure the free flow of information to the NRC by excluding any language or conditions, which might be construed as restricting the employee from bringing forth any possible safety violations to the NRC. The rule targets settlement agreements affecting the employee's compensation, terms of, conditions of, and privileges of employment including those filed under section 210 of the energy reorganization act.

The rule would make the licensee or applicant primarily responsible for insuring their contractors or subcontractors do not impede the free flow of information to the NRC. The rule would require licensees to establish procedures in order to inform its contractors and subcontractors of the requirements of the rule, assure it is informed by its contractors and subcontractors of each complaint related to work performed and filed by an employee of the contractors pursuant to section 210, and provide for prior review by the licensee of any settlement agreements negotiated by the contractor or subcontractor and resulting from a section 210 complaint.

The rule does not seem to limit the subcontractor tier at which the licensee's responsibilities end. Conceivably the licensee would be held responsible at all tiers down to the most basic supplier.

Paragraph (f)(1) states "...including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to section 210 of the..." this implies that the section 210 settlement agreements are a subset of the agreements to which this rule applies. The rule then is not limited to the section 210 agreements.

The extensive and far-reaching oversight responsibility for labor agreements that the licensee is being asked to undertake and the lack of definition of the type of agreement that this rule applies to make the rule impracticable and unworkable.

The supplementary information accompanying the rule states "...following the filing of a complaint, the Department of Labor performs an investigation. If either the employee or the employer are not satisfied with the outcome..." The rule then requires the licensee to review, approve, and report on labor dispute settlement agreements between a contractor and its employees after a section 210 complaint has been filed, investigated and the DOL has made available its findings. More appropriate and efficient would be holding the individual contractors responsible for reporting on the settlement agreements into which they enter with their employees.

In precedent, 10CFR21 imposes reporting requirements on "...Any individual director or responsible officer of a firm constructing, owning, operating, or supplying the components of any facility or activity licensed or regulated pursuant to the Atomic Energy Act of 1954." Amending 10CFR21 to encompass services as well as components would place responsibility for labor settlement agreements at the employer-employee level.

The supplementary information accompanying the rule requests comments on a specific question. The supplementary information solicits comments on whether the rule should prohibit all restrictions on providing information to the commission or should limitations on an individual appearing before an adjudicatory board be permissible as long as other avenues for providing information to the Commission are available.

The purpose or objective of the rule is to safeguard the free flow of information to the commission. The rule seeks to uncover those labor dispute settlement agreements brought under section 210 of the Energy reorganization act which are settled out of court and outside of the review of an administrative law judge. Those agreements may affect an employee's compensation, terms of, conditions of, and privileges of employment and may imperil the free flow of information to the commission, and thus are a threat to the health and safety of the public.

In response, to the question then, as long as other avenues of providing information to the commission are available and protected then limited restrictions on providing information to the commission should be permissible.

TU Electric supports full and timely disclosure to the NRC of any safety concerns. TU Electric supports the NUMARC comments to the proposed rule as contained on pages 6-13 of the NUMARC letter dated September 18, 1989.

Sincerely,

William J. Cahill, Jr.

JDR/jdr

c - Mr. R. D. Martin, Region IV
Resident Inspectors, CPSES (3)

DOCKET NUMBER
PROPOSED RULE PR 30,40,50,60,70,72,150
(54FR30049)

Arizona Public Service Company
P.O. BOX 53999 • PHOENIX, ARIZONA 85072-3999

WILLIAM F. CONWAY
EXECUTIVE VICE PRESIDENT
NUCLEAR

(34)

'89 SEP 22 A11:11

161-02334-WFC/GS
September 18, 1989

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

Dear Mr. Chilk:

Subject: Proposed Rule - Preserving the Free Flow of Information to the Commission
54 Fed. Reg. 30049 (July 18, 1989)
Request for Comments
File: 89-056-026

In response to the request of the U. S. Nuclear Regulatory Commission (NRC) for comments on the proposed rule entitled "Preserving the Free Flow of Information to the Commission" (54 Fed. Reg. 30049 - July 18, 1989), Arizona Public Service Company (APS) is hereby submitting the comments attached to this letter.

If you have any questions, please do not hesitate to contact Mr. A. C. Rogers of my staff at (602) 371-4041.

Sincerely,

WFC/GS/jle

Attachment

cc: T. L. Chan
M. J. Davis
T. J. Polich
A. C. Gehr

OCT 6 1989

Acknowledged by card.

ATTACHMENT

These comments respond to the U. S. Nuclear Regulatory Commission (the "NRC" or the "Commission") request for public comment on the NRC's proposed rule entitled "Preserving the Free Flow of Information to the Commission," which was published in the Federal Register on July 18, 1989 (54 Fed. Reg. 30049), and are submitted on behalf of Arizona Public Service Company, the Department of Water and Power of the City of Los Angeles, El Paso Electric Company, Public Service Company of New Mexico, Salt River Project Agricultural Improvement and Power District, Southern California Edison Company and Southern California Public Power Authority, who are Participants in the Arizona Nuclear Power Project ("ANPP") and licensees of Palo Verde Nuclear Generating Station ("Palo Verde") Units 1, 2 and 3.

We, along with the rest of the nuclear industry, certainly share the Commission's concern that there be full and timely disclosure of safety-related matters to the NRC. We believe, however, that the statutory and regulatory requirements currently in place provide the necessary assurance that safety concerns of all types are brought to the attention of licensees or the NRC for evaluation and resolution. Therefore, the Participants in Palo Verde believe that the imposition of any additional regulations in this area would be unnecessary and unwarranted. Moreover, we believe that the proposed rule is drafted with such imprecision that it would neither further the stated objectives of the Commission nor be capable of reasonable implementation by licensees.

The views expressed herein by the Palo Verde Participants are in accord with the position stated in the comments of the Nuclear Management and Resources Council, Inc. ("NUMARC"), of which the Participants are members, on this matter. We therefore endorse those comments and urge the Commission to give due consideration to the thoughtful and detailed analysis of the proposed rule set forth in the submission by NUMARC. In particular, we recommend to the Commission's attention NUMARC's discussion of the significant flaws in the nature and scope of the proposed rule as currently formulated and the substantial and costly administrative burden that the proposed rule would impose on licensees. As NUMARC points out, the proposed rule -- unlimited as it is to nuclear safety-related activities and the identification of nuclear safety concerns and levying requirements on licensees to police their contractors and subcontractors, ostensibly all the way back to the suppliers of the raw materials used in any product purchased by the licensee -- sets an impossible task to complete. Moreover, the substantial costs of attempting to comply with that rule would far outweigh any supposed benefit to the public health and safety that the rule could possibly achieve.

For these reasons, we urge the NRC not to adopt any rule concerning the free flow of information or, alternatively, to modify the proposed rule in accordance with NUMARC's comments in order to yield a reasonable and workable regulation.

(33)

WASHINGTON PUBLIC POWER SUPPLY SYSTEM

P.O. Box 968 • 3000 George Washington Way • Richland, Washington 99352

September 18, 1989
Docket No. 50-397
G02-89-171

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

Subject: **PRESERVING THE FREE FLOW OF INFORMATION TO THE COMMISSION**

The Nuclear Regulatory Commission is proposing a revision to its rules to require licensees to ensure that neither they, nor their contractors or subcontractors, impose conditions on settlement agreements under section 210 of the Energy Reorganization Act or in other agreements affecting employment that would prohibit, restrict, or otherwise discourage an employee from providing the Commission with information on potential safety issues. The Supply System has reviewed in detail this proposed rule and has concluded that its net effect on increased safety to the general public is so remote, and the capability of any licensee to truly ensure its total compliance is so unrealistic, that we are compelled to express our complete dissatisfaction and hereby request that the Commission proceed with the withdrawal of the subject proposed rule.

First, the proposed rule provides an unnecessary burden on the industry with very questionable results. The additional administrative programs that would have to be levied against the continually decreasing number of contractors willing to support the nuclear industry is counter productive. Contractors and subcontractors serve many customers. Some are "nuclear suppliers," but most are not. Each nuclear utility contracts individually with each contractor. To require contractors to revise their corporate policies and establish new administrative controls in reaction to isolated instances of questionable personnel practices is an overreaction by NRC and will hinder our efforts to retain and solicit new qualified nuclear plant contractors. The proposed rule arises out of the buying-off of complaining employees of the architect/engineer on the Comanche Peak Nuclear Station. This rule would in no way have prevented that from happening. In fact, it would probably do just the opposite because the incentive for contractors and subcontractors to buy the silence of unhappy employees is increased by the proposed rule. More effort ought to be expended in programs which would increase the number of qualified nuclear suppliers rather than further restrict it. Competition is hard enough to achieve as more and more companies opt out of the ever-increasingly regulated nuclear industry.

Secondly, the entire philosophy underlying this proposed rule also is directly contrary to fundamental principles of human behavior. This rule attempts to make the licensee the policeman for purposes of monitoring the employment relations of contractors and subcontractors beyond its control. In the event that the contractor/subcontractor should commit a crime, the rule anticipates that he will take the counter productive step of confessing to the policeman. That is not the way human nature works. The contractor/subcontractor has no incentive to bring his embarrassments to the owner's attention -- reality is just the opposite. Moreover, the fact that the rule makes the policeman (licensee) the party to be punished only adds disincentive to the contractor/subcontractor to report a safety-related problem. No contractor wants to be responsible for penalizing his customer, the owner. Yet, this proposed rule requires that the contractor's customer "assure" that the contractor will do just that.

In addition to the general comments on the proposed rule, the following comments are provided in direct response to specific questions posed by the Commission. The questions and our responses are as follows:

1) Should the rule prohibit all restrictions on providing information to the Commission or should limitations on an individual appearing before a Commission adjudicatory board (e.g., requiring an individual to resist a subpoena) be permissible as long as other avenues for providing information to the Commission are available?

   Regulatory changes should not be pursued reflecting language of a potential prohibition, such as the above, that may be something less than absolute. To try and draw fine distinctions such as whether a violation could turn, or whether an employee was permitted to testify at an adjudicatory board voluntarily or only upon subpoena would make any rule hopelessly subjective and serve only to breed litigation. Any rule in this regard should be as black and white as possible with as little grey as possible. There is already enough uncertainty with the use of undefined terms such as "contractor" and "subcontractor." No further ambiguity is needed.

2) Should the rule impose an additional requirement that licensees and license applicants must ensure that all agreements affecting employment, including those of their contractors or subcontractors, contain a provision stating that the agreement in no way restricts the employee from providing safety information to the Commission?

PRESERVING THE FREE FLOW OF INFORMATION TO THE COMMISSION

Potential regulatory changes on this subject should consider the above intent in order to be effective. In this regard, we disagree with the conclusion being expressed in the current proposed rule which states that, "The alternative of imposing an additional requirement on licensees and license applicants to require any agreement affecting employment to include a provision stating that the agreement in no way restricts the employee from providing information to the Commission was rejected as unnecessary to achieve objectives of the rule." It would be much to the advantage of the licensee if any future rule requires putting specified language in a settlement agreement because it would then provide a concrete, understandable, "safe harbor" guarantee of compliance with the rule.

The most serious problem with the current proposed rule is that it would require licensees to "assure" that ill-defined entities beyond the control of the licensee behave in a specific manner with regard with certain, and often disgruntled employees; yet it provides absolutely no direction as to how the licensee is to accomplish that guarantee. At least if there were a requirement that certain specified language appearing in an employee dispute settlement agreement would, in fact, satisfy the rule, a licensee would be able to have some assurance that it was in compliance. It is a very common feature of regulatory law to provide that specific conduct will be deemed to be in compliance with a particular rule or regulation. This is the "safe harbor" concept that is found in all kinds of federal regulations. At the very least, any such new rule should provide that if a licensee does require specified Section 210 language in all of its settlement agreements, and contractually imposes the same language requirements into the settlement agreements of its contractors and subcontractors, such action would constitute compliance with the rule.

In summary, we do not believe that the proposed rule would be effective in satisfying the basic concerns of the Commission. As written, it has elements of unreasonableness and practically unachievable goals with no apparent benefit or increased safety to the public. We urge the NRC to reconsider the issues and to withdraw this proposed rule.

Very truly yours,

G. C. Sorensen, Manager
Regulatory Programs (MD 280)

RL/tlr

cc: Mr. N. S. Reynolds, Bishop, Cook, Purcell & Reynolds

(32)

THE CLEVELAND ELECTRIC ILLUMINATING COMPANY

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PERRY NUCLEAR POWER PLANT

September 18, 1989
PY-CEI/NRR-1064 L

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

Perry Nuclear Power Plant
Docket No. 50-440
Comments on NRC Proposed Rule,
Preserving the Free Flow of
Information to the Commission
54 Fed. Reg - 30049 - July 18, 1989

Dear Sir:

The Nuclear Regulatory Commission (NRC) recently published, at 54 Fed. Reg. 30049 (July 18, 1989), notice of a proposed rule which would require licensees and license applicants to ensure that neither they, nor their contractors or subcontractors, impose conditions in settlement agreements under section 210 of the Energy Reorganization Act, or in other agreements affecting employment, that would prohibit, restrict, or otherwise discourage an employee from providing the Commission with information on potential safety violations.

We are pleased to provide the following comments for the NRC's consideration:

I. Summary

CEI is fully committed to ensuring that every individual involved in the operation of its operating nuclear power reactors understands his rights and responsibilities to promptly report any safety concerns. The company has diligently worked to create an atmosphere which encourages all employees to freely communicate and to pursue those concerns until satisfactorily resolved. CEI does not tolerate acts of intimidation or harassment or threats against those who report safety concerns.

As more fully described below, we believe that there is no compelling need for this rule-making. The current regulatory framework provided by the Energy Reorganization Act, together with existing NRC Rules and Regulations, is more than adequate to ensure that employees and former employees feel free to bring safety concerns to the NRC. The Department of Labor has already announced that it will not accept any settlement agreement in a section 210 proceeding which restricts access by government agencies to information of the kind that the proposed rule would cover. In any egregious cases, existing federal criminal law would most likely apply.

U.S. NUCLEAR REGULATORY COMMISSION
DOCKETING & SERVICE SECTION
OFFICE OF THE SECRETARY
OF THE COMMISSION

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Existing NRC regulations assure that individuals are aware of their rights to communicate safety concerns to the NRC. Because of these laws, policies and programs, the current situation works. The NRC points to only one case of arguable relevance as a basis for this rule. This single case does not provide a reasonable basis for the proposed rule in light of the high cost and scope of the effort which would result from the rule.

Finally, the proposed rule is vague and overbroad. It could be construed to prohibit any settlement agreements concerning employment litigation -- a situation which contravenes public policy and the NRC's own policy.

II. The Proposed Rule is Not Needed

Section 210 of the Energy Reorganization Act of 1974, as amended, and the NRC's regulations promulgated to implement that section (10 CFR 50.7) prohibit discrimination against any employee for engaging in certain protected activities. Those activities include:

- o providing NRC information on possible violations of requirements under the Atomic Energy Act or the Energy Reorganization Act;
- o requesting the NRC initiate action against the employee for the administration or enforcement of these requirements;
- o testifying in any Commission proceeding.

Any employee who believes that there has been such discrimination may seek a remedy before the Department of Labor. The remedy may include reinstatement, back pay and compensatory damages. Such discrimination may also be grounds for NRC enforcement action (including civil penalties and license revocation or suspension) against the employers.

The NRC bases the proposed rule on its expressed concern that in the settlement of Section 210 proceedings before the Department of Labor, the potential exists for "restrict[ing] the freedom of an employee or former employee who is subject to its provisions, to freely and fully communicate with the Nuclear Regulatory Commission about nuclear safety matters." 54 Fed. Reg. 30049.

In support of this concern, the NRC cites a single case involving a worker at the Comanche Peak Steam Electric Station as its basis for this proposed rule.[1] A single case of at least arguable relevance would not appear to constitute a reasonable basis for a rulemaking of this magnitude. The Commission's December 12, 1988 decision specifically discussing the

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1 In fact, the former employee had numerous opportunities, prior to entering into the settlement agreement, to identify all of his safety concerns to the NRC.

settlement agreements involved in this one case, construed the agreement to allow the former employee to bring his safety concerns directly to the NRC, and stated that "[as] long as the individual's right to bring matters to the NRC, in a reasonably convenient manner is not curtailed, we do not see a violation of federal law or NRC regulation." Texas Util. Elec. Co. (Comanche Peak Steam Electric Station, Units 1 and 2) CLI-88-12, 28 N.R.C at 612-13 [2].

The Department of Labor has already taken the position that it will not approve settlement agreements with the types of provisions of which the NRC seems to disapprove. In Polizzi v. Gibbs & Hill, Case No. 87-ERA-38, Secretary's Order Rejecting in Part and Approving in Part Settlement Submitted by the parties and Dismissing Case issued July 18, 1989, the Secretary restated the Department's holding that a Section 210 case cannot be dismissed without a finding by the Secretary that the settlement is fair, adequate and reasonable. The Order reviewed a settlement agreement and determined that one of its provisions was unenforceable as against public policy. That provision would have prohibited the complainant from voluntarily testifying in NRC proceedings involving the particular nuclear plant at which he had worked. The Department is therefore already reviewing all Section 210 settlement agreements to assure that they do not include the types of clauses that concern the NRC and is voiding such clauses when they are found.

There also exists a comprehensive set of criminal statutes which would apply to any egregious attempts to corruptly influence a person's testimony before a federal agency, corruptly persuade a person not to testify or to delay or prevent his testimony, or corruptly obstruct a pending agency proceeding. See, e.g. 18 U.S.C Section 201, 1506, 1512.

In addition, requirements on reporting of safety concerns to NRC are already an integral part of existing NRC regulations, for example 10 CFR Parts 19 and 21. NRC Form 3, which NRC regulations require to be posted in all NRC-licensed facilities, reminds employees that they can confidentially report safety-related problems to NRC. So too does Part 21. 10 CFR 21.2, n.1. The Commission even invites collect telephone calls for this purpose. Id.

Finally, the April 27, 1989 letters sent by the Executive Director of Operations to all nuclear power plant licensees (and apparently many other entities involved in the nuclear power industry) have made the NRC's position crystal clear. Since the NRC published the proposed rule before the responses to the April 27 letter were due, the proposed rule cannot be based on any sense that a real problem exists. Nor has the Commission made any attempt to determine whether the letter's explicit announcement of NRC's position would not be sufficient to correct the potential problem which the proposed rule seeks to solve.

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2 On April 20, 1989 the Commission withdrew any comment on this particular settlement agreement because the settlement agreement was the subject of a pending Department of Labor Case. Texas Util. Elec. Co., (Comanche Peak Steam Electric Station, Units 1 and 2) CLI:-89-06, 29 NRC 348, 355 (1989).

For all of these reasons, we respectfully submit that the proposed rule is not needed, at least not at the present time.

III. The Rule is Unreasonably Broad and Unreasonably Vague

The proposed role is broad beyond all reasonable bounds. It is also sufficiently vague that is would be impossible for anyone subject to it to know whether or not they were in compliance.

a. The proposed rule requires that NRC licensees "assure" that their contractors and subcontractors do not impose the types of conditions that would be prohibited, that licensees adopt procedures that "assure" that their contractors and subcontractors are informed of the rule's prohibition, and that licensees "assure" that they are informed by their contractors and subcontractors. It is unreasonable to require licensees to provide assurance with respect to contractors and subcontractors. This type of guarantee over third party behavior sets an impossibly restrictive standard.

b. The proposed rule applies to contractors and subcontractors of NRC licensees, whether or not the scope of the contract or subcontract has anything to do with the NRC-licensed activity. Thus, every contractor of a utility, and every contractor's contractor, becomes subject to the regulation, even if they perform no safety-related work. The unreasonable breadth of the rule can be appreciated if one postulates a multi-billion dollar company whose only connection with NRC is a single radioactive source licensed under 10 CFR Part 30. Under the proposed rule, the company would have to apply the requirements of proposed subpart (g)(1) to every contractor and every subcontractor, notwithstanding the total lack of connection to nuclear safety.

c. The prohibition against any condition that would "prohibit, restrict or otherwise discourage" an employee from voluntarily providing information to the NRC is so vague that it would be impossible to determine what terms and conditions could be in violation. For example, would NRC consider that a licensee's requirements to protect trade secrets, safeguards information, proprietary information, etc. might "otherwise discourage" an employee from voluntarily providing information to NRC? [3] Would

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3 The Commission's regulations concerning the protection of Safeguards Information prohibit any person from providing access to such information unless the recipient has "an established 'need to know'" 10 CFR 73.21(c)(1). The "established 'need to know'" requirement applies even if the recipient is an NRC employee. See 10 CFR 73.21(c)(1)(i). It is not inconceivable that someone could argue that a licensee's procedure restating the "established 'need to know'" requirements would "otherwise discourage" an employee from providing information to the NRC.

NRC consider guidance to an employee that communications outside the company normally go through administrative channels to "otherwise discourage" the employee from voluntarily providing information to "any person within the Commission?"

d. The scope of the rule extends far beyond settlement agreements in Section 210 proceedings. It reaches each contract for employment and each collective bargaining agreement. It could even be construed to reach every contract for goods and services that contains a provision relating in any way to "compensation, terms, conditions and privileges of employment." The proposed rule requires no connection whatsoever with nuclear safety or NRC-licensed facilities.

e. The proposed rule's failure to define the terms "contractor" and "subcontractor" leaves open for question the scope of the proposed rule's coverage. Is a contractor any person with whom the licensee enters into a contract? If so, does that mean that the proposed rule reaches every organization for whom the licensee purchases any good or services? Does it cover every procurement? If, for example, a licensee buys a light bulb from General Electric, must he then "assure" that General Electric does not "impose, as a condition of any agreement affecting the compensation, terms, conditions and privileges of employment . . . any provision that would . . . otherwise discourage an employee from voluntarily providing to any person within the Commission information about possible violations of" NRC requirements?

f. The proposed rule would create confusion and complexity by apparently requiring that contractors performing safety-related work for multiple licensees submit to all the licensees for "prior review" any Section 210 settlement agreement. For example, a nuclear steam supply system vendor or an architect-engineering firm under the literal words of the proposed rule would seemingly have to provide to each licensee for whom it performs work any Section 210 settlement agreement for prior review, even if the underlying Section 210 complaint was unrelated to work performed for the licensee.[4]

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4 Although proposed subsection (g)(2)(ii) limits a contractor or subcontractor's obligation to inform licensees and applicants of Section 210 complaints to those complaints "related to work peformed for the licensee or license applicant," the prior review requirement in proposed subsection (g)(2)(iii) contains no such limits. The latter section applies to "settlement agreements negotiated under Section 210 of the Energy Reorganization Act of 1974 by [the licensee/license applicant's] contractors and subcontractors," without the restriction in subsection (g)(2)(ii) that the work be performed for the licensee/applicant.

g. Notwithstanding the NRC's statement that it "supports settlements as they provide remedies to employees without the need for litigation," 54 Fed. Reg. at 30049, the effect of the proposed rule will be to create a strong disincentive to settlements. It could well be argued that any agreement which settles an action between an employee and his employer will "discourage" the employee from bringing safety complaints to the NRC because the employee no longer has any self-interested motive to do so. An employee who has been compensated (or otherwise satisfied) in exchange for dropping a claim against his employer will naturally be less likely to pursue complaints against his employer through the NRC. Accordingly, the proposed rule could be interpreted to prohibit[5] virtually all settlement agreements of employment disputes.

IV. Conclusion

For all these reasons, CEI respectfully submits that the proposed rule is both unneeded and unwise.

Very truly yours,

Al Kaplan
Vice President
Nuclear Group

AK:njc

cc: Document Control Desk
P. Hiland
T. Colburn
Region III

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5 The published NRC comments also indicate that the "discourage" language could be read broadly. The NRC states, "the proposed rule applies to all provisions which might discourage an employee from providing safety information . . ." 54 Fed. Reg. 30049, 30050 (emphasis added). The NRC further states that it intends "to prohibit provisions in these agreements that in any way restrict the flow of information to the Commission, the Commission's adjudicatory boards, or the NRC staff." Id. at 30050 (emphasis added).

DOCKET NUMBER
PROPOSED RULE PR 30, 40, 50, 60, 70 72, 150
(54 FR 30049)

(31)

CP&L
Carolina Power & Light Company

DOCKETED
USNRC

SERIAL: NLS-89-267

SEP 1 8 1989

'89 SEP 22 A11 :11

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Mr. Samuel J. Chilk
Secretary
United States Nuclear Regulatory Commission
Washington, DC 20555

ATTENTION: Docketing and Service Branch

COMMENTS ON PROPOSED RULE - PRESERVING THE
FREE FLOW OF INFORMATION TO THE COMMISSION
54 FR 30049 (JULY 18, 1989)

Dear Mr. Chilk:

On July 18, 1989 the Nuclear Regulatory Commission (NRC) published in the Federal Register (54 FR 30049) a notice of proposed rulemaking regarding the free flow of information to the Commission. Carolina Power & Light Company (CP&L) hereby submits the following comments on the proposed rule.

The Nuclear Management and Resources Council (NUMARC) has conducted a careful review of the potential effects of the proposed rule and is providing detailed comments on behalf of the nuclear industry. CP&L endorses the NUMARC position. Further, we would like to reiterate a major point addressed in the NUMARC comments. We believe the proposed rule would impose an unreasonable and unworkable burden on licensees to police the labor relations of their contractors and subcontractors. CP&L has a large number of contractors that provide goods and services for CP&L facilities, and those contractors have many more subcontractors. We believe it is unreasonable to expect licensees to assure that every labor and employment agreement entered into by these contractors and subcontractors contains no clauses that may later be deemed restrictive.

CP&L appreciates the opportunity to provide comments regarding the proposed rule. If you have any questions, please contact me at (919) 546-6242 or Mr. Lewis Rowell at (919) 546-2770.

Yours very truly,

L. I. Loflin
Manager
Nuclear Licensing Section

OCT 6 1989
Acknowledged by card.

LSR/crs (489CRS)

cc: Mr. R. A. Becker
Mr. W. H. Bradford
Mr. S. D. Ebneter
Mr. L. Garner (NRC - HBR)
Mr. R. Lo
Mr. W. H. Ruland
Mr. E. G. Tourigny

411 Fayetteville Street • P. O. Box 1551 • Raleigh, N. C. 27602

(30)

GE Nuclear Energy

General Electric Company
175 Curtner Avenue, San Jose, CA 95125

September 15, 1989
PWM-89139
MFN 069-89

Mr. Samuel J. Chilk
Office of the Secretary
United States Nuclear Regulatory Commission
Washington, D.C. 20555

Attention: Docketing and Service Branch

Subject: Proposed Rule on Preserving the Free Flow of Information to the Commission

Reference: Letter from Victor Stello (NRC) to John F. Welch, Jr. (GE) dated April 27, 1989

Dear Mr. Chilk:

General Electric Nuclear Energy (GENE) has reviewed the proposed changes to 10CFR Parts 30, 40, 50, 60, 70, 72, and 150 which appeared in 54FR136 pages 30049 through 30054. This proposal has a direct bearing on GENE as we function both as a licensee and as a contractor for licensees. While we endorse the free flow of information relating to safety concerns to the NRC we find the scope and wording of the proposal to go far beyond what is needed to achieve the purpose. (See attached comments.) We believe that the scope and content of the recent letter to industry from the Executive Director for Operations (Reference letter) is far more appropriate. We urge the NRC to reconsider this proposed rule in this light.

Should you have any questions about our comments please do not hesitate to contact either me or Mr. Noel Shirley (408-925-1192) of my staff.

Very truly yours,

P.W. Marriott, Manager
Licensing and Consulting Services

cc: L.S. Gifford (GE)

ATTACHMENT

General Electric Nuclear Energy (GENE) fully supports the need and right of any individual to bring nuclear safety concerns to the attention of the NRC. That need must be respected. But it is also clear that provisions currently exist which ensure this. This makes the proposed rule unnecessary. Further, the proposed rule unnecessarily restricts licensees in the conduct of their business and, worse still, requires that they interpose themselves into the conduct of the business of their contractors and subcontractors. This type of regulation would be hopelessly impractical to enforce and does not contribute anything to the goal of safe operation of nuclear power plants. Therefore, it is felt that the proposed rule is inappropriate and should be withdrawn.

The scope of the proposed rule is too broad to be manageable, but there are two major concerns that we have with the proposed rule. The first is that the rule would require inappropriate infringement into the internal workings of a company by a separate third party firm. This is a poor way to utilize the limited resources of a licensee. The second concern is that the proposed rule is not limited to interactions between the licensee and his contractors or subcontractors which are involved in licensed activities. This means that the licensee or applicant would have to deal, for example, with the local car repairman as if he were conducting a licensed activity. This is inappropriate. These concerns will be expanded in our discussion of the two questions that the Commission posed.

Beyond the proposed rule changes, the Commission has requested comments on the following issues:

1. Should the rule prohibit all restrictions on providing information to the Commission, or should limitations on an individual appearing before a Commission adjudicatory board be permissible as long as other avenues for providing information to the Commission be available?

Although whistleblowers must remain free to provide relevant information to the NRC relating to safety concerns, licensees and applicants settling Department of Labor (DOL) charges or reaching agreement with employees in other contexts should be free to seek and obtain whistleblower agreement to do such things as withdraw from further active pursuit of a 2.206 petition.

2. Should the rule impose an additional requirement that licensees and license applicants must ensure that all agreements affecting employment, including those of their contractors or subcontractors, contain a provision stating that the agreement in no way restricts the employee from providing safety information to the Commission?

In response to both the proposed rule and the second additional request for comments, we consider any requirement to provide affirmative statements in every agreement that potentially affects employment to be an unjustified interference with an employer's right to manage its own business and workforce. There is only a minimal basis, i.e., a single reported case, for formalizing any new requirements, even on DOL settlement agreements. There is absolutely <u>no</u> justification for going further and imposing such pervasive interferences in

expanding the restriction to all employee agreements; or requiring licensee notice and settlement approval, regarding any contractor employee charges to the DOL. In short, there is an inadequate regulatory basis in the proposed regulation and no rational basis in sound business practice to require this type of infringement by a third party on the internal workings of another company.

An additional concern is the difference in relationships between large companies, such as utilities, and their contractors and small licensees and small companies who may not be normally engaging in licensed activities. Often, such small firms may tend to deal on the basis of verbal rather than written contracts. The proposed rule does not appear to recognize this approach to business, and it will unduly burden many small contractors. In fact, the imposition of a requirement for a written contract, or for particular contract provisions, for all work performed for, or on behalf of, a licensee may well result in the further erosion of the already limited number of businesses willing to provide services for the nuclear industry.

In summary, it is felt that current regulations adequately assure the free flow of information regarding safety concerns to the NRC. No further regulations are required to ensure this important right and obligation of the individual. The proposed regulation,if promulgated, would have a major negative and unjustified impact on the industry.

NUCLEAR MANAGEMENT AND RESOURCES COUNCIL
1776 Eye Street, N.W. • Suite 300 • Washington, DC 20006-2496
(202) 872-1280

Joe F. Colvin
Executive Vice President &
Chief Operating Officer

September 19, 1989

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

Attention: Docketing and Service Branch

RE: Proposed Rule - Preserving the Free Flow of Information
to the Commission
54 Fed. Reg. 30049 (July 18, 1989)
Request for Comments

Earlier Comment #14

Dear Mr. Chilk:

→ Comments were submitted by courier on September 18, 1989, by the Nuclear Management and Resources Council, Inc. ("NUMARC") in response to the request of the U.S. Nuclear Regulatory Commission ("NRC") for comments on the NRC's proposed rule entitled "Preserving the Free Flow of Information to the Commission" (54 Fed. Reg. 30049 - July 18, 1989).

After the courier had left, we found that an error had been made in those comments on page 5 relating to the NRC's submittal to the Office of Management and Budget pursuant to the Paperwork Reduction Act requirements. Enclosed is the correct copy of the NUMARC comments submitted on behalf of the nuclear industry. Accordingly, please consider the attached comments dated September 19, 1989, as being the submittal by NUMARC in this docket.

Sincerely,

Joe F. Colvin

JFC/RWB:bb

NUCLEAR MANAGEMENT AND RESOURCES COUNCIL

1776 Eye Street, N.W. • Suite 300 • Washington, DC 20006-2496
(202) 872-1280

Joe F. Colvin
Executive Vice President &
Chief Operating Officer

September 19, 1989

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

Attention: Docketing and Service Branch

RE: Proposed Rule - Preserving the Free Flow of Information
to the Commission
54 Fed. Reg. 30049 (July 18, 1989)
Request for Comments

Dear Mr. Chilk:

These comments are submitted on behalf of the Nuclear Management and Resources Council, Inc. ("NUMARC") in response to the request of the U.S. Nuclear Regulatory Commission ("NRC") for comments on the NRC's proposed rule entitled "Preserving the Free Flow of Information to the Commission" (54 Fed. Reg. 30049 - July 18, 1989).

NUMARC is the organization of the nuclear power industry that is responsible for coordinating the combined efforts of all utilities licensed by the NRC to construct or operate nuclear power plants, and of other nuclear industry organizations, in all matters involving generic regulatory policy issues and on the regulatory aspects of generic operational and technical issues affecting the nuclear power industry. Every utility responsible for constructing or operating a commercial nuclear power plant in the United States is a member of NUMARC. In addition, NUMARC's members include major architect-engineering firms and all of the major nuclear steam supply system vendors.

The nuclear industry supports the concept of full, and timely, disclosure to the NRC of safety concerns. As described below, we believe present statutory and regulatory requirements appropriately provide for safety concerns that arise in any context to be brought to the attention of the licensee or the NRC so that they can be evaluated and resolved. This includes those that might have been associated with a complaint of discrimination against an employee who might have raised safety concerns. We do not believe that additional regulation is necessary or that the proposed rule is an effective way to satisfy the NRC's concerns. Moreover, the proposed rule as written is unreasonable and unworkable. However, if the NRC determines that it is necessary to develop a final rule, we have suggested ways in which the NRC's goals can be attained in a reasonable and workable manner. These recommendations are designed to effectuate the policy underlying the rulemaking, a policy which we support, without imposing unreasonable and unworkable burdens and procedures on persons subject to Commission authority.

Current Statutory and Regulatory Requirements:

Section 210 of the Energy Reorganization Act of 1974, as amended, and the embodiment of those requirements by the NRC in 10 C.F.R. § 50.7, prohibits discrimination against any employee for bringing safety concerns to the NRC. Any employee of a Commission licensee, or a contractor or a subcontractor of a Commission licensee or license applicant, who believes he or she has been discriminated against for raising safety issues, has the right to file a complaint with the U.S. Department of Labor to seek redress for such discriminatory action.

A variety of other regulatory requirements encourage safety concerns to be brought to the attention of the NRC. For example, 10 C.F.R. Part 19 requires that Form NRC-3, "Notice to Employees," be posted in conspicuous locations to inform workers at nuclear facilities, whether employees of licensees or contractors, of their opportunities to confidentially inform the NRC of nuclear safety concerns. Part 19 also requires that workers be informed of their responsibility to report promptly to the licensee any condition which may lead to or cause a violation of Commission regulations or unnecessary exposure to radiation or radioactive materials.

Further, 10 C.F.R. Part 21, adopted by the NRC pursuant to the requirements of Section 206 of the Energy Reorganization Act, establishes additional requirements for directors or responsible officers of licensees or suppliers of safety-related components to nuclear facilities to report promptly to the NRC any matters that could create a substantial safety hazard. All licensees are required to develop procedures to implement these requirements and must post information about these requirements in a conspicuous location in any premises where nuclear safety-related activities are performed, including identifying the individual to whom reports of safety concerns may be made.

In addition, 10 C.F.R. 50.55(e) requires the holder of a construction permit for a nuclear power plant to promptly notify the Commission of specified significant deficiencies found in plant design and construction which, if uncorrected, could adversely affect the safety of plant operations at anytime throughout the expected lifetime of the plant.

Thus, there are already in effect comprehensive statutory and regulatory requirements that collectively provide many ways in which employees of licensees and contractors are informed of their ability to raise safety concerns and the protection they are afforded if they raise safety concerns.

Current Situation:

Under current practice, the U.S. Department of Labor informs the NRC of any complaints brought under Section 210, reviews all proposed settlement agreements of Section 210 proceedings, and informs the NRC of the resolution of those proceedings. Under 10 C.F.R. § 50.7, the NRC has the regulatory authority to take enforcement action, which may include revocation of the

facility's license and the imposition of civil penalties or other enforcement action.

Relating to the particular matter that is the fundamental focus of the proposed rule, the NRC Executive Director for Operations sent a letter dated April 27, 1989, to, among others, a senior executive of each commercial nuclear power plant licensee expressing concern that agreements entered into between licensees and their employees or former employees to settle Section 210 proceedings might include clauses which could, or could be interpreted to, restrict the ability of employees or former employees to provide information about potential safety issues to the NRC. Licensees were requested to report not later than July 31, 1989, if any restrictive clauses had been identified by licensees in current or previous Section 210 settlement agreements or in other agreements affecting compensation, terms, conditions and privileges of employment. If any such restrictive clauses were identified, licensees were to promptly inform the employee or former employee that he or she may raise any safety concern to the NRC without fear of retribution and that any such restriction in a settlement agreement should be disregarded. Responses by licensees indicating any such restrictive clauses that were identified were to be provided to the NRC by July 31, 1989. Without waiting for the responses, on July 18, 1989 the NRC issued its proposed rule on exactly the same subject. We believe it would have been appropriate for the NRC to have evaluated licensee responses to the April 27, 1989 letter to ascertain the nature and scope of any restrictive clauses identified and then to determine what, if any, additional regulation might be warranted to address the NRC's concerns.

The Proposed Rule:

The only basis cited by the NRC in support of the proposed rule is a single case involving a worker at a commercial nuclear power plant under construction. That worker alleged that he believed that a Section 210 settlement agreement that he had entered into, with the advice of counsel, had restricted his ability to bring safety concerns to the attention of the NRC, notwithstanding the fact that he had been given many opportunities to raise additional safety concerns, and failed to do so, prior to executing the settlement agreement. Even though there may have been other cases in which an employee alleged he or she had been prevented from bringing safety concerns to the NRC because of a restriction contained in a settlement agreement, the record supporting the proposed rule consists of the citation to that single case. If the rulemaking is premised, as it appears to be, on the basis of that single case, no reasonable basis exists for proceeding with a rulemaking; any rulemaking proceeding that is premised on but a single instance of a perceived problem is, by definition, an ineffective and unjustified use of the limited resources of both the NRC and the industry.

Assuming, however, that the NRC concludes that additional regulation is warranted, even though the basis for that conclusion is not disclosed in the notice of proposed rulemaking, the nature and scope of the proposed rule is unreasonable and unworkable:

(1) The proposed rule is not limited to contractors or subcontractors involved in nuclear safety related activities (i.e., those regulated by the NRC under the authority of the Atomic Energy Act to protect public health and safety). As drafted, the proposed rule would apply to all contractors and their subcontractors who provide any goods or services to a licensee. Such an unlimited requirement would affect thousands of companies, just for Part 50 licensees alone;

(2) The proposed rule is not limited to settlement agreements that involve issues related to the identification of nuclear safety concerns. The proposed rule would thus involve dispute settlements under collective bargaining agreements, worker's compensation cases, arbitrations, equal employment opportunity cases -- in fact, the whole range of labor relation contracts, without limit;

(3) The proposed rule is not limited to agreements in which the licensee, or goods and services provided to a licensee, may be involved (e.g., the proposed rule would reach into the contractual relationship that a licensee's contractor might have with any of its non-nuclear suppliers or customers, even if that relationship had nothing to do with the licensee or the goods and services provided to the licensee). The proposed rule also would extend to all contracts entered into by non-nuclear divisions of a licensee or contractor;

(4) The proposed rule would require licensees to interpose themselves in any and all employee agreements that each and every contractor and subcontractor of any tier might make, the vast majority of which are not associated with licensed activities and thus could not involve any questions of nuclear safety;

(5) The proposed rule has the potential of abrogating proprietary information agreements entered into by various companies with their employees or with third parties. As presently drafted, the proposed rule could negate those proprietary agreements which require that certain procedures be undertaken by employees so as to maintain the confidentiality of information with which they have been entrusted;

(6) The proposed rule would even require a contractor who supplies goods and services to more than one licensee to obtain the approval of <u>each</u> licensee with which they do business to any settlement agreement that the contractor or its subcontractor might enter into; and

(7) The proposed rule could be interpreted, albeit improperly, as precluding any kind of settlement, including one involving an NRC licensing proceeding.

The Supplementary Information accompanying the proposed rule states that no substantial costs would be imposed by the proposed rule. This is simply not true, as even the NRC's own analysis demonstrates. In the NRC's notice to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, the NRC provided its estimate of the time required for licensees to establish procedures (1) to ensure that contractors and subcontractors are informed of the prohibition contained in the proposed rule against restrictive clauses in settlement agreements, (2) to require that licensees are notified of any complaints of discrimination brought by an employee of a contractor or a subcontractor, and (3) to review any settlement agreements related to any employee complaints. (The abstract provided in the Federal Register notice (54 Fed. Reg. 30962 - July 25, 1989) regarding the submittal to OMB states that the rule is limited to complaints of discrimination associated with work performed for the licensee or license applicant, yet the proposed rule is not so limited - neither the notice to the Office of Management and Budget nor the proposed rule suggest any limitation on settlement agreements to those involving nuclear safety issues.)

The estimated time to develop the required procedures, which apparently does not include the time required to implement those procedures, was estimated by the NRC at 2.2 hours per NRC licensee; for Part 50 licensees, the annual burden was estimated to be 8 hours per licensee. No information was provided to explain the basis of this estimate, but one utility has determined that it has over 10,500 open nuclear-related procurement contracts in place, and that does not include any subcontractors of those contractors. Developing the procedures required by the NRC's proposed rule, as drafted, for an undertaking of that magnitude would clearly require the expenditure of significant resources. To implement the procedures, once developed, would require a massive expenditure of licensee resources.

Thus, the proposed rule would levy a significant burden on licensees, yet the NRC has concluded that no backfit analysis is required pursuant to 10 C.F.R. § 50.109 "because these amendments do not involve any provisions which would impose backfits as defined in 10 C.F.R. § 50.109(a)(1)." No justification is given for that conclusion. The proposed rule would clearly impose additional procedural requirements resulting solely from adding a new provision to the Commission's rules and that would be a backfit under § 50.109. The proposed rule does not suggest that a backfit analysis is not required under § 50.109(a)(4), as well it should not, because there is no evidence that would substantiate that conclusion. Therefore, in accordance with 10 C.F.R. § 50.109(a)(2), a systematic and documented analysis must be provided that demonstrates that the proposed rule will result in a substantial increase in the overall protection of the public health and safety to be derived from the backfit and that the direct and indirect costs of implementation are justified in view of that increased protection.

The proposed rule -- unlimited as it is to nuclear safety related activities and the identification of nuclear safety concerns, and levying requirements on licensees to police their contractors and subcontractors, ostensibly all the way back to the suppliers of the raw materials used in

any product purchased by the licensee -- sets an impossible task to complete, and the substantial cost of attempting to comply far outweighs any supposed benefit to public health and safety.

Recommendations:

Notwithstanding the serious flaws contained in the proposed rule, the industry does understand and appreciate the NRC's concern that clauses might be contained in Section 210 settlement agreements that could be interpreted by an employee or a former employee to restrict his or her ability to contact the NRC with additional safety concerns. Although we do not believe that a rule is necessary, we believe that the NRC's concern can be addressed in a rulemaking context that is reasonable. In addition to the following specific recommendations, the scope of the proposed rule as written is such that it could be interpreted as precluding any kind of settlement, including one involving NRC licensing proceedings. Accordingly, and consistent with both the language and legislative history of Section 210 of the Energy Reorganization Act, and the Separate Views of Commissioner Roberts (54 Fed. Reg. 30,050), the Commission should state affirmatively in any future action addressing this matter that limited restrictions are acceptable, so long as they do not restrict an individual's freedom in such a way as to preclude him or her from bringing matters pertinent to public health and safety to the attention of the NRC. As the Commission acknowledged in the Federal Register notice, settlements provide remedies to employees which obviate the need for litigation in appropriate circumstances.

First, the NRC should limit the scope of its proposed action to Section 210 settlement agreements. Section 210 complaints are founded on an allegation of a safety concern and resultant discrimination. To broaden the NRC's inquiry into "any agreement affecting the compensation, terms, conditions and privileges of employment," as the proposed rule would do, will dilute the need for attention to the area of major concern and may interpose the NRC inappropriately into areas where Congress has provided jurisdiction to other agencies (e.g., the National Labor Relations Board, the Equal Employment Opportunity Commission).

Second, 10 C.F.R. Part 21, in accordance with Section 206 of the Energy Reorganization Act, imposes obligations upon contractors involved in licensed activities to post certain documents in conspicuous locations and to establish procedures to ensure that the NRC is notified promptly of any licensed activities which could cause a significant safety hazard. Rather than establish an independent obligation on licensees to police contractors involved in licensed activities to accomplish the requirements of Section 210 of the Energy Reorganization Act, the NRC should deal directly with contractors under Section 210 as it currently does under Section 206. Establishing posting and notification requirements concerning the NRC's policy on restrictive clauses in Section 210 settlement agreements directly on contractors, similar to those imposed upon licensees and to those imposed upon contractors under 10 C.F.R. Part 21, would be the most direct and effective manner in which the NRC could achieve its stated goal.

Third, the NRC should review the current practice and, if necessary, revise the current Memorandum of Understanding with the U.S. Department of Labor to ensure that the NRC is notified promptly of any proceedings brought under Section 210 and of the disposition of each of those proceedings so that the NRC can conduct its own investigation regarding the potential impact on public health and safety in order to determine if enforcement action for a violation of NRC regulations can be pursued in a timely fashion. In addition to establishing the procedural interagency exchange of information, the MOU should provide that the U.S. Department of Labor would inform all parties to a Section 210 complaint, and the affected licensee(s) if they are not a party to that complaint, of the Department of Labor's conclusion that clauses in a settlement agreement that restrict a person's perceived ability to raise safety concerns are void as a matter of public policy. (See In the Matter of Lorenzo Mario Polizzi, U.S. Department of Labor Case No. 87-ERA-38). This would, of course, be the most direct way of ensuring that a complainant in a Section 210 proceeding, and the respondent, are directly informed that any settlement agreement that they might subsequently enter into should not contain a restrictive provision with respect to bringing safety concerns to the attention of the NRC. Litigation over jurisdictional authority is not an efficient use of regulatory resources.

Fourth, licensees and license applicants should notify current contractors involved in nuclear-related activities of the NRC's concerns about this matter. With respect to future contracts, licensees could incorporate provisions in contracts associated with nuclear safety related activities to direct contractors to notify all contractor employees of their rights and opportunities to raise safety concerns without fear of retribution and to request that contractors notify their subcontractors in a similar fashion. We would strongly oppose any requirement that licensees renegotiate existing contracts or that contractors be required to renegotiate their existing contracts with subcontractors to add contractual provisions requiring licensee approval of settlement agreements negotiated under Section 210. This requirement is commercially unreasonable and in many contexts may be legally impossible (e.g., a collective bargaining agreement). To levy additional requirements by that means would be unduly burdensome and -- in light of the other notice and enforcement means in place -- would result in at most, an incremental benefit that would not offset the attendant costs.

Fifth, the Commission should establish procedures in connection with any rule of the type contemplated which assure that proprietary information relative to the alleged safety concern will remain confidential until such time as the material is either returned to the owner of the proprietary information or the owner is given an opportunity to establish that the information is entitled to proprietary protection under 10 C.F.R. Section 2.790.

Finally, the NRC should also consider revising Form NRC-3 to include an appropriate provision relating to Section 210 settlement agreements.

Response to Request for Specific Comments:

First, the Commission asked whether the rule should prohibit all restrictions on providing information to the Commission or whether limitations on individuals appearing before a Commission adjudicatory board should be permissible because other avenues for providing information to the Commission are available. We think that the two alternatives stated by the Commission are not the appropriate alternatives. We do not believe any rule should "prohibit all restrictions on providing information to the Commission." There is no basis in the record to demonstrate that any such rule is needed, and such a broad prohibition would affect many rights, including rights to proprietary information, rights of privacy, and other due process rights of licensees and contractors and their employees. Limitations on an individual appearing before a Commission adjudicatory board under certain circumstances is appropriate to maintain a viable adjudicatory process.

Second, the Commission asked for comments on whether the rule should impose an additional requirement that licensees and license applicants must ensure that all agreements affecting employment, including those of their contractors and subcontractors, contain a provision stating that the agreement in no way restricts the employee from providing safety information to the commission. As described above, such a requirement would constitute an unreasonable, unnecessary and undue restriction by the Commission on contractual relationships, many of which are far removed from the nuclear safety concerns. Such a provision is not needed to ensure adequate protection of public health and safety or of a "whistleblower's" freedom to bring safety concerns to the attention of the Commission, and its imposition would be arbitrary and capricious.

Conclusion:

We believe that adoption of the above recommendations will achieve the NRC's aims without imposing an onerous burden on the industry that is not compensated for by an increase in public health and safety. We are prepared to work with the NRC to address its concerns and we would appreciate an opportunity to discuss this matter further with the Commission and NRC Staff at its earliest convenience.

Sincerely,

Joe F. Colvin

JFC/RWB:bb

YANKEE ATOMIC ELECTRIC COMPANY

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(29)

September 19, 1989
FYC 89-015
GLA 89-070

Mr. Samuel J. Chilk
Secretary
United States Nuclear Regulatory Commission
Washington, DC 20555

Attention: Docketing and Service Branch

Subject: Proposed Rule - Preserving the Free Flow of Information to the Commission

Dear Mr. Chilk:

Yankee Atomic Electric Company (YAEC) appreciates the opportunity to comment on the subject proposed rule. YAEC owns and operates a nuclear power plant in Rowe, Massachusetts. Our Nuclear Services Division also provides engineering and licensing services for other nuclear power plants in the Northeast, including Vermont Yankee, Maine Yankee, and Seabrook.

All Yankee companies stress the importance of 10CFR, Part 21, as part of corporate and plant cultures. Safety is paramount. We agree with the Commission that any agreements which restrict the freedom or even the perceived freedom of an employee or former employee to freely and fully communicate with the Commission on matters regarding nuclear safety matters is entirely incongruous with the objectives of Section 210 of the Energy Reorganization Act and 10CFR, Part 21. We further believe however, 10CFR, Parts 19 and 21, are quite clear in their meaning and an additional rule is therefore unnecessary. A new rule might even cloud an issue that seems eminently clear. The recent Department of Labor ruling invalidating any contract inhibiting full participation and disclosure by employees supports the contention that further rules are not needed. If clarification is deemed necessary then, as in the past, a letter from the Executive Director for Operations could achieve that purpose.

The intended new rule, apparently driven by a single instance of misinterpretation, proposes to place an entire new legal obligation on licensees to police conformance by any and all direct and lower tier subcontractors to their own Part 21 obligations. This is, at best, extremely inefficient and, we feel, a waste of licensee resources. It merely creates another obligation on licensees to enforce NRC regulations.

Finally, the determination that a backfit analysis is not required for this proposed rule appears flawed. This is clearly a change to requirements imposed on licensees. Additionally, there is a significant impact on licensees and certainly no commensurate increase in public protection that justifies the costs involved in vigorously implementing the proposed rule. We urge that this proposed action be reconsidered and rejected.

Sincerely yours,

D. W. Edwards

Donald W. Edwards
Director, Industry Affairs

DWE/dhm/0646x

(28)

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CABLE ADDRESS: ATOMLAW

September 18, 1989

Samuel J. Chilk, Secretary
United States Nuclear Regulatory
Commission
Washington, D.C. 20555

Re: Proposed Amendment to 10 C.F.R. §50.7, etc.
Regarding Conditions in Settlement Agreements,
54 Fed. Reg. 30049 (July 18, 1989)

Dear Mr. Chilk:

The Nuclear Regulatory Commission ("Commission" or "NRC") has requested comments on a proposed revision to its rules which would require, inter alia, reactor licensees and applicants to assure that neither they nor their contractors or subcontractors impose, as a condition of any agreement to settle an employee's complaint under Section 210 of the Energy Reorganization Act of 1974, 42 U.S.C. §5851, any provision which would prohibit, restrict or otherwise discourage the employee from voluntarily providing to the NRC information about possible violations of law, NRC regulations, orders and licenses. See 54 Fed. Reg. 30049 (July 18, 1989).

On behalf of itself and its clients, the firm of Conner & Wetterhahn, P.C. recommends that the Commission not adopt the proposed revision for the reasons discussed below. As a practical matter, the proposed revision mainly affects reactor licensees under revised 10 C.F.R. §50.7(f) and our comments bear upon that impact.

From a broader perspective, the proposed amendment must be viewed as part of the Commission's increased efforts to exercise indirect authority over nuclear power plant contractors by imposing new requirements on licensees and levying civil penalties against licensees. In our opinion, this is an unwarranted extension of authority. Section 210 puts contractors and licensees on an equal footing. Licensees and contractors alike are prohibited from acts of discrimination on account of an employee's having engaged in

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protected activity. Both are liable to the employee for damages and other relief before the Secretary of Labor.

Although licensees and contractors are on an equal footing before the Secretary, neither Section 210 nor the Atomic Energy Act of 1954, as amended, 42 U.S.C. §2011 et seq. gives the NRC jurisdiction over the employment actions of contractors as such. Nor does either statute make licensees vicariously liable for the wrongful employment decisions of their contractors. Nothing in the text of the Act, its legislative history or interpretation by any court suggests that a licensee may be held accountable for acts of discrimination by its contractor. Yet, this is the present Staff enforcement policy and the unmistakeable direction of Section 50.7.1/ There is simply no statutory authority for this extension of NRC enforcement policy.

If the Commission believes that discrimination by contractors is a safety problem, it should ask Congress for authority under the Atomic Energy Act to regulate their onsite employment activities directly rather than indirectly through licensees. Unlike a licensee's well-known, non-delegable responsibility for the contractor's work on the plant site under quality assurance requirements,2/ a contractor's employment decisions are its own. Section 210

1/ The NRC Staff has, especially in the last few years, attempted to regulate contractors indirectly by enforcement actions against licensees. Without any stated justification, the NRC Staff has flatly stated that its licensees "will be held responsible in enforcement actions for the discriminatory actions of its contractors." NRC Enforcement Guidelines Manual, 88-01 at 2 n.1 (February 10, 1988).

2/ Under NRC regulations, a licensee "may delegate to others, such as contractors, agents or consultants, the work of establishing and executing the quality assurance program, or any part thereof, but shall retain responsibility therefor." 10 C.F.R. Part 50, App. B(I). There is a vast difference between holding a licensee accountable for a contractor's work, which the licensee can supervise and inspect under its Quality Assurance Program, and holding a licensee accountable for the subjective mental processes of contractors who are illegally motivated against their own employees.

places responsibility for compliance squarely on the shoulders of licensees and contractors alike. We are unaware of any court decision or NRC adjudication which has reached any contrary interpretation of the law.

Even if the proposed amendment did not suffer from this vice of overextension, its adoption has not been justified. The prohibition against discrimination by licensee or contractor employers against their employees under Section 210 has, of course, existed for some 15 years. Literally hundreds of cases filed with the Department of Labor have been settled since that time, thus avoiding the need for hearings before the Secretary of Labor and investigation by the NRC. As the Commission notes in its explanation of the proposed rule, such voluntary resolution should be encouraged.

The proposed rule, however, would make resolution more difficult. First, the revised rule would require contractors to submit private settlements with their own employees to licensees or applicants for review. Although the licensee would presumably review the proposed settlement for one limited purpose, in practice the scope of the review would become blurred. It would only be a matter of time before licensees, at the urging or insistence of NRC enforcement Staff, became involved in the substance of such settlements. And it is only natural that the contractor would be apprehensive about involving the licensee's management and lawyers in drafting an agreement binding on the contractor alone. Further, the requirement for licensee review will delay settlement at the most crucial time - when the momentum to settle is strong.

Second, the proposed rule is so broad ("any provision which would prohibit, restrict, or otherwise discourage, an employee from voluntarily providing to any person within the Commission information about possible violations . . .") as to create problems of interpretation. For example, if the employee voluntarily agrees to forego reinstatement as a quid pro quo for a lump sum back pay award, does the agreement illegally "restrict" or "discourage" the providing of further information the employee might have transmitted had he remained on the job?

If there had been a history of abusive practices by licensees or contractors in settling Section 210 discrimination cases, the Commission's proposal would be understandable. From the background information given, however, it appears that the proposed rule responds to a single settlement in a Section 210 case involving Comanche Peak.

Yet, according to the Commission's own reading of that agreement, it did in fact "allow the individual involved to bring any safety concerns he has directly to the NRC, either on his own behalf or on the behalf of organizations not referenced in the agreement, and to respond to an administrative subpoena if that subpoena is not quashed by the issuing officer."3/

The Commission further stated that the agreement in Comanche Peak "only restricts the individual's right to appear voluntarily as a witness or a party in certain NRC proceedings (and then only on behalf of the organizations and individuals listed in the agreement) and obligates the individual to take 'reasonable' steps to resist a subpoena in such proceedings."4/ On this basis, the Commission flatly stated: "As long as the individual's right to bring matters to the NRC in a reasonably convenient manner is not curtailed, we do not see a violation of federal law or NRC regulation."5/ Accordingly, the "problem" contemplated by the proposed rule has not been shown to exist even in the single case cited.

It should also be borne in mind that the Secretary of Labor has authority to approve or disapprove settlement agreements in Section 210 hearings. The Secretary has stated his commitment to construe Section 210, like similar employee protection statutes, so as to promote safety as well as the reporting of safety violations, "the ultimate goal of the Act."6/ In a recent order dated July 18, 1989, as evidence of that commitment, the Secretary of Labor

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3/ Texas Utilities Electric Company (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-88-12, 28 NRC 605, 612 (1988).

4/ Id. (emphasis in original).

5/ Id. at 612-613. Because a proposed NRC intervenor challenged the validity of this agreement in a separate Department of Labor proceeding, the Commission later clarified that it was not making any definitive statement of the agreement's "acceptability or legality." Comanche Peak, CLI-89-6, 29 NRC 348, 355 (1989).

6/ Mackowiack v. University Nuclear Systems, Inc., Case No. 82-ERA-8 (April 29, 1983) (slip op. at 10).

rejected as against public policy, part of a settlement agreement which prohibited the complainant from providing information or assisting or cooperating with the Department of Labor or other agencies.7/ Thus, the Secretary would be receptive to the NRC's position, as communicated in the past.8/

We concur in the views of Commissioner Roberts that the proposed rule imposes broad, unnecessary restrictions on employers' options in negotiating settlement agreements and constitutes governmental interference in the contractual relations between licensees and their contractors. Years of experience demonstrate no need for such intrusive provisions. Requiring contractors to report each Section 210 claim to the licensee and requiring the licensee to become immersed in the settling of such claims will only inhibit voluntary resolution of those cases and impose yet further regulatory burdens -- another tier of legal review and recordkeeping -- upon licensees.

Moreover, the Commission has already dealt with any concern supposedly redressed by the proposed rule. By letter dated April 27, 1989 from the Executive Director for Operations, the NRC required each licensee to review all settlements by either itself or its contractors to ensure that restrictive clauses have not been included. The NRC instructed licensees to report any restrictive clauses so identified to the NRC no later than July 31, 1989. Given the timing of this rulemaking, we do not know whether any evidence of a real problem has surfaced. But even if the responses to the NRC show a problem, it should be resolved

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7/ NRC Weekly Information Report (Enclosure A) (August 2, 1989).

8/ Such an inter-agency communication was used, for example, to express the NRC's view that reinstatement ordered by the Secretary in Section 210 cases should not override nuclear plant security clearance procedures imposed by the NRC. See Letter from NRC Chairman Lando W. Zech, Jr. to Secretary of Labor William E. Brock, III (January 20, 1987), re James E. Wells, Jr. v. Kansas Gas & Electric Company, Case No. 85-ERA-0022.

in the simplest way possible by reminding licensees of their responsibility to avoid such provisions and coordinating NRC policy with the Secretary of Labor.

Sincerely,

Robert M. Rader

Robert M. Rader

DOCKET NUMBER
PROPOSED RULE PR 30,40,50,60,70,72,150
(54 FR 30049)

Corder to Breaux, 9/14/89

(27)

My specific comments to the NRC requests on the "Proposed Rule" Issues 1 and 2 are:

ISSUE NO.1 The "Proposed Rule" should have no restrictions on individuals providing any information to the Commission. As long as there are any restrictions and individuals can or can not be confused/aware of 'other avenues' the Commission is going to be manipulated by Commission Licensees, license applicants, and their contractors or subcontractors. Any Commission adjudicatory board that finds it's self confronted by the nuclear industry management resorces, is going to continue to be concerned about subpoena(s) maneuvers/strategy, unles the "Rule" applies to all equally.

ISSUE NO.2 The answer to issue no. 2 is:: yes; impose an (the) additional requirements. By now the NRC does not need to ask that question - it needs to get involved in all regulation numbered parts.

My Comments in General on the "Proposed Rule" are:

GENERAL COMMENT NO. 1 If the NRC really wants to prevent a "chilling effect on communications about nuclear safety matters", then have the Commission licensees and license applicants and their contractors or subcontractors impose full and candid disclosure to each employee the Rule of Preserving the Free Flow of Information to the Commission in a manditory training program - with both instructors and employees signing for verification of the understanding of the "Rule". This 'ol NRC "Commission license shall assure ..... and bla bla" is no longer functional. The NRC has to began to utilize both the industry management and worker resourses, and get out there and 'check it out'.

General Comment No. 2 The NRC needs to get away from it's "any avenues of Access to the NRC". What is wrong with just the plain up-front truth - everyone is really responsible for the safety of the plant - that is the RULE. The problem is not that just some whistleblower cares about plant safety/cost, and pays a dear price for a courage that C E C's lack - its the fact that nuclear plants can remain unsafe and all employees can not suffer the same price because of retalliation

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DOCKET NUMBER
PROPOSED RULE PR 30,40,50,60,70,72,150
(54FR30049)

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

OFFICE OF THE
SECRETARY

September 20, 1989

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SECY-NRC

MEMORANDUM FOR: The Record

FROM: Emile Julian, Branch Chief
Docketing & Service, SECY

SUBJECT: JOHN CORDER'S COMMENT ON 53FR30049

John Corder submitted comments on a proposed rule in a letter of September 14, 1989, addressed to Senator John Breaux. The comments on "Preserving the Free Flow of Information to the Commission" from that letter are attached.

General Comment No. 3 I have worked under the AEC and NRC Rules and now it is time to reorganize. Why? The NRC just is not getting the safety assurance job done. We in the field think the NRC is a joke. How many whistleblowers, 3-mi. Islands and nuclear defense plants mismanagement/errors does it take to realize that the NRC has to go? Anyone want to hear of my NRC experiences? The NRC has so many sore spots that more band aids will not help any lame duck.

General Comment No. 4 When the NRC is reorganized, let OSHA be a viable safety and functional part of the regulatory Program. OSHA is sitting on the sideline with the experience and we need their fresh troops. As it is now, OSHA has to be invited on to the project. Guess how many requests OSHA has received for assistance last year? How about the last five (5) years? The public deserves better. The workers do too.

General Comment No. 5 The (new) NRC should seek public involvement in the nuclear plants. All the answers are fifteen (15) to twenty (20) years old now. What about the new generation of nuclear power plants - any questions? After all, isn't the name of the industry "Public Utility"? I have a bunch of good questions.

General Comment No. 6 I believe that the NRC has determined that a Backfit Analysis would expose too much. Would they find out that the agency has not been listening to the worker's whistles? Would the Chairman find out that more staff was needed years ago, or is the "if you (utilities) do good we do good" still a cop-out? Would it mean that hundreds of workers deserve compensation, restoration of pride and a chanch to build America the Great, again? I say Backfit.

In conclusion, I pray with all my heart that truth, safety and employment shall not be jepcrdized by:

FRIENDS IN HIGH PLACES

EMINENT POSITION STATUS

INVESTMENT/PROFIT PRIORITIES

May God bless you for seeking the truth.

Respectfully submitted,

John A. Corder

Distb: Att.

(26)

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(54FR30049)

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September 18, 1989

Mr. Samuel J. Chilk
Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
Attn: Docketing and Service Branch

RE: Notice of Proposed Rulemaking: "Preserving the Free Flow of Information to the Commission," 54 Fed. Reg. 30049

Dear Mr. Chilk:

Duke Power Company hereby submits the following comments on the proposed regulation in the above-captioned notice. Duke would note at the outset that it supports the objective of the Commission's proposed rule, which is to assure that contracts, whether arising from cases under Section 210 of the Energy Reorganization Act or otherwise, do not hinder an employee from "full and complete disclosure to the Nuclear Regulatory Commission about nuclear safety matters". See 54 Fed. Reg. 30049. Duke does believe, however, that if promulgated the rule should be crafted to support not only the Commission's goal of full and open access, but also the public policy that encourages settlement agreements as a means of ensuring an end to litigation. We therefore provide the following comments:1/

Duke supports the concept of full and timely disclosure to the Commission of safety concerns. By the same token, Duke underscores the Commission's point that public policy favors settlements, since they "provide remedies to employees without the need for litigation." 54 Fed. Reg. 30049. Both of these important concepts should be served by any rule promulgated by the Commission on the free flow of information.

As a practical matter, settlement agreements are not attractive to the respondent in a Section 210 case if they cannot ensure some degree of finality. Employers entering Section 210 settlement agreements have a legitimate interest in ensuring that the case they are settling is indeed over. Thus, employers have a valid interest in obtaining some guarantee that an employee, having once reported nuclear safety concerns to the Commission, and having based a Section 210 action before the Department of Labor on that activity, does not continue to raise those same concerns either before NRC or the Department of Labor, or indeed in other forums. This is particularly

1/ NUMARC has advanced reasons as to why the proposed rule is not necessary, in addition to suggesting ways in which a rule on this subject could be crafted to address its concerns. We offer these comments in the event a rule is promulgated.

OCT 6 1989
Acknowledged by card.

true where the NRC has conducted an investigation of the safety concerns raised by the employee, or former employee, and that individual has participated in or been made aware of the investigation and its results, though certainly any settlement agreement reached prior to completion of the NRC's investigation should provide that the employee or former employee be permitted to participate in the NRC's investigation/resolution of the matter. Accordingly, a settlement agreement should be able to limit further airing of an issue that has already been raised in the said prescribed circumstances.

Thus, if a rule is promulgated, Duke believes that a balance would be fairly struck, and the free flow of safety information to the Commission preserved, if an employer may bargain with an employee to ensure that, once a safety concern has been brought to the Commission's attention, consistent with factors outlined above, the same concern is not utilized by the employee to multiply litigation vexatiously.

In sum, in answer to the Commission's question as to whether a rule should prohibit <u>all</u> restrictions on providing information to the Commission, or whether some restrictions might be appropriate, 54 Fed. Reg. 30050, Duke believes that a rule should allow the limited restrictions discussed above. In this way, any rule promulgated would support the Commission's goal of free and open access, without undermining the desirability of settlement agreements.

Sincerely yours,

Albert V. Carr, Jr.
Associate General Counsel

AVC/sjr

(25)

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JAY E. SILBERG, P.C.

September 18, 1989

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

Attention: Docketing & Service Branch

Re: Proposed Rule - Preserving the
Free Flow of Information to the Commission

Dear Sir:

The Nuclear Regulatory Commission ("NRC") recently published, at 54 Fed. Reg. 30049 (July 18, 1989), notice of a proposed rule which would require licensees and license applicants to ensure that neither they, nor their contractors or subcontractors, impose conditions in settlement agreements under section 210 of the Energy Reorganization Act, or in other agreements affecting employment, that would prohibit, restrict, or otherwise discourage an employee from providing the Commission with information on potential safety violations.

As counsel for Wisconsin Electric Power Company, we are pleased to provide the following comments for the NRC's consideration.

I. Summary

Wisconsin Electric is fully committed to ensuring that every individual involved in the operation of its operating nuclear power reactors understands his rights and responsibilities to promptly report any safety concerns. The company has diligently worked to create an atmosphere which encourages all employees to freely communicate and to pursue those concerns to satisfactory resolution. Wisconsin Electric does not tolerate acts of intimidation or harassment or threats against those who report safety concerns.

As more fully described below, we believe that there is no compelling need for this rule-making. The current regulatory framework provided by the Energy Reorganization Act, together with existing NRC Rules and Regulations, is more than adequate to

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ensure that employees and former employees feel free to bring safety concerns to the NRC. The Department of Labor has already announced that it will not accept any settlement agreement in a section 210 proceeding which restricts access by government agencies to information of the kind that the proposed rule would cover. In any egregious cases, existing federal criminal law would most likely apply. Existing NRC regulations assure that individuals are aware of their rights to communicate safety concerns to NRC. Because of these laws, policies and programs, the current situation works. The NRC points to only one case of arguable relevance as a basis for this rule. This single case does not provide a reasonable basis for the proposed rule in light of the high cost and scope of the effort which would result from the rule.

Finally, the proposed rule is vague and overbroad. It could be construed to prohibit any settlement agreements concerning employment litigation -- a situation which contravenes public policy and the NRC's own policy.

II. The Proposed Rule is Not Needed

Section 210 of the Energy Reorganization Act of 1974, as amended, and the NRC's regulations promulgated to implement that section (10 CFR § 50.7) prohibit discrimination against any employee for engaging in certain protected activities. Those activities include:

- providing NRC information on possible violations of requirements under the Atomic Energy Act or the Energy Reorganization Act;
- requesting the NRC initiate action against the employee for the administration or enforcement of these requirements;
- testifying in any Commission proceeding.

Any employee who believes that there has been such discrimination may seek a remedy before the Department of Labor. The remedy may include reinstatement, back pay and compensatory damages. Such discrimination may also be grounds for NRC enforcement action (including civil penalties and license revocation or suspension) against the employers.

The NRC bases the proposed rule on its expressed concern that in the settlement of Section 210 proceedings before the Department of Labor, the potential exists for "restrict[ing] the freedom of an employee or former employee who is subject to its provisions, to freely and fully communicate with the Nuclear Regulatory Commission about nuclear safety matters." 54 Fed. Reg. 30049.

In support of this concern, the NRC cites a single case involving a worker at the Comanche Peak Steam Electric Station as its basis for this proposed rule. A single case of at least arguable relevance[1/] would not appear to constitute a reasonable basis for a rulemaking of this magnitude. The Commission's December 12, 1988 decision specifically discussing the settlement agreement involved in this one case, construed the agreement to allow the former employee to bring his safety concerns directly to the NRC, and stated that "[a]s long as the individual's right to bring matters to the NRC in a reasonably convenient manner is not curtailed, we do not see a violation of federal law or NRC regulation." Texas Util. Elec. Co. (Comanche Peak Steam Electric Station, Units 1 and 2) CLI-88-12, 28 N.R.C. at 612-13.[2/]

The Department of Labor has already taken the position that it will not approve settlement agreements with the types of provisions of which the NRC seems to disapprove. In Polizzi v. Gibbs & Hill, Case No. 87-ERA-38, Secretary's Order Rejecting in Part and Approving in Part Settlement Submitted by the Parties and Dismissing Case, issued July 18, 1989, the Secretary restated the Department's holding that a Section 210 case cannot be dismissed without a finding by the Secretary that the settlement is fair, adequate and reasonable. The Order reviewed a settlement agreement and determined that one of its provisions was unenforceable as against public policy. That provision would have prohibited the complainant from voluntarily testifying in NRC proceedings involving the particular nuclear plant at which he had worked. The Department is therefore already reviewing all

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1/ In fact, the former employee had numerous opportunities, prior to entering into the settlement agreement, to identify all of his safety concerns to the NRC.

2/ On April 20, 1989 the Commission withdrew any comment on this particular settlement agreement because the settlement agreement was the subject of a pending Department of Labor case. Texas Util. Elec. Co., (Comanche Peak Steam Electric Station, Units 1 and 2) CLI-89-06, 29 NRC 348, 355 (1989).

§ 210 settlement agreements to assure that they do not include the types of clauses that concern the NRC and is voiding such clauses when they are found.

There also exists a comprehensive set of criminal statutes which could well apply to any egregious attempts to corruptly influence a person's testimony before a federal agency, corruptly persuade a person not to testify or to delay or prevent his testimony, or corruptly obstruct a pending agency proceeding. See, e.g. 18 U.S.C. §§ 201, 1505, 1512.

In addition, requirements on reporting of safety concerns to NRC are already an integral part of existing NRC regulations, for example, 10 CFR Parts 19 and 21. NRC Form 3, which NRC regulations require to be posted in all NRC-licensed facilities, reminds employees that they can confidentially report safety-related problems to NRC. So too does Part 21. 10 CFR § 21.2, n. 1. The Commission even invites collect telephone calls for this purpose. Id.

Finally, the April 27, 1989 letters sent by the Executive Director of Operations to all nuclear power plant licensees (and apparently many other entities involved in the nuclear power industry) have made the NRC's position crystal clear. Since the NRC published the proposed rule before the responses to the April 27 letter were due, the proposed rule cannot be based on any sense that a real problem exists. Nor has the Commission made any attempt to determine whether the letter's explicit announcement of NRC's position would not be sufficient to correct the potential problem which the proposed rule seeks to solve.

For all of these reasons, we respectfully submit that the proposed rule is not needed, at least not at the present time.

III. The Rule Is Unreasonably Broad and Unreasonably Vague

The proposed role is broad beyond all reasonable bounds. It is also sufficiently vague that it would be impossible for anyone subject to it to know whether or not they were in compliance.

a. The proposed rule requires that NRC licensees "assure" that their contractors and subcontractors do not impose the types of conditions that would be prohibited, that licensees adopt procedures that "assure" that their contractors and subcontractors are informed of the

rule's prohibition, and that licensees "assure" that they are informed by their contractors and subcontractors. It is unreasonable to require licensees to provide assurance with respect to contractors and subcontractors. This type of guarantee over third party behavior sets an impossibly restrictive standard.

b. The proposed rule applies to contractors and subcontractors of NRC licensees, whether or not the scope of the contract or subcontract has anything to do with the NRC-licensed activity. Thus, every contractor of a utility, and every contractor's contractor, becomes subject to the regulation, even if they perform no safety-related work. The unreasonable breadth of the rule can be appreciated if one postulates a multibillion dollar company whose only connection with NRC is a single radioactive source licensed under 10 CFR Part 30. Under the proposed rule, the company would have to apply the requirements of proposed subpart (g)(1) to every contractor and every subcontractor, notwithstanding the total lack of connection to nuclear safety.

c. The prohibition against any condition that would "prohibit, restrict or otherwise discourage" an employee from voluntarily providing information to the NRC is so vague that it would be impossible to determine what terms and conditions could be in violation. For example, would NRC consider that a licensee's requirements to protect trade secrets, Safeguards Information, proprietary information, etc. might "otherwise discourage" an employee from voluntarily providing information to NRC?[3/] Would NRC consider guidance to an employee that communications outside the company normally go through administrative channels to "otherwise discourage" the

---

3/ The Commission's regulations concerning the protection of Safeguards Information prohibit any person from providing access to such information unless the recipient has "an established 'need to know.'" 10 CFR § 73.21(c)(1). The "established 'need to know'" requirement applies even if the recipient is an NRC employee. See 10 CFR § 73.21(c)(1)(i). It is not inconceivable that someone could argue that a licensee's procedure restating the "established 'need to know'" requirement would "otherwise discourage" an employee from providing information to the NRC.

employee from voluntary providing information to "any person within the Commission?"

d. The scope of the rule extends far beyond settlement agreements in Section 210 proceedings. It reaches each contract for employment and each collective bargaining agreement. It could even be construed to reach every contract for goods and services that contains a provision relating in any way to "compensation, terms, conditions and privileges of employment." The proposed rule requires no connection whatsoever with nuclear safety or NRC-licensed facilities.

e. The proposed rule's failure to define the terms "contractor" and "subcontractor" leaves open for question the scope of the proposed rule's coverage. Is a contractor any person with whom the licensee enters into a contract? If so, does that mean that the proposed rule reaches every organization for whom the licensee purchases any good or services? Does it cover every procurement? If, for example, a licensee buys a light bulb from General Electric, must he then "assure" that General Electric does not "impose, as a condition of any agreement affecting the compensation, terms, conditions and privileges of employment . . . any provision that would . . . otherwise discourage an employee from voluntarily providing to any person within the Commission information about possible violations of" NRC requirements?

f. The proposed rule would create confusion and complexity by apparently requiring that contractors performing safety-related work for multiple licensees submit to all the licensees for "prior review" any Section 210 settlement agreement. For example, a nuclear steam supply system vendor or an architect-engineering firm under the literal words of the proposed rule would seemingly have to provide to each licensee for whom it performs work any Section 210 settlement agreement for prior review, even if the underlying section 210

complaint was unrelated to work performed for the licensee.[4]

g. Notwithstanding the NRC's statement that it "supports settlements as they provide remedies to employees without the need for litigation," 54 Fed. Reg. at 30049, the effect of the proposed rule will be to create a strong disincentive to settlements. It could well be argued that any agreement which settles an action between an employee and his employer will "discourage" the employee from bringing safety complaints to the NRC because the employee no longer has any self-interested motive to do so. An employee who has been compensated (or otherwise satisfied) in exchange for dropping a claim against his employer will naturally be less likely to pursue complaints against his employer through the NRC. Accordingly, the proposed rule could be interpreted to prohibit virtually all settlement agreements of employment disputes.[5]

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[4] Although proposed subsection (g)(2)(ii) limits a contractor or subcontractor's obligation to inform licensees and applicants of section 210 complaints to those complaints "related to work performed for the licensee or license applicant," the prior review requirement in proposed subsection (g)(2)(iii) contains no such limit. The latter section applies to "settlement agreements negotiated under section 210 of the Energy Reorganization Act of 1974 by [the licensee/license applicant's] contractors and subcontractors," without the restriction in subsection (g)(2)(ii) that the work be performed for the licensee/applicant.

[5] The published NRC comments also indicate that the "discourage" language could be read broadly. The NRC states, "the proposed rule applies to all provisions which might discourage an employee from providing safety information ..." 54 Fed. Reg. 30049. 30050 (emphasis added). The NRC further states that it intends "to prohibit provisions in these agreements that in any way restrict the flow of information to the Commission, the Commission's adjudicatory boards, or the NRC staff." Id. at 30050 (emphasis added).

IV. Conclusion

For all these reasons, Wisconsin Electric respectfully submits that the proposed rule is both unneeded and unwise.

Very truly yours,

Jay E. Silberg
Counsel to Wisconsin
Electric Power Company

s/121jes5429.89

(24)

STATE OF ILLINOIS
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TERRY R. LASH
DIRECTOR

September 18, 1989

The Secretary of the Commission
Attn: Docketing and Service Branch
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Re: Proposed Rule - Preserving the Free Flow of Information to the Commission. (54 Fed. Reg. 30049-30051; July 18, 1989.)

The Illinois Department of Nuclear Safety (IDNS) hereby submits its comments on the above-identified proposed rule concerning the free flow of information to the U.S. Nuclear Regulatory Commission (NRC). The Illinois Department of Nuclear Safety is the lead agency in Illinois for preparing emergency plans for, and in cooperation with the Illinois Emergency Services and Disaster Agency (IESDA), coordinating emergency responses to accidents at nuclear power plants in Illinois.

The IDNS staff has reviewed the proposed rule and support the imposition of the rule in the strictest sense. Any agreement, contract or arrangement that would inhibit or discourage an individual from taking valid safety concerns to the NRC should be totally prohibited. The only reason for such an arrangement would be to conceal information about questionable safety-related work at nuclear power plants. Such pay-for-silence arrangements are clearly not in the best interests of the public.

A contractor employee should also be able to get safety-related questions satisfactorily resolved by his employer or the licensee. If not, then a clear, direct and unfettered line of communication must remain open to the regulatory authority. Anything that interferes with this process should be prohibited. IDNS also supports the proposal that licensees and contractors have provisions in their employment agreements that provide the right for employees to provide safety information to the NRC without fear of punitive actions.

As the State agency charged with protecting the radiological health of the citizens of Illinois, any action that increases the margins of safety at a nuclear facility, or contributes to preventing an accident, is strongly supported. The proposed rule can contribute to achieving both of these goals.

Sincerely,

Terry R. Lash
Director

TRL:slg

U.S. NUCLEAR REGULATORY COMMISSION
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Stephen B. Bram
Vice President

(23)

Consolidated Edison Company of New York, Inc.
Indian Point Station
Broadway & Bleakley Avenue
Buchanan, NY 10511
Telephone (914) 737-8116

September 18, 1989

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

Attention: Docketing and Service Branch

Re: Proposed Rule: Preserving the Free Flow of Information to the Commission (54 Fed. Reg. 30049, July 16, 1989)

Dear Sir:

Consolidated Edison Company of New York, Inc. ("Con Edison"), as owner and operator of Indian Point Unit No. 2, is pleased to submit the following comments on the Commission's proposed rule. While Con Edison supports Commission efforts to ensure the full and timely disclosure of possible safety concerns at licensed facilities, we believe that the proposed rule, as drafted, is too broad to accomplish its stated purpose. Moreover, were the NRC to require affirmative statements in all licensee employment and collective bargaining agreements informing employees that they are not prohibited from bringing safety concerns to the Commission, we believe that the Commission would exceed the scope of its statutory authority and improperly interfere with licensee employment policies.

1. The proposed rule is excessively broad.

The proposed rule would apply to "[a]ny agreement affecting the compensation, terms, conditions, and privileges of employment . . . . " See, e.g., 54 Fed. Reg. 30052. Con Edison believes that this provision is too broad, duplicative of existing NRC requirements, and unnecessarily burdensome on licensees without any concomitant, substantial benefit to public health and safety. For example, many types of employment agreements, such as contracts of hire and collective bargaining agreements, have never had reason to include provisions regarding the parties' ability to

report safety concerns to a third party, since there have existed adequate statutory and regulatory safeguards against restrictions on the free flow of information. See 10 C.F.R. § 50.7; 10 C.F.R. Part 19; 10 C.F.R. Part 21. These safeguards also make application of the proposed rule to settlement agreements under section 210 of the Energy Reorganization Act unnecessary.

Moreover, the proposed rule's requirement that licensees ensure that contractor and subcontractor employment agreements permit the free flow of safety concerns to the Commission would necessitate licensee review of all proposed contractor and subcontractor agreements with their consultants and employees, a hopelessly burdensome and virtually impossible task for licensees that employ large numbers of contractors and subcontractors.

The Commission has proposed to justify application of such a sweeping rule by stating that a flat ban on any provisions restricting access to the Commission would avoid any uncertainty or conflict regarding the interpretation of specific contractual provisions. However, we believe that this problem could be best resolved by the development of specific channels of communication and rules prohibiting interference with these channels.

2. The proposed rule would improperly interfere with existing licensee employment agreements.

The proposed rule would also result in extensive and unwarranted governmental involvement in the private employment contracts of licensees and their contractors. There should generally be a presumption that private parties are free to contract as to reasonable terms of employment, with imposition of prescriptive governmental requirements carrying a heavy burden of justification. The adoption of a rule providing specific channels of communication as an alternative to intrusion into employment contractual relationships would preserve the Commission's ability to freely receive information regarding nuclear safety while limiting the government's interference into the employee/employer relationship.

An employer should also have the right to be sure that once a section 210 complainant has settled with his or her employer and a particular safety issue

has been brought to the Commission's attention, the employee can be restricted from again raising the same assertion against the employer in some other context or forum. An employer should also have the right to ensure that there will be no attempt at improper utilization of the information by a settling employee.

Conclusion

For the foregoing reasons, Con Edison believes that the proposed rule is unnecessary, unduly burdensome on licensees and their contractors, and without substantial benefit to the public health and safety. The purposes and objectives underlying the Commission's proposal can be fully satisfied by regulations assuring unimpeded access to Commission officials by licensee employees, without direct intrusion in employee/employer contractual relationships. Con Edison additionally endorses the comments of the Nuclear Management and Resources Council submitted in response to the Commission's proposal. Con Edison appreciates the opportunity to comment on this matter and reiterates its previously expressed willingness to work with NRC staff to ensure the continued free flow of information to the Commission.

Respectfully submitted,

(22)

PHILADELPHIA ELECTRIC COMPANY

NUCLEAR GROUP HEADQUARTERS

955-65 CHESTERBROOK BLVD.

WAYNE, PA 19087-5691

(215) 640-6000

September 18, 1989

Mr. Samuel J. Chilk
Secretary of the Commission
U.S. Nuclear Regulatory Commission
Attn: Docketing and Service Branch
Washington, DC 20555

SUBJECT: Comments Concerning the Nuclear Regulatory Commission Proposed Rule, 10 CFR 30, 40, 50, 60, 70, 72 and 150 "Preserving the Free Flow of Information to the Commission" (59 FR 30049)

Dear Mr. Chilk:

This letter is being submitted in response to the Nuclear Regulatory Commission's (NRC's) request for comments regarding the the Proposed Rule 10 CFR 30, 40, 50, 60, 70, 72, and 150, "Preserving the Free Flow of Information to the Commission," published in the Federal Register (54 FR 30049, dated July 18, 1989).

The Philadelphia Electric Company (PECo) appreciates the opportunity to comment on this proposed rule. PECo does not agree that this proposed rule is needed, and therefore, recommends that the NRC reconsider its promulgation as a final rule. We are of the opinion that the current statutory and regulatory requirements provide the necessary methods to ensure that safety concerns, as well as discriminatory concerns, are brought to the attention of the licensee or the NRC. We endorse the Nuclear Management and Resources Council (NUMARC) position and comments regarding this proposed rule. Also, we agree and support the "Separate Views of Commissioner Roberts" as stated on page 30050 of the proposed rule. We concur with his statement that, "...the proposed rule constitutes government interference in the contractual relations between licensees and their contractors that is not needed to assure adequate protection of public health and safety or of whistleblowers' freedom to bring their safety concerns to the NRC."

In addition, we would like to offer the following comments for the NRC's consideration that substantiate our position regarding this proposed rule.

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The proposed rule identifies three (3) items which would require the licensees to implement procedures to ensure compliance with the requirements of this proposed rule. In particular, one of these items would require that the licensee review all settlement agreements between licensee contractors/subcontractors and their employees to assure that no provisions exist that would restrict an employee from providing information to the NRC. To perform this review function, the licensee could become involved in reviewing details of employer-employee relationships which could be considered confidential in nature. In addition, we estimate that a significant expenditure of manhours and costs could be incurred if a licensee is required to meet the above requirements for purchase orders and contracts within the scope of all the affected CFR Parts. This is contrary to the statement on page 30050 of the proposed rule; "The rule, as proposed, will not impose any substantial costs on licensees or license applicants."

If the NRC proceeds with promulgation as a final rule, there may be considerable difficulty in imposing these procedural requirements on our contractors and in turn on their subcontractors within the 60 day time period as specified in the proposed rule. Virtually all nuclear quality assured purchase orders and contracts invoke 10 CFR 50 requirements, and therefore would need the appropriate language (i.e., imposition of procedural requirements) included in these quality documents. The only mechanism available to us to assure compliance with this proposed rule would be to amend our contracts with contractors to incorporate the substantive procedural requirements which are stipulated by this proposed rule. In the case of subcontractors, our contractors would be required to impose these new procedural requirements on each subcontractor. This process could take significantly longer than the specified 60 days to complete to ensure compliance.

If you have any questions regarding this matter, please do not hesitate to contact us.

Very truly yours,

R. M. Kacich for

G. A. Hunger, Jr.
Director
Licensing Section
Nuclear Support Division

New Hampshire
Yankee

21

NYN-89112

September 15, 1989

Secretary, United States Nuclear Regulatory Commission
Washington, DC 20555

Attention: Docketing and Service Branch

Subject: Comments on Proposed Rulemaking; Preserving the Free Flow of Information to the Commission (54FR30049)

Gentlemen:

New Hampshire Yankee (NHY) appreciates the opportunity to comment on the subject proposed rulemaking. NHY fully encourages employee reporting of information concerning nuclear safety at Seabrook Station through its Employee Allegation Resolution (EAR) Program.

NHY supports the position and recommendations regarding this proposed rule which are included in the comment letter submitted by the Nuclear Utility Management and Resources Council (NUMARC). NHY believes that the proposed rule is not necessary to address the NRC's concerns regarding restrictive conditions included in employee discrimination case settlement agreements filed pursuant to Section 210 (of the Energy Reorganization Act of 1974 as amended). Existing regulations and statutes, particularly 10CFR50.7 which implements Section 210, 10CFR19 and 10CFR21, provide for a free flow of information concerning nuclear safety to the NRC and the licensee.

The utility responses to the April 27, 1989, letter from the NRC Executive Director for Operations which were required to be submitted by July 31, 1989, should be fully evaluated by the NRC to determine the extent of the concern prior to proceeding with any rulemaking. NHY believes that if the NRC determines that rulemaking must proceed, the NUMARC recommendations would provide the basis for a rule which is reasonable.

Very truly yours,

Ted C. Feigenbaum
Senior Vice President
and Chief Operating Officer

(20)

Mayo Clinic

Rochester, Minnesota 55905 Telephone 507 284-2511

Jill Smith Beed
Legal Counsel

September 15, 1989

Secretary
U. S. Nuclear Regulatory Commission
Washington, D.C. 20055

Attention: Docketing and Service Branch

RE: Proposed amendments to 10 C.F.R. Part 30, 40, 50, 60, 70, 72 and 150

I am writing to express concerns about the proposed rules requiring licensees and license applicants to ensure that neither they, nor their contractors or subcontractors impose conditions in any agreement affecting employment that would prohibit, restrict or otherwise discourage employees from providing information to the Nuclear Regulatory Commission about possible safety violations. It will be very difficult for licensees to monitor the employment practices of their contractors and subcontractors. Requiring the licensee to review agreements between contractors and subcontractors and their employees would be extremely difficult and would be an intrusion into the personnel practices of the contractors and subcontractors. In addition, the licensee is in a position to exert some control over its contractor but not the subcontractors. Any requirements for controlling the subcontractor should be borne by the contractor. Finally, in many instances this review will be unnecessary as many of these contractors and subcontractors will also be licensees themselves.

Instead of requiring licensees to monitor their contractors and subcontractors, the rules concerning employee protection from employment discrimination contained in section 19.20 could be expanded to insure protection of employees who voluntarily report possible violations. If the Commission does, however, choose to promulgate these rules, we would suggest that they be limited in the following ways:

1. The contractors and subcontractors for which this applies should be narrowly defined as subcontractors and contractors under the licensed function and not all contractors and subcontractors of the licensee. A large

Mayo Clinic
Rochester, Minnesota 55905
LEGAL DEPARTMENT

corporation may have multiple contractors and subcontractors, many of whom have nothing to do with their license under the Nuclear Regulatory Commission. The licensee should not have to notify these contractors and subcontractors.

2. The requirements should not apply to contractors and subcontractors who also are licensees as they will already fall within this rule.

3. The licensee's obligation should be limited to notifying the contractor of the requirements of paragraph (g) (1).

Thank you very much for considering these suggestions.

Very truly yours,

Jill Smith Beed

Jill Smith Beed

JSB:dd

(19)

MARSHALL UNIVERSITY
UNIVERSITY RADIATION SAFETY OFFICE
400 Hal Greer Boulevard
Huntington, West Virginia 25755-2505
304/696-6755

September 15, 1989

Secretary
US Nuclear Regulatory Commission
Attn: Docketing and Service Branch
Washington, DC 20555

Dear Sir/Madam

SUBJECT: Public Comment on Proposed Rule "Preserving the Free Flow of Information to the Commission"

We received your notice of the proposed rule named above, on August 7, 1989. Concerning the free flow of information, we agree the Commission must guarantee the employee's right to testify without punishment or discrimination, but we tend to support the view of Commissioner Roberts that the proposed rule too broad and infringes into labor areas which do not involve radiation safety.

Requiring radiation safety involvement with every contractor and subcontractor who may work for a licensee is not necessary, and will not benefit the public health and safety. Most contractors will never even see a restricted area while working for a licensee whose principal business does not involve the production or large scale use of byproduct material. NRC visibility may not serve the public interest, and may increase the public anxiety toward radiation in general.

The rule needlessly involves radiation safety programs in contract matters, and diverts valuable man-hours from more important pursuits. Applying the rule to all licensees equally could cause small programs to suffer disproportionately from the loss of their safety personnel as they work out the details of compliance. The rule may decrease public safety during this time period.

The Commission's position on free flow of information is already clearly stated on NRC Form 3, which is posted by law near each restricted area. If the Commission feels that further elaboration of its position is necessary, this form should be revised to reflect its views. This change could accomplish the desired result without significantly adding to the burden of compliance by licensees.

Thank you for considering these comments on the proposed policy. We hope that they may be used constructively in your final rule.

Sincerely

Richard P. Petit, Jr.

Richard P. Petit, Jr.

RPP/jw

pc: Dr. Thomas J. Manakkil

RE: 89143-N

(18)

SEQUOYAH FUELS CORPORATION

September 13, 1989

Certified Mail
Return Receipt Requested

Secretary
U.S. NUCLEAR REGULATORY COMMISSION
Washington, D.C. 20555

Attn: Docketing and Service Branch

RE: Proposed Rule - Preserving the Free Flow of Information to the Commission
54 Federal Register 30049 (July 18, 1989)

Dear Sir:

These comments are submitted by Sequoyah Fuels Corporation (SFC) in response to the request of the U.S. Nuclear Regulatory Commission (NRC) for comments on the proposed rule entitled "Preserving the Free Flow of Information to the Commission." SFC operates the Sequoyah Facility, an NRC-licensed uranium conversion operation in Gore, Oklahoma.

SFC fully concurs with the separate views expressed by Commissioner Roberts, as published in the Federal Register. Furthermore, SFC believes that NRC exceeds its authority under the Atomic Energy Act when it proposes to force licensees to act as agents in conducting what amounts to legal reviews of third party contracts to enforce the proposed rule. SFC is not clear as to what level of "assurance" the NRC wants; SFC believes that the requirements, as stated in g (1) and (2) of the proposed rule, place an unreasonable burden on the licensee.

SFC alternately recommends that this issue be addressed by NRC providing a contractor notice on this matter, which licensees would include in the request for proposal, contract award notice, and/or in contractor training material.

Hwy 10 & I-40 P.O. Box 610 Gore, Oklahoma 74435 Telephone (918) 489 5511 Facsimile (918) 489 5620

SFC appreciates the opportunity to comment on the proposed rule. Should you wish to discuss our comments further, please contact Lee Lacey at 918/489-3207.

Sincerely,

Lee R. Lacey for SPK

Scott P. Knight
Vice President
Administration

SPK:LRL:nv

cc: R. Adkisson
K. Asmussen
R. Graves
B. Lenz
J. Mestepey

Alabama Power Company
40 Inverness Center Parkway
Post Office Box 1295
Birmingham, Alabama 35201
Telephone 205 868-5581

W. G. Hairston, III
Senior Vice President
Nuclear Operations

DOCKET NUMBER
PROPOSED RULE PR 30,40,50,60,70,72,150
(54 FR 30049)

17

Alabama Power
the southern electric system

September 18, 1989

Docket Nos. 50-348
50-364

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

ATTENTION: Docketing and Service Branch

Comments on NRC Proposed Rule
"Preserving the Free Flow of Information
to the Commission"
(54 Federal Register 30049 of July 18, 1989)

Dear Mr. Chilk:

On July 18, 1989, the Nuclear Regulatory Commission (NRC) published in the Federal Register the proposed rule "Preserving the Free Flow of Information to the Commission" and invited comments by September 18, 1989. Alabama Power Company has monitored the efforts of NUMARC with regard to this proposed rulemaking. In accordance with the request for comments, Alabama Power Company hereby is in total agreement with the NUMARC comments to be provided to the NRC by September 18, 1989.

Alabama Power Company appreciates the opportunity to comment on the proposed rule. If you have any questions, please contact our office.

Sincerely,

W. G. Hairston, III

WGH,III:JMG/kdc

cc: Mr. S. D. Ebneter
Mr. E. A. Reeves
Mr. G. F. Maxwell

OCT 6 1989
Acknowledged by card.

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DOCKET NUMBER
PROPOSED RULE PR 30, 40, 50, 60, 70, 72, 150
(54 FR 30049)

16

the southern electric system

W. G. Hairston, III
Senior Vice President
Nuclear Operations

September 18, 1989

Docket Nos. 50-321 50-424
50-366 50-425

HL-730
ELV-00861
X7GJ17-220

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

ATTENTION: Docketing and Service Branch

Comments on NRC Proposed Rule
"Preserving the Free Flow of Information
to the Commission"
(54 Federal Register 30049 of July 18, 1989)

Dear Mr. Chilk:

On July 18, 1989, the Nuclear Regulatory Commission (NRC) published in the Federal Register the proposed rule "Preserving the Free Flow of Information to the Commission" and invited comments by September 18, 1989. Georgia Power Company has monitored the efforts of NUMARC with regard to this proposed rulemaking. In accordance with the request for comments, Georgia Power Company hereby is in total agreement with the NUMARC comments to be provided to the NRC by September 18, 1989.

Georgia Power Company appreciates the opportunity to comment on the proposed rule. If you have any questions, please contact our office.

Sincerely,

W. J. Hairston, III
W. G. Hairston, III

WGH,III:JMG/kdc

DOCKET NUMBER
PROPOSED RULE PR 30,40,50,60,70,72,150
(54FR 30049)

(15)

AT&T Bell Laboratories

G. M. Wilkening
Director
Environmental Health,
Environmental Management and Safety Center

600 Mountain Avenue
Murray Hill, NJ 07974
201 582-6565

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SECY-NRC

September 18, 1989

Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Re: Comment on NRC Proposed Rule in FR 54 136, 30049-30054, July 18, 1989

The following comment is submitted in response to the U.S.N.R.C. proposed rule of July 18, 1989 concerning added requirements on employee protection.

The proposed rule requires that each licensee ensure that neither they, nor any of their contractors or subcontractors, restrict any employee from voluntarily reporting safety violations to the NRC [30.7(g)(1)]. The proposed rule also requires that every licensee adopt procedures to assure compliance [30.7(g)(2)].

It is the position of AT&T Bell Laboratories that the proposed rule is unnecessary. Adequate safeguards for employee protection already exist within the NRC regulations. For example, 10 CFR Part 19.16(a) provides that employees may request inspections by giving notice directly to the NRC if they believe safety violations exist, and that, if requested, their names not be made known to the licensee. Further, both 19.20 and 30.7(a) specifically prohibit employment discrimination against an employee who engages in protected activities. These existing regulations are more than adequate safeguards for employees engaging in protected activities. The proposed rule would not effect any improvement in the degree of employee protection.

The proposed rule also introduces wasteful cost into the radiation protection program. In particular, added cost would be incurred in establishing and implementing procedures to ensure that contractors and subcontractors are informed of the new requirements [30.7(g)(2)(i)]. This cost is wasteful because any contractor

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Acknowledged by card.

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or subcontractor personnel who might be hired to work with NRC-licensed radioactive material at AT&T Bell Labs, would already be considered radiation workers either under the Bell Labs license (e.g., part time help) or under their own or their employer's license (e.g., manufacturer's representatives). In either case, existing NRC regulations on employee protection would already apply to the contractor or subcontractor personnel. Thus we have been able to identify no case in which our employees or those of our contractors or subcontractors would benefit from the new NRC proposed rule.

Finally, AT&T Bell Labs believes that it is inappropriate to impose new and costly regulatory requirements on all licensees because of regulatory violations by one or a few licensees. If specific instances have arisen where certain NRC licensees have violated or circumvented existing NRC regulations on employee protection, then those instances should be dealt with on a case by case basis. This is to say, the NRC should enforce the existing regulations, not impose new ones.

We share the concern of the NRC that employees of all licensees be assured of adequate protection under the regulations. Existing NRC regulations for employee protection fully meet this concern, and have served employees of the nuclear industry well for many years. No clear need has been demonstrated to add to or change the existing regulations for employee protection, and no new benefit has been demonstrated to accrue to employees from the proposed rule. We therefore recommend that the proposed rule not be implemented.

Sincerely yours,

G. M. Wilkening
Chairman, Radiation Protection Committee

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NUCLEAR MANAGEMENT AND RESOURCES COUNCIL
1776 Eye Street, N.W. • Suite 300 • Washington, DC 20006-2496
(202) 872-1280

Joe F. Colvin
Executive Vice President &
Chief Operating Officer

September 18, 1989

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

Attention: Docketing and Service Branch

RE: Proposed Rule - Preserving the Free Flow of Information to the Commission
54 Fed. Reg. 30049 (July 18, 1989)
Request for Comments

Dear Mr. Chilk:

These comments are submitted on behalf of the Nuclear Management and Resources Council, Inc. ("NUMARC") in response to the request of the U.S. Nuclear Regulatory Commission ("NRC") for comments on the NRC's proposed rule entitled "Preserving the Free Flow of Information to the Commission" (54 Fed. Reg. 30049 - July 18, 1989).

NUMARC is the organization of the nuclear power industry that is responsible for coordinating the combined efforts of all utilities licensed by the NRC to construct or operate nuclear power plants, and of other nuclear industry organizations, in all matters involving generic regulatory policy issues and on the regulatory aspects of generic operational and technical issues affecting the nuclear power industry. Every utility responsible for constructing or operating a commercial nuclear power plant in the United States is a member of NUMARC. In addition, NUMARC's members include major architect-engineering firms and all of the major nuclear steam supply system vendors.

The nuclear industry supports the concept of full, and timely, disclosure to the NRC of safety concerns. As described below, we believe present statutory and regulatory requirements appropriately provide for safety concerns that arise in any context to be brought to the attention of the licensee or the NRC so that they can be evaluated and resolved. This includes those that might have been associated with a complaint of discrimination against an employee who might have raised safety concerns. We do not believe that additional regulation is necessary or that the proposed rule is an effective way to satisfy the NRC's concerns. Moreover, the proposed rule as written is unreasonable and unworkable. However, if the NRC determines that it is necessary to develop a final rule, we have suggested ways in which the NRC's goals can be attained in a reasonable and workable manner. These recommendations are designed to effectuate the policy underlying the rulemaking, a policy which we support, without imposing unreasonable and unworkable burdens and procedures on persons subject to Commission authority.

Current Statutory and Regulatory Requirements:

Section 210 of the Energy Reorganization Act of 1974, as amended, and the embodiment of those requirements by the NRC in 10 C.F.R. § 50.7, prohibits discrimination against any employee for bringing safety concerns to the NRC. Any employee of a Commission licensee, or a contractor or a subcontractor of a Commission licensee or license applicant, who believes he or she has been discriminated against for raising safety issues, has the right to file a complaint with the U.S. Department of Labor to seek redress for such discriminatory action.

A variety of other regulatory requirements encourage safety concerns to be brought to the attention of the NRC. For example, 10 C.F.R. Part 19 requires that Form NRC-3, "Notice to Employees," be posted in conspicuous locations to inform workers at nuclear facilities, whether employees of licensees or contractors, of their opportunities to confidentially inform the NRC of nuclear safety concerns. Part 19 also requires that workers be informed of their responsibility to report promptly to the licensee any condition which may lead to or cause a violation of Commission regulations or unnecessary exposure to radiation or radioactive materials.

Further, 10 C.F.R. Part 21, adopted by the NRC pursuant to the requirements of Section 206 of the Energy Reorganization Act, establishes additional requirements for directors or responsible officers of licensees or suppliers of safety-related components to nuclear facilities to report promptly to the NRC any matters that could create a substantial safety hazard. All licensees are required to develop procedures to implement these requirements and must post information about these requirements in a conspicuous location in any premises where nuclear safety-related activities are performed, including identifying the individual to whom reports of safety concerns may be made.

In addition, 10 C.F.R. 50.55(e) requires the holder of a construction permit for a nuclear power plant to promptly notify the Commission of specified significant deficiencies found in plant design and construction which, if uncorrected, could adversely affect the safety of plant operations at anytime throughout the expected lifetime of the plant.

Thus, there are already in effect comprehensive statutory and regulatory requirements that collectively provide many ways in which employees of licensees and contractors are informed of their ability to raise safety concerns and the protection they are afforded if they raise safety concerns.

Current Situation:

Under current practice, the U.S. Department of Labor informs the NRC of any complaints brought under Section 210, reviews all proposed settlement agreements of Section 210 proceedings, and informs the NRC of the resolution of those proceedings. Under 10 C.F.R. § 50.7, the NRC has the regulatory authority to take enforcement action, which may include revocation of the

facility's license and the imposition of civil penalties or other enforcement action.

Relating to the particular matter that is the fundamental focus of the proposed rule, the NRC Executive Director for Operations sent a letter dated April 27, 1989, to, among others, a senior executive of each commercial nuclear power plant licensee expressing concern that agreements entered into between licensees and their employees or former employees to settle Section 210 proceedings might include clauses which could, or could be interpreted to, restrict the ability of employees or former employees to provide information about potential safety issues to the NRC. Licensees were requested to report not later than July 31, 1989, if any restrictive clauses had been identified by licensees in current or previous Section 210 settlement agreements or in other agreements affecting compensation, terms, conditions and privileges of employment. If any such restrictive clauses were identified, licensees were to promptly inform the employee or former employee that he or she may raise any safety concern to the NRC without fear of retribution and that any such restriction in a settlement agreement should be disregarded. Responses by licensees indicating any such restrictive clauses that were identified were to be provided to the NRC by July 31, 1989. Without waiting for the responses, on July 18, 1989 the NRC issued its proposed rule on exactly the same subject. We believe it would have been appropriate for the NRC to have evaluated licensee responses to the April 27, 1989 letter to ascertain the nature and scope of any restrictive clauses identified and then to determine what, if any, additional regulation might be warranted to address the NRC's concerns.

The Proposed Rule:

The only basis cited by the NRC in support of the proposed rule is a single case involving a worker at a commercial nuclear power plant under construction. That worker alleged that he believed that a Section 210 settlement agreement that he had entered into, with the advice of counsel, had restricted his ability to bring safety concerns to the attention of the NRC, notwithstanding the fact that he had been given many opportunities to raise additional safety concerns, and failed to do so, prior to executing the settlement agreement. Even though there may have been other cases in which an employee alleged he or she had been prevented from bringing safety concerns to the NRC because of a restriction contained in a settlement agreement, the record supporting the proposed rule consists of the citation to that single case. If the rulemaking is premised, as it appears to be, on the basis of that single case, no reasonable basis exists for proceeding with a rulemaking; any rulemaking proceeding that is premised on but a single instance of a perceived problem is, by definition, an ineffective and unjustified use of the limited resources of both the NRC and the industry.

Assuming, however, that the NRC concludes that additional regulation is warranted, even though the basis for that conclusion is not disclosed in the notice of proposed rulemaking, the nature and scope of the proposed rule is unreasonable and unworkable:

(1) The proposed rule is not limited to contractors or subcontractors involved in nuclear safety related activities (i.e., those regulated by the NRC under the authority of the Atomic Energy Act to protect public health and safety). As drafted, the proposed rule would apply to all contractors and their subcontractors who provide any goods or services to a licensee. Such an unlimited requirement would affect thousands of companies, just for Part 50 licensees alone;

(2) The proposed rule is not limited to settlement agreements that involve issues related to the identification of nuclear safety concerns. The proposed rule would thus involve dispute settlements under collective bargaining agreements, worker's compensation cases, arbitrations, equal employment opportunity cases -- in fact, the whole range of labor relation contracts, without limit;

(3) The proposed rule is not limited to agreements in which the licensee, or goods and services provided to a licensee, may be involved (e.g., the proposed rule would reach into the contractual relationship that a licensee's contractor might have with any of its non-nuclear suppliers or customers, even if that relationship had nothing to do with the licensee or the goods and services provided to the licensee). The proposed rule also would extend to all contracts entered into by non-nuclear divisions of a licensee or contractor;

(4) The proposed rule would require licensees to interpose themselves in any and all employee agreements that each and every contractor and subcontractor of any tier might make, the vast majority of which are not associated with licensed activities and thus could not involve any questions of nuclear safety;

(5) The proposed rule has the potential of abrogating proprietary information agreements entered into by various companies with their employees or with third parties. As presently drafted, the proposed rule could negate those proprietary agreements which require that certain procedures be undertaken by employees so as to maintain the confidentiality of information with which they have been entrusted;

(6) The proposed rule would even require a contractor who supplies goods and services to more than one licensee to obtain the approval of <u>each</u> licensee with which they do business to any settlement agreement that the contractor or its subcontractor might enter into; and

(7) The proposed rule could be interpreted, albeit improperly, as precluding any kind of settlement, including one involving an NRC licensing proceeding.

The Supplementary Information accompanying the proposed rule states that no substantial costs would be imposed by the proposed rule. This is simply not true, as even the NRC's own analysis demonstrates. In the NRC's notice to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, the NRC provided its estimate of the time required for licensees to establish procedures (1) to ensure that contractors and subcontractors are informed of the prohibition contained in the proposed rule against restrictive clauses in settlement agreements, (2) to require that licensees are notified of any complaints of discrimination brought by an employee of a contractor or a subcontractor, and (3) to review any settlement agreements related to any employee complaints. (The abstract provided in the Federal Register notice (54 Fed. Reg. 30962 - July 25, 1989) regarding the submittal to OMB states that the rule is limited to complaints of discrimination associated with work performed for the licensee or license applicant, yet the proposed rule is not so limited - neither the notice to the Office of Management and Budget nor the proposed rule suggest any limitation on settlement agreements to those involving nuclear safety issues.)

The estimated time to develop the required procedures, which apparently does not include the time required to implement those procedures, was estimated by the NRC at 2.2 hours per licensee. However, the major burden would fall on the 202 Part 50 licensees. In its notice to OMB, the NRC appears to have estimated the annual paperwork burden on Part 50 licensees to be 2,594,433 hours for annual responses and 1,107,206 hours for annual recordkeeping, which results in a per licensee estimated burden of 12,844 hours and a total annual burden for all Part 50 licensees of 3,701,639 hours. No information was provided to explain the basis of this estimate, but one utility has determined that it has over 10,500 open nuclear-related procurement contracts in place, and that does not include any subcontractors of those contractors. Developing the procedures required by the NRC's proposed rule, as drafted, for an undertaking of that magnitude would clearly require the expenditure of significant resources. To implement the procedures, once developed, would require, even by the NRC's own estimate, a massive expenditure of licensee resources.

Thus, the proposed rule would levy a significant burden on licensees, yet the NRC has concluded that no backfit analysis is required pursuant to 10 C.F.R. § 50.109 "because these amendments do not involve any provisions which would impose backfits as defined in 10 C.F.R. § 50.109(a)(1)." No justification is given for that conclusion. The proposed rule would clearly impose additional procedural requirements resulting solely from adding a new provision to the Commission's rules and that would be a backfit under § 50.109. The proposed rule does not suggest that a backfit analysis is not required under § 50.109(a)(4), as well it should not, because there is no evidence that would substantiate that conclusion. Therefore, in accordance with 10 C.F.R. § 50.109(a)(2), a systematic and documented analysis must be provided that demonstrates that the proposed rule will result in a substantial increase in the overall protection of the public health and safety to be derived from

the backfit and that the direct and indirect costs of implementation are justified in view of that increased protection.

The proposed rule -- unlimited as it is to nuclear safety related activities and the identification of nuclear safety concerns, and levying requirements on licensees to police their contractors and subcontractors, ostensibly all the way back to the suppliers of the raw materials used in any product purchased by the licensee -- sets an impossible task to complete, and the substantial cost of attempting to comply far outweighs any supposed benefit to public health and safety.

Recommendations:

Notwithstanding the serious flaws contained in the proposed rule, the industry does understand and appreciate the NRC's concern that clauses might be contained in Section 210 settlement agreements that could be interpreted by an employee or a former employee to restrict his or her ability to contact the NRC with additional safety concerns. Although we do not believe that a rule is necessary, we believe that the NRC's concern can be addressed in a rulemaking context that is reasonable. In addition to the following specific recommendations, the scope of the proposed rule as written is such that it could be interpreted as precluding any kind of settlement, including one involving NRC licensing proceedings. Accordingly, and consistent with both the language and legislative history of Section 210 of the Energy Reorganization Act, and the Separate Views of Commissioner Roberts (54 Fed. Reg. 30,050), the Commission should state affirmatively in any future action addressing this matter that limited restrictions are acceptable, so long as they do not restrict an individual's freedom in such a way as to preclude him or her from bringing matters pertinent to public health and safety to the attention of the NRC. As the Commission acknowledged in the Federal Register notice, settlements provide remedies to employees which obviate the need for litigation in appropriate circumstances.

First, the NRC should limit the scope of its proposed action to Section 210 settlement agreements. Section 210 complaints are founded on an allegation of a safety concern and resultant discrimination. To broaden the NRC's inquiry into "any agreement affecting the compensation, terms, conditions and privileges of employment," as the proposed rule would do, will dilute the need for attention to the area of major concern and may interpose the NRC inappropriately into areas where Congress has provided jurisdiction to other agencies (e.g., the National Labor Relations Board, the Equal Employment Opportunity Commission).

Second, 10 C.F.R. Part 21, in accordance with Section 206 of the Energy Reorganization Act, imposes obligations upon contractors involved in licensed activities to post certain documents in conspicuous locations and to establish procedures to ensure that the NRC is notified promptly of any licensed activities which could cause a significant safety hazard. Rather than establish an independent obligation on licensees to police contractors involved in licensed activities to accomplish the requirements of Section 210 of the

Energy Reorganization Act, the NRC should deal directly with contractors under Section 210 as it currently does under Section 206. Establishing posting and notification requirements concerning the NRC's policy on restrictive clauses in Section 210 settlement agreements directly on contractors, similar to those imposed upon licensees and to those imposed upon contractors under 10 C.F.R. Part 21, would be the most direct and effective manner in which the NRC could achieve its stated goal.

Third, the NRC should review the current practice and, if necessary, revise the current Memorandum of Understanding with the U.S. Department of Labor to ensure that the NRC is notified promptly of any proceedings brought under Section 210 and of the disposition of each of those proceedings so that the NRC can conduct its own investigation regarding the potential impact on public health and safety in order to determine if enforcement action for a violation of NRC regulations can be pursued in a timely fashion. In addition to establishing the procedural interagency exchange of information, the MOU should provide that the U.S. Department of Labor would inform all parties to a Section 210 complaint, and the affected licensee(s) if they are not a party to that complaint, of the Department of Labor's conclusion that clauses in a settlement agreement that restrict a person's perceived ability to raise safety concerns are void as a matter of public policy. (See In the Matter of Lorenzo Mario Polizzi, U.S. Department of Labor Case No. 87-ERA-38). This would, of course, be the most direct way of ensuring that a complainant in a Section 210 proceeding, and the respondent, are directly informed that any settlement agreement that they might subsequently enter into should not contain a restrictive provision with respect to bringing safety concerns to the attention of the NRC. Litigation over jurisdictional authority is not an efficient use of regulatory resources.

Fourth, licensees and license applicants should notify current contractors involved in nuclear-related activities of the NRC's concerns about this matter. With respect to future contracts, licensees could incorporate provisions in contracts associated with nuclear safety related activities to direct contractors to notify all contractor employees of their rights and opportunities to raise safety concerns without fear of retribution and to request that contractors notify their subcontractors in a similar fashion. We would strongly oppose any requirement that licensees renegotiate existing contracts or that contractors be required to renegotiate their existing contracts with subcontractors to add contractual provisions requiring licensee approval of settlement agreements negotiated under Section 210. This requirement is commercially unreasonable and in many contexts may be legally impossible (e.g., a collective bargaining agreement). To levy additional requirements by that means would be unduly burdensome and -- in light of the other notice and enforcement means in place -- would result in at most, an incremental benefit that would not offset the attendant costs.

Fifth, the Commission should establish procedures in connection with any rule of the type contemplated which assure that proprietary information relative to the alleged safety concern will remain confidential until such time as the material is either returned to the owner of the proprietary

information or the owner is given an opportunity to establish that the information is entitled to proprietary protection under 10 C.F.R. Section 2.790.

Finally, the NRC should also consider revising Form NRC-3 to include an appropriate provision relating to Section 210 settlement agreements.

Response to Request for Specific Comments:

First, the Commission asked whether the rule should prohibit all restrictions on providing information to the Commission or whether limitations on individuals appearing before a Commission adjudicatory board should be permissible because other avenues for providing information to the Commission are available. We think that the two alternatives stated by the Commission are not the appropriate alternatives. We do not believe any rule should "prohibit all restrictions on providing information to the Commission." There is no basis in the record to demonstrate that any such rule is needed, and such a broad prohibition would affect many rights, including rights to proprietary information, rights of privacy, and other due process rights of licensees and contractors and their employees. Limitations on an individual appearing before a Commission adjudicatory board under certain circumstances is appropriate to maintain a viable adjudicatory process.

Second, the Commission asked for comments on whether the rule should impose an additional requirement that licensees and license applicants must ensure that all agreements affecting employment, including those of their contractors and subcontractors, contain a provision stating that the agreement in no way restricts the employee from providing safety information to the commission. As described above, such a requirement would constitute an unreasonable, unnecessary and undue restriction by the Commission on contractual relationships, many of which are far removed from the nuclear safety concerns. Such a provision is not needed to ensure adequate protection of public health and safety or of a "whistleblower's" freedom to bring safety concerns to the attention of the Commission, and its imposition would be arbitrary and capricious.

Conclusion:

We believe that adoption of the above recommendations will achieve the NRC's aims without imposing an onerous burden on the industry that is not compensated for by an increase in public health and safety. We are prepared to work with the NRC to address its concerns and we would appreciate an opportunity to discuss this matter further with the Commission and NRC Staff at its earliest convenience.

Sincerely,

Joe F. Colvin

JFC/RWB:bb

13

Nebraska Public Power District

GENERAL OFFICE
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NLS8900353
September 14, 1989

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

Attention: Docketing and Service Branch

Reference: Proposed Rule - Preserving the Free Flow of Information to the Commission - 54 Federal Register 30049 (July 18, 1989)

Dear Mr. Chilk:

These comments are submitted by Nebraska Public Power District (NPPD), owner and operator of the Cooper Nuclear Station near Brownville, Nebraska, in response to the request for comments on the above-referenced proposed rule.

This proposed rule has been extensively discussed in comments submitted on behalf of NUMARC which are endorsed by NPPD. Like NUMARC, NPPD supports the concept of complete and prompt disclosure to the Commission of legitimate safety concerns. In addition, NPPD also agrees that the rule as proposed is overly broad, and creates an unnecessary administrative burden for licensees that far exceeds any possible benefit of promoting full and timely disclosure to the Commission of legitimate safety concerns.

The supplementary information in the Federal Register notice (54 Fed. Reg. at 30049) suggests that "the proposed rule would only apply to agreements that relate to the compensation, terms, conditions and privileges of employment, including section 210 settlement agreements and not to agreements in general." Notwithstanding the statement in the supplementary information, the proposed rule contains no such limitation and could arguable apply to all agreements. This is one of NPPD's main concerns.

NPPD has estimated that it enters into approximately 5,000 contracts each year for the purchase of goods and services at Cooper Nuclear Station. Establishing effective procedures to assure that contractors and subcontractors associated with these contracts do not impose certain conditions on their employees would be a burdensome task for licensees. On the other hand, the alternatives suggested by NUMARC can more reasonable achieve the goals of the Commission and, therefore, merit serious consideration.

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NPPD sees absolutely no justification for attempting to require a licensee to review settlement agreements negotiated by its contractors and subcontractors under section 210 of the Energy Reorganization Act to assure that such agreements contain no provisions limiting access to the Commission. NPPD believes that it is inappropriate to impose itself in such a manner upon contractors and subcontractors in disputes which may exist between employers and employees.

For the reasons set forth above, NPPD believes that the proposed rule as currently drafted is an overreaching, inefficient approach to the Commission's legitimate concern of maintaining access to the Commission by employees of contractors and subcontractors for the purpose of reporting possible violations under the Atomic Energy Act and related regulations, orders and licenses. NPPD supports the recommendations to achieve this goal through the alternatives suggested in NUMARC's comments.

Sincerely,

K E Walsh for

G. A. Trevors
Division Manager
Nuclear Support

GAT:JCM:rg

Commonwealth Edison
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(12)

DOCKET NUMBER
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(54FR 30049)

DOCKETED
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'89 SEP 18 P1:08

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BRANCH

September 15, 1989

Sammuel J. Chilk, Secretary
U.S. Nuclear Regulatory Commission
Attn: Docketing and Service Branch
Washington, DC 20555

Subject: Proposed Rule on Preserving the Free Flow of Information to the Commission (54 Fed. Register 30049, July 18, 1989)

Reference: Letter from V. Stello, Jr. (NRC) to B. Thomas (CECo), dated April 27, 1989, regarding the Free Flow of Information to the Commission.

Dear Mr. Chilk:

This provides Commonwealth Edison Company's (CECo's) comments on the subject proposed rule. CECo is the largest private nuclear utility in the country. As such we have approximately 250 contractor suppliers providing goods and services to our nuclear plants. In turn these contractors are served by approximately 100 subcontract suppliers. Therefore, any CECo involvement in the business affairs of its contractors and subcontractors, would entail significant expenditures of resources. CECo could only support such a rule if it results in an increase in safety commensurate with the costs that would be incurred. In the proposed rule, the NRC intends to regulate certain aspects of employment contracts and settlement agreements to preserve the free flow of safety information to the Commission. This would be accomplished by requiring each licensee to ensure that all contracts entered into by its employees and by employees of its contractors and subcontractors would not impose restrictions on the flow of information to the NRC either: 1) in agreements settling actions brought under Section 210 of the Energy Reorganization Act (ERA) of 1974, as amended; or 2) in any other agreements which affect the compensation, terms, conditions and privileges of employment. Thus, each licensee would be required to review all contracts and settlement agreements to ensure that they neither prohibit, restrict or otherwise discourage any employee from providing safety information to the NRC.

CECo understands the NRC's need for unrestricted access to information about safety violations. However, CECo believes that unrestricted access to such information is provided already by the regulatory requirements currently in place. These include 10 CFR 50.7, 10 CFR Part 19, and 10 CFR Part 21. CECo is aware that under the protections afforded by these regulations, employees have raised safety concerns to the NRC. CECo is not aware that any such concern has been precluded from being raised by a contract provision.

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The NRC has not identified any instance in which access to safety information has been denied. The one agreement referred to by the NRC did not foreclose individuals from using other available avenues for communicating with the NRC. Also, because that agreement was known to the NRC, the NRC was alerted to the restrictions imposed by it and could take whatever compensating measures that it believed warranted. Therefore, the need for a rule as broad as the one proposed is not supported by historical impediments.

Under these circumstances it is premature for the NRC to act on the basis of one incident to promulgate this rule. Rather, CECo suggests that the NRC consider waiting until the results of their April 27, 1989 letter (Reference) are known in total, in order to better ascertain whether and to what extent there have been restrictions warranting a rule.

CECo also is concerned that the proposed rule is vague and places licensees in an untenable position with respect to their contractors and subcontractors. It would require licensees to ensure that employment contracts between individuals and contractors, or subcontractors, do not "prohibit, restrict, or otherwise discourage" employees from bringing safety concerns to the NRC. Discouragement, in particular, is subject to interpretation, especially in light of the many and varied types of contracts entered into by the employees of contractors and subcontractors. Arguments over the existence of discouragement could cause licensees to become involved in the intimate details of their contractors' and subcontractors' bargaining with their employees. Not only is such an intrusion into the commercial judgment of independent entities unwarranted, it is impractical. CECo does not have the resources to police our contractors and subcontractors as a surrogate direct for the NRC authority over them.

Nevertheless, to the extent reasonable, CECo does take an active role with regard to employee rights. CECo currently requests that contractors advise us if they suspect an employee will, or has filed a Section 210 complaint. We also request contractors to notify us prior to taking employment related action (i.e. termination, lay-off, etc.) for certain classes of employees (i.e. quality control inspectors) if they believe a Section 210 complaint may occur based on their interaction with the employee. We are in the process of strengthening this program to incorporate the spirit of the April 27, 1989 letter (Reference). Generally, we have found contractors to be open with CECo on their Section 210 complaint cases. However, there is some reluctance by contractors to involve the licensee in direct employer-employee matters, especially in the reasons for and terms of settlement agreements. Contractors desire to limit knowledge of settlement agreements to preclude others from filing frivolous Section 210 complaints, which through denial by the initial investigator, are appealed to try to obtain settlement payments in lieu of a costly hearing.

Although CECo believes that the proposed rule would be extremely costly to impliment and would not result in increased safety, we recognize that some formal statement may be needed to reaffirm the NRC's access to safety information. CECo believes that a policy statement would more appropriately address the Commission's concern, and be commensurate with the magnitude of the issue. CECo believes that the circumstances which prompted this proposed rule provide the criteria for that NRC statement. The NRC should limit its attention to licensees and not try to extend its jurisdiction to contractors and subcontractors by making licensees responsible for their acts.

If the contractors and subcontractors are to be regulated, it would be appropriate for the NRC to obtain such authority through an amendment to the Atomic Energy Act of 1954. A good example is provided by Section 206 of the Energy Reorganization Act which extended NRC authority to suppliers of certain components to nuclear power plants. However, if the Commission insists that the licensees act to ensure agreements of their contractors/subcontractor are non-restrictive, CECo suggests that the contractors simply be required to certify to the licensee that any agreements do not contain restrictive clauses.

Moreover, the incident which prompted this proposed rule indicates that the NRC should focus on settlements of claims brought under Section 210 of the ERA. There is no evidence that employment contracts have contained provisions limiting the flow of safety information to the NRC. However, because such provisions could be inconsistent with 10 CFR 50.7, there may be no need for a new rule to cover them.

Finally, if the NRC involves itself in settlement agreements by licensees, that involvement should also address the enforcement implications under 10 CFR 50.7. In the past, the settlement of Section 210 claim has led the NRC to find that 10 CFR 50.7 was violated, even where the Secretary of Labor had not made a definitive determination of discrimination and the licensee had claimed that no discrimination had occurred. If the NRC proposes to monitor Section 210 agreements, it should couple that monitoring with a clear policy on the enforcement consequences of such agreements.

CECo appreciates this opportunity to provide its comments to the NRC. Responses to the specific questions in the notice of proposed rulemaking are attached.

Respectfully,

Leslie E. Holden
Regulatory Assurance Engineer

9003K:44/46
Attachment

RESPONSES TO SPECIFIC NRC QUESTIONS

Q.1. "Should the rule prohibit all restrictions on providing information to the Commission, or should limitations on an individual appearing before a Commission adjudicatory board (e.g., requiring an individual to resist a subpoena) be permissible as long as other avenues for providing information to the Commission are available?"

A.1. Either alternative presented places unnecessary requirements on the licensee.

If the rule were to prohibit all restrictions on providing information to the Commission, the licensee would be burdened with establishing that contracts/agreements between their contractors, or subcontractors, and their employees did not contain restrictive clauses. Licensees do not have the resources to police the number of contracts involved, nor do they have a method for enforcing limitations on contracts/agreements between contractors, or subcontractors, and their employees.

If the rule permitted limitations on providing information that could attainable via other means to the Commission, the licensee would be burdened with establishing whether the information would be attainable via other means. This would require licensees to predict the Commission's determination of whether an adequate alternative was available, placing the licensee in an uncertain position.

The Commission has identified only one instance in which such a contract even raised a question regarding the availability of safety information to the Commission. The occurrence of a single instance does not indicate that a rule is needed to preserve the ability of the Commission to obtain information, instead, the Commission may better deal with this issue on a case-by-case basis.

Q.2. "Should the rule impose additional requirements that licensees and license applicants must ensure that all agreements affecting employment, including those of their contractors or subcontractors, contain a provision stating that the agreement in no way restricts the employee from providing safety information to the Commission?"

A.2 No. As stated in response to question 1, requiring licensees to "ensure" that all agreements affecting employment between contractors, or subcontractors, and their employees do not restrict information to the Commission places an undue burden on the licensee. This circumstance makes it appropriate for the Commission to extend its authority to regulate contractors and subcontractors indirectly by requiring licensees to police their contracts with their employees. CECo also believes that unrestricted access to safety information is already provided by the regulatory requirements currently in place.

To require licensees to accept this responsibility would be to require them to expend substantial additional resources and to significantly modify their commercial contracting procedures. Such severe dislocations have not been shown to be warranted by the history of the Commission's access to information.

SCE&G
A SCANA Company

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Ollie S. Bradham
Vice President
Nuclear Operations

(11)

DOCKET NUMBER
PROPOSED RULE PR 30,40,50,60,70,72,150
(54 FR 30049)

September 15, 1989

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'89 SEP 18 P1:09

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

Attn: Docketing and Service Branch

Subject: Virgil C. Summer Nuclear Station
Docket No. 50/395
Operating License No. NPF-12
Comments on Proposed Rule for
Preserving the Free Flow of
Information (54 FR 30049)

Dear Mr. Chilk:

South Carolina Electric & Gas Company (SCE&G) has reviewed the proposed rule, "Preserving the Free Flow of Information to the Commission," to 10 CFR Parts 30, 40, 50, 60, 70, 72 and 150, which was promolgated in the Federal Register (54 FR 30049) of July 18, 1989. SCE&G fully endorses the comments provided by the Nuclear Management and Resources Council. SCE&G does not have additional comments.

Very truly yours,

O S Bradham

O. S. Bradham

ARR/OSB:lbs

c: D.A. Nauman/O.W. Dixon, Jr./T.C. Nichols, Jr.
E.C. Roberts
W.A. Williams, Jr.
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P.O. Box 14000, Juno Beach, FL 33408-0420

(10)

FPL DOCKET NUMBER PROPOSED RULE PR 30,40,50,60,70,72,150 (54 FR 30049)

SEPTEMBER 1 4 1989

L-89-340

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

Attn: Docketing and Service Branch

Re: Proposed Rule - Preserving the Free Flow of Information to the Commission
54 Fed. Reg. 30049 (July 18, 1989)
Request for Comments

Dear Mr. Chilk:

These comments are submitted on behalf of the Florida Power & Light Company (FPL) in response to the request of the U. S. Nuclear Regulatory Commission (NRC) for comments on the NRC's proposed rule entitled "Preserving the Free Flow of Information to the Commission" (54 Fed. Reg. 30049 - July 18, 1989).

FPL supports the concept of full, and timely, disclosure to the NRC of safety concerns. We believe present statutory and regulatory requirements appropriately provide for safety concerns that arise in any context, including those that might have been associated with a complaint of discrimination, to be brought to the attention of the licensee or the NRC so that they can be evaluated and resolved. We do not believe that additional regulation is necessary.

Section 210 of the Energy Reorganization Act of 1974, as amended, and the embodiment of those requirements by the NRC in 10 CFR § 50.7, prohibits discrimination against any employee for bringing safety concerns to the NRC. Any employee of a Commission licensee, or a contractor or a subcontractor of a Commission licensee or license applicant, who believes he or she has been discriminated against for raising safety issues, has the right to file a complaint with the U. S. Department of Labor to seek redress for any personal harm that may have been caused by the discriminatory action.

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A variety of other regulatory requirements encourage safety concerns be brought to the attention of the NRC. For example, 10 CFR Part 19 requires that Form NRC-3, "Notice to Employees", be posted in conspicuous locations to inform workers at nuclear facilities, whether employees of licensees or contractors, of their opportunities to confidentially inform the NRC of nuclear safety concerns.

Further, 10 CFR Part 21 establishes additional requirements for Directors or responsible officers of licensees or suppliers of safety-related components to nuclear facilities to report promptly to the NRC any matter that could create a substantial safety hazard.

Thus, there are already in effect comprehensive statutory and regulatory requirements that collectively provide many ways in which employees of licensees and contractors are informed of their ability to raise safety concerns and the protection they are afforded.

The only basis cited by the NRC in support of the proposed rule is a single case involving a worker at a commercial nuclear power plant under construction. That worker alleged that he believed that a Section 210 settlement agreement that he had entered into, with the advice of counsel, had restricted his ability to bring safety concerns to the attention of the NRC, notwithstanding the fact that he had previously sworn, prior to executing the settlement agreement, that he had already identified to the NRC all safety concerns that he had. The record supporting the proposed rule consists of the citation to that single case. If the rulemaking is premised, as it appears to be, on the basis of that single case, no reasonable basis exists for adopting a proceeding with rulemaking to address a single case.

Assuming, however, that the NRC concludes that additional regulation is warranted, even though the basis for that conclusion is not disclosed in the notice of proposed rulemaking, the nature and scope of the proposed rule is unreasonable and unworkable:

(1) The proposed rule is not limited to contractors or subcontractors involved in licensed activities. As drafted, the proposed rule would apply to all contractors and their subcontractors who provide any goods or services to a licensee. Such an unlimited requirement would affect thousands of companies just for Part 50 licensees alone;

(2) The proposed rule is not limited to settlement agreements that involve issues related to the identification of nuclear safety concerns. The proposed rule would thus involve collective bargaining agreements, worker's compensation cases, equal employment opportunity cases -- in fact, the whole range of labor relation contracts, without limit;

(3) The proposed rule is not even limited to agreements in which the licensee, or goods and services provided to a licensee, may be involved (e.g., the proposed rule would reach into the contractual relationship that a contractor of a licensee might have with any other purchaser of its goods or services, even if that relationship had nothing to do with the licensee or the goods and services provided to the licensee);

(4) The proposed rule would require licensees to interpose themselves in any and all employee agreements that each and every contractor, and subcontractor of any tier, might make, the vast majority of which are not associated with licensed activities and thus could not involve any questions of nuclear safety;

(5) The proposed rule, as worded, prohibits "any provision (in any agreement affecting compensation, terms, conditions and privileges of employment, including an agreement to settle a Section 210 complaint) which would prohibit, restrict, or otherwise discourage, an employee from . . . providing information . . . ." This language could be interpreted, as precluding any kind of settlement, including one involving an NRC licensing proceeding.

The information accompanying the proposed rule states that no substantial costs would be imposed by the rule. The estimated time to develop the required procedures, which does not seem to include the time required to implement those procedures, was estimated by the NRC to be 22 hours per licensee. Developing the procedures required by the NRC's proposed rule, as drafted, because of the number of contractors each utility has, would require significant resources. To implement the procedures, once developed, would require a major expenditure of licensee resources.

The NRC has estimated the annual paperwork burden on Part 50 licensees to be 2,594,433 hours for annual responses and 1,107,206 hours for annual recordkeeping, which totals an annual burden for Part 50 licensees of 3,701,639 hours. No information was provided to explain the basis of this estimate.

Thus, the proposed rule would levy a significant burden on licensees, yet the NRC has concluded that a backfit analysis in accordance with 10 CFR § 50.109 is not required "because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR § 50.109(a)(1)." We feel that a systematic and documented analysis should be provided which demonstrates that the proposed rule will result in a substantial increase in the overall protection of the public health and safety. The proposed rule sets an unduly burdensome task to complete, and the egregious cost of attempting to comply far outweighs any supposed benefit to public health and safety.

Recommendation:

Notwithstanding the serious flaws contained in the proposed rule, FPL does understand and appreciate the NRC's concern that clauses might be contained in Section 210 settlement agreements that could be interpreted by an employee or a former employee to restrict his or her ability to contact the NRC with additional safety concerns. Although we do not believe that a rule is necessary, we believe that the NRC's concern can be addressed in a rulemaking context that is reasonable.

Even more significantly, and particularly as worded, the scope of the proposed rule is such that it could be interpreted as precluding any kind of settlement, including one involving NRC licensing proceedings. Accordingly, and consistent with both the language of Section 210 of the Energy Reorganization Act and the Separate Views of Commissioner Roberts (54 Fed. Reg. 30,050), the commission should state affirmatively in any future action addressing this matter that limited restrictions are acceptable, so long as they do not restrict an individual's freedom in such a way as to preclude him or her from bringing matters pertinent to public health and safety to the attention of the NRC.

First, the NRC should limit the scope of its proposed action to Section 210 settlement agreements. Section 210 complaints are founded on an allegation of a safety concern and resultant discrimination. To broaden the NRC's inquiry into "any agreement affecting the compensation, terms, conditions and privileges of employment," as the proposed rule would do, will dilute the need for attention to the area of major concern.

Second, under Section 206 of the Energy Reorganization Act, obligations are imposed upon contractors to post certain documents in conspicuous locations and to establish procedures to ensure that the NRC is notified promptly of any licensed activities which could cause a significant safety hazard. Rather than establish an independent obligation on licensees to police contractors under Section 210, the NRC should directly deal with contractors under Section 210 as it currently does under Section 206.

Third, the NRC should formalize the current practice and enter into a Memorandum of Understanding with the U. S. Department of Labor to ensure that the NRC is notified promptly of any proceedings brought under Section 210 and of the disposition of each of those proceedings so that the NRC can ensure that any enforcement action for a violation of NRC regulations can be promptly pursued.

Fourth, licensees and license applicants should notify current contractors of the NRC's concerns about this matter. With respect to future contracts, licensees could incorporate provisions in contracts associated with licensed activities to direct contractors to notify all contractor employees of their rights and opportunities to raise safety concerns without fear of retribution and to require contractors to notify their subcontractors in a similar fashion.

We believe that adoption of the above recommendations will achieve the NRC's aims without imposing an onerous burden on the industry that is not compensated for by an increase in public health and safety.

FPL appreciates the opportunity to comment on this regulation and we are ready to work with the NRC concerning this matter.

Very truly yours,

R. J. Costa for

C. O. Woody
Acting Senior Vice President - Nuclear

COW/JAD/gp

B. Ralph Sylvia
Senior Vice President

Detroit Edison

6400 North Dixie Highway
Newport, Michigan 48166
(313) 586-4150

September 12, 1989

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

Attention: Docketing and Service Branch

RE: Proposed Rule - Preserving the Free Flow of Information to the Commission
54 Federal Register 30049 (July 18, 1989)
Request for Comments

Dear Mr. Chilk:

The Detroit Edison Company (hereinafter Company) is a public utility serving over 1,800,000 customers in southeastern Michigan. The Company is the owner and operator of Fermi 2 Nuclear Power Plant. It is also a member of the Nuclear Management and Resources Council, which has also submitted comments in this proceeding, and the Company endorses those comments as they would apply to the Fermi 2 Nuclear Power Plant.

However, the Company also holds seven licenses pursuant to 10 CFR Part 30 of the Commission's Regulations. Those licenses authorize the possession and use of sealed sources which are used in analytical and measuring instruments. These instruments are located in five fossil fuel fired power plants, and the Engineering Research Laboratory, as well as five portable instruments that are transported to various locations for use.

Because of the nature of those sources and the controls upon them, there is a slight probability of contractor or subcontractor employees engaging in actions which would amount to protected activities under Section 210 of the Energy Reorganization Act. Yet, the number of contracts that are issued yearly for activities where the license material is located is in the 10's of thousands. The burden imposed in issuing and administrating these contracts would impose an enormous burden on the Company, with little or no benefit in maintaining communications with the Nuclear Regulatory Commission. It also should be understood that unlike contractors who perform work at a Nuclear Power Plant, those contractors do not have normal interactions with the Nuclear Regulatory Commission, increasing the difficulty in negotiating the necessary contractual arrangements to assure compliance with proposed 10 CFR 30.7.

Therefore, the Company would request the Commission not adopt the proposed 10 CFR 30.7, but if the Commission feels it must adopt such a provision, it should be focused much more narrowly on contractors who are involved in the procurement, maintenance or disposal of licensed material or activities, to reduce the burden on the licensee.

Very truly yours,

B Ralph Sylte

West Virginia University Hospitals
Radiology Department

(8)

12 September 1989

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

Gentlemen,

I wish to comment on the proposed regulations on "preserving the free flow of information" issued in the Federal Register on 18 July 1989, Vol. 54, No. 136, p. 30049. The intent of the proposed regulation is laudable and the wording may be appropriate for nuclear power plants and other licensees whose major business involves licensed activities, but for the majority of licensees, the regulations, if adopted, will require a large amount of unnecessary paperwork. Therefore, I recommend that the proposed regulations be rewritten, at least for licensees under 10 CFR Part 30.

The vast majority of licensees are businesses, hospitals, madical practitioners and educational institutions for which the use of licensed material constitutes only a minor part of their activities. NUREG/CR-4958 lists licensees in various categories in 1983:

Nuclear Medicine Diagnosis and Therapy	6412
Manufacturing and Distribution	1219
Academic, Research and Development	882
Industrial Radiography	1008
Gauging Devices and Gas Chromatography	5119
Pool and Dry Irradiators	205
Well Logging	831
Uranium Mining, Milling, etc.	4
Commercial Low Level Waste Disposal	83

Of these, very few, except in the last four categories are primarily engaged in a licensed activity. For example, a hospital may be licensed for Nuclear Medicine Diagnosis and Therapy, but this will comprise only a small part of its patient load. However, each of these licensees has contractors and subcontractors, the vast majority of whom have no connection with licensed activities. West Virginia University Hospital has approximately 500 contractors at any one time, of whom only approximately 10 are involved in licensed activities, all of whom are licensed themselves. West Virginia University has approximately 6500 contractors at any one time, of which only approximately 15 are involved with licensed activities, and all of

Morgantown, WV 26506-8062 • 304-293-4106

them are licensed themselves. Yet 10 CFR 30.7(g)(2) requires that appropriate procedures be set up to inform these contractors and subcontractors of the requirements of 10 CFR 30.7(g)(1), etc. This seems to indicate that a hospital having its parking lot paved or its roof repaired would have to inform the paving contractor of these requirements. This may not be the intent of the regulation, but a zealous inspector could certainly read it that way. Hence, my concern that this proposed regulation imposes an unreasonable burden upon licensees and could create an unintentional legal trap for the unwary. My recommendation is that 10 CFR 30.7(g)(2) either be dropped entirely or else be considerably narrowed to include only those contractors and subcontractors dealing with licensed activities.

If you would like further input from me on this issue, please feel free to contact me and I will make myself available. I appreciate your consideration of my comments and having the opportunity to render my opinions.

Sincerely,

Stephen T. Slack

Stephen T. Slack, Ph. D.
Radiation Safety Officer

SSM

SANDVIK SPECIAL METALS
CORPORATION

(509) 586-4131 • TELEX 152873

P.O. BOX 6027 | KENNEWICK, WA 99336

(7)

150

DOCKET NUMBER
PROPOSED RULE PR 30,40,50,60,70,73
(54FR 30049)

September 7, 1989

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

Dear Mr. Chilk:

Reference: Comments to proposed rule change to Section 210, Energy Reorganization Act of 1974

We are in agreement that an individual should be able to freely and fully communicate with the regulatory agencies about safety matters or potential safety violations and that no settlements be imposed that restrict this freedom.

However, our concern with the proposed rules is that they provide no opportunity for an employer to take action against or protect ourself from an employee who provides false information.

Sincerely,

K. C. Bowles, Manager
Quality Assurance

KCB/bs

U.S. NUCLEAR REGULATORY COMMISSION
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OF THE COMMISSION

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DOCKET NUMBER
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(54FR30049)

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OFFICE OF SECRETARY
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BRANCH

August 25, 1989

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

Attention: Docketing and Service Branch

REF: Proposed Rule Federal Register Vol. 54, No. 136
RIN 3150-AD21
Preserving the Free Flow of
Information to the Commission

Dear Sir:

The Hartford Steam Boiler Inspection and Insurance Company (HSB) is a provider of third party inspection services under the provisions of the American Society of Mechanical Engineers' Boiler and Pressure Vessel Code. This standard is referenced in 10CFR50 and therefore our activities would ostensibly be covered by the subject rulemaking. While HSB endorses all reasonable means to make information available to the Commission necessary to fulfill its statuatory obligations, we are concerned about the apparent breadth and lack of precision in the language of the proposed rule.

Specifically, the proposed rule precludes any provision which "restricts or otherwise discourage(s)" an employee from providing information. While we certainly agree that employees should not be prohibited from supplying information to the Commission, we believe the proposed wording could be construed to prohibit an employer's mandating internal reporting structures for apparent non-conformances. In effect, the proposed wording could be interpreted as making the NRC staff the "court of first resort" rather than allowing licensees and their contractors to develop routine reporting structures as part of their quality assurance programs as required by 10CFR50 Appendix B.

Nothing in this comment is intended to imply that an employee should be prohibited from providing information to the Commission; consequently, we suggest that the words "restrict, or otherwise discourage" be stricken from proposed paragraph (f) (1). We believe this would protect the free flow of information while not unreasonably restricting an employer's right to enforce its normal reporting systems for non-conformances.

Very truly yours,

R E Feigel

R. E. Feigel, Director
Engineering Operations

SEP 11 1989
Acknowledged by card.

The Hartford Steam Boiler
Inspection and Insurance Co.
One State Street
Hartford, Connecticut 06102
(203) 722-1866 Telex: 6813125

5

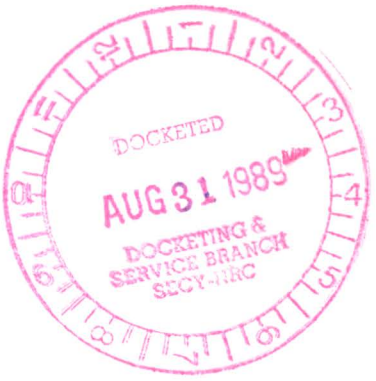
DOCKET NUMBER
PROPOSED RULE PR 30,40,50,60,70,72,150
(54 FR 30049)

ADVANCED NUCLEAR FUELS CORPORATION

2101 HORN RAPIDS ROAD, PO BOX 130, RICHLAND, WA 99352-0130
(509) 375-8100 TELEX: 15-2878

SAFETY, SECURITY, AND LICENSING

August 25, 1989
CWM:89:073



U.S. Nuclear Regulatory Commission
Attn: Docketing and Service Branch
Secretary of the Commission
Washington, DC 20555

Dear Sirs:

Subject: PRESERVING THE FREE FLOW OF INFORMATION TO THE COMMISSION

Advanced Nuclear Fuels Corporation (ANF) has reviewed the proposed rule entitled, "Preserving the Free Flow of Information to the Commission." The proposed rule was published in the Federal Register in Vol. 54, No. 136, July 18, 1989 (p. 30049). Our comments are given below.

ANF is a fabricator and supplier of low-enriched reactor fuels and related services. We are concerned with the safe operation of our fuel fabrication plant as well as the impact on safety of any services or basic components supplied to a licensed facility. We take positive actions to assure that the safety reporting requirements of 10 CFR 21, Section 206 of the Energy Reorganization Act of 1974 and Section 203 of the NRC Authorization of Appropriations Act of FY 1980, are met. Compliance with those laws and 10 CFR 21 is delineated in written Company policy. In addition, copies of those laws, 10 CFR 21, and Form NRC-3 are conspicuously posted at our facility. It is clear from Form NRC-3 that any employee can, at any time, contact the NRC either by speaking to one of the NRC inspectors in person or via telephone, using the posted telephone numbers. It is also clear from the posted information that the employee should have no fear of reprisal from the Company, and that the employee's identity will be kept in confidence by the NRC. Thus, it is difficult to believe that additional regulations are needed to assure that there is a free flow of information to the NRC.

We support the position of Commissioner Roberts that the proposed rule is unnecessary and should not be issued.

We believe the nature and scope of the proposed rule is unreasonable and unworkable. The rule is not limited to contractor or subcontractors involved in licensed activities. The rule is not limited to settlement agreements that involve any issues related to the identification of nuclear safety concerns. The rule is not even limited to agreements in which the licensee, or goods and services provided to the licensee, may be involved. It goes beyond obedience to the law. It requires the licensees to expend efforts to assure that its contractors and subcontractors are aware of the law. Further, it would force

SEP 11 1989
Acknowledged by card.

licensees to reach agreements with their contractors and subcontractors which would give the licensees the right of prior review of any settlement agreements negotiated under Section 210 of the Energy Reorganization Act of 1974 by their contractors and subcontractors to assure that such agreements contain no restrictions to the flow of information to the NRC. We do not believe that there is any public health and safety justification for such an extreme precautionary measure.

The above forced agreements also would have a negative impact on the participation of contractors and subcontractors in the nuclear business. It has been reported that during the past decade, there has been an increasing disposition of sub-tier suppliers to reduce or cease their participation in the nuclear equipment supply market because the marginal relationship of such activity to their main lines of business does not justify the added burdens to which they are subjected and the potential liability to which they are exposed. This decrease in the sub-tier supplier group adversely impacts the viability of the nuclear energy program, the availability of adequate and competitive sources of supply and nuclear safety in general. The proposed rule can only further deter participation in the nuclear supply market. This will not improve the safety of nuclear plants but could prove to be counter-productive.

We believe that the industry has already been adequately notified of the unacceptability of restrictive clauses in Section 210 settlements by the April 27, 1989 letter from Victor Stello, Jr. entitled, "Notification of the NRC of Employees' Potential Safety Issues."

That letter also asked the licensees to review all agreements reached under Section 210 and report to NRC by July 31, 1989 if any restrictive clauses had been identified. Since the proposed rule was published on July 18, 1989, it appears that the reports of the licensees may not have been taken into account in formulating the proposed rule. If that is the case, we request that the Commission examine the reports from the licensees on settlement agreements to determine if there is a compelling reason for a formal regulation.

In summary, we believe the proposed rule is unnecessary, too broad in scope, and counterproductive as written. It also appears that the formulation of the proposed rule did not take into account the reports of the licensees on settlement agreements which were requested in the April 27, 1989 letter from Victor Stello, Jr. We urge the Commission to retract the proposed rule and permit the April 27, 1989 letter from Victor Stello, Jr., to be a sufficient reminder to the industry of the unacceptability of restrictive clauses in Section 210 settlements.

While we are firmly convinced that the proposed rule is unnecessary, we do appreciate the Commission's concern with settlement agreements which could restrict the flow of safety information. It appears to us that the risk of such a restriction could be reduced without a formal regulation by adding appropriate language relating to Section 210 settlements to Form NRC-3, and by

the NRC entering into a Memorandum of Understanding with the Department of Labor to provide for notification to the NRC of any settlement agreements which could concern the NRC.

We appreciate this opportunity to participate in the rulemaking process.

Very truly yours,

C. W. Malody

C. W. Malody, Manager
Regulatory Compliance

CWM:jrs

(4)

Sverdrup
CORPORATION

13723 Riverport Drive
Maryland Heights, Missouri 63043

314 436-7600

August 24, 1989

Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Attention: Docketing and Service Branch

Dear Mr. Secretary:

This letter constitutes Sverdrup Corporation's response to your proposed rule concerning Preserving the Free Flow of Information to the Commission found at Volume 54, No. 136 of the Federal Register dated Tuesday, July 18, 1989.

By way of introduction, Sverdrup Corporation is not a major licensee or license applicant of the Nuclear Regulatory Commission. As part of its professional services rendered to clients, Sverdrup Corporation from time to time uses small nuclear equipment to test for moisture of soils. Only in this context is it a licensee or license applicant under the jurisdiction of the Nuclear Regulatory Commission.

Sverdrup Corporation agrees that complainants voicing alleged safety violations should have free access to the Nuclear Regulatory Commission staff. However, it believes that the proposed rule will impose significant burdens on applicants and licensees to supervise their contractors and subcontractors which will have a significant bureaucratic and economic impact upon such licensees and license applicants.

What is unclear about the proposed rule are the "procedures" which a licensee or license applicant must establish to ensure that its contractors and subcontractors are informed of the prohibition concerning settlement agreements under Section 210 of the Energy Reorganization Act and that contractors and subcontractors are notified of any complaints of discrimination by their employees for providing safety violation information to the Nuclear Regulatory Commission. Most onerous is the requirement that a licensee or license applicant must review any settlement agreement negotiated between a subcontractor or contractor and their employees concerning Section 210 of the Energy Reorganization Act. These oversight requirements will require license applicants and licensees to hire additional personnel to perform these functions and will involve them in disputes and possibly litigation between contractors and subcontractors and their employees. Licensees or license applicants will have obvious difficulty in compelling their contractors and subcontractors to negotiate proper agreements with such employees.

A better and less burdensome approach would be for the Nuclear Regulatory Commission to adopt a rule requiring that all contracts of licensees and license applicants with their contractors and subcontractors notify such contractors and subcontractors of the substance of this proposed rule. Specifically, contracts between the licensees and license applicants and contractors and subcontractors should contain terms or provisions that contractors and subcontractors cannot discriminate against employees for revealing safety related matters to the Nuclear Regulatory Commission or restrict in any way access of such employees to the Nuclear Regulatory Commission as part and parcel of the Section 210 settlement agreements. Also, such contracts of licensees and license applicants could contain a certification by the contractor and subcontractor that they would abide by the proposed rule. This approach would simply take the burden off the license applicant and licensees of policing contractors and subcontractors. Similarly, licensees and license applicants could so certify to the Nuclear Regulatory Commission that all contracts they have with contractors or subcontractors comply with the substance of this proposed rule. Violations by a contractor or subcontractor of such certifications would constitute a breach of contract with licensees and license applicants. False certifications by licensees and license applicants would subject them to enforcement by the Nuclear Regulatory Commission and subject them to violations of 18 U.S.C., Section 1001.

Thank you for allowing me to submit such comments on behalf of Sverdrup Corporation.

Sincerely,

SVERDRUP CORPORATION

James F. Bycott

James F. Bycott
Attorney

cc: Mike Droke

JFB:jyb

(3)

83 Pine St.
Brattleboro, Vt. 05301
August 24, 1989

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

Attn: Docketing and Service Branch

Dear Sir or Madam:

I am opposed to the proposed Rule "Preserving the Free Flow of Information to the Commission", published in the Federal Register on July 18, 1989, Vol. 54, No. 136.

This rule would prohibit a licensee from requiring its employees to allow upper management the opportunity to correct, or address potential safety violations before the employee provides the information to the Commission. It is an employee's responsibility to inform management of these situations such that they may be addressed as soon as possible, and the licensee should have the right to demand that its employees give management that opportunity.

The new rule would create an environment where a disgruntled employee could set up a licensee by allowing a violation to occur and then embarrassing the licensee by going to the Commission. For this, the employee would be protected from any form of retribution.

I see no public or employee health and safety justification for this rule; in fact, there may be a negative impact. Therefore, I am opposed to this new rule.

Thank you,
Bob N. Leach
Bob N. Leach

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August 9, 1989

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

Attention: Docketing & Service Branch

Ref: RIN 3150-AD21
Proposed rule - Preserving the free flow of information to the Commission.

It is my opinion that the proposed rule is unnecessary because it is redundant. Existing laws and regulations already provide for the free flow of information to government agencies.

The way to solve this problem is not to bury it in paper.

The idea that it will "not impose any substantial costs on licensees or license applicants" is simply not true. Every piece of paper we are required to prepare, file, update, sign or read adds to the cost of doing business.

I see no evidence in the proposal document that indicates any improvement in the safety of individuals is to be gained by a series of documents which are, in effect, promises to obey the regulation.

If the Commission feels that existing laws and regulations do not adequately cover the issue, a simple performance based regulation might be in order.

I suggest the following opening language for paragraph 30.7 (g)(1).

No licensee, contractor, or sub contractor of a licensee shall impose, etc.

Paragraph (g)(2) then becomes superfluous, as does all the paperwork.

An analogy which comes to mind is that of the stop sign. The rules say I must stop at a stop sign, but I am not required to promise in writing that I will do so, nor am I required to get written agreements from my spouse, my children and my mother-in-law that they, too, will stop.

THE OHMART CORPORATION • 4241 ALLENDORF DRIVE, CINCINNATI, OHIO 45209 • (513) 272-0131 • TELEX: 21-2071 OHMUSA-UR • FAX: (513) 272-0133

Each of us, whether receiving a drivers license or a nuclear materials license accepts the rules that apply. There is no need for the additional paperwork.

Very truly yours,

Paul E. Sieck
V.P. Manufacturing

PES:ss

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

July 25, 1989

DOCKET NUMBER
PROPOSED RULE PR 30,40,50,60,70,72,150
(54FR 30049)

NOTE TO: Stuart A. Treby
Office of the General Counsel

FROM: Dennis M. Crutchfield, Associate Director
for Special Projects
Office of Nuclear Reactor Regulation

SUBJECT: COMMENTS RECEIVED ON SETTLEMENT AGREEMENTS FROM MR. LEWIS

In a May 1, 1989 letter, Mr. Marvin I. Lewis detailed suggestions concerning Department of Labor settlement agreements. Enclosed are Mr. Lewis' comments. Please consider these comments in response to the Federal Register notice on the proposal to amend the Commission's regulations.

Dennis M. Crutchfield, Associate Director
for Special Projects
Office of Nuclear Reactor Regulation

Enclosure:
As stated

cc: T. Quay

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DOCKET NUMBER
PROPOSED RULE PR 30,40,50,60,70,72,150
(54FR 30049)

(1)

Marvin I. Lewis
7801 Roosevelt Boulevard
Suite 62
Phila., PA 19152

Victor Stello, Jr.
EDO
USNRC
Washington, D. C. 20555

Dear Director;

Your letter of April 27,1989, to Phillip Clark of GPU about "Notification of the NRC of Employees' Potential Safety Issues" came to my attention. Your effort to assure that the NRC has access to information from licensee employees is laudable. Your approach may leave out a few ways that employees may be able to bring safety information to the Commission.

You refer to an employee or his lawyer must not be prohibited from bringing information to the Commission via an out of court agreement. I suggest that out of court agreements must require that an employee should also be allowed to bring concerns to any interested party such as intervenors without any limitation.

You also require the licensee to check agreements and bring this information to the NRC and you. I suggest that the NRC require all such agreements to be filed in the appropriate docket and in the PDRs. The licensee has a bias to judge inadequately what the NRC might judge to be an issue of safety.

I hope that my suggestions are helpful.

Very truly yours,

Marvin I. Lewis

5-1-89.

SEP 11 1989

Acknowledged by card.

EDO---004456

[7590-01]

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 40, 50, 60, 70, 72 and 150

RIN: 3150-AD21

Preserving the Free Flow of Information to the Commission

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed Rule.

SUMMARY: The Nuclear Regulatory Commission is proposing a revision to its rules governing the conduct of all Commission licensees and license applicants. The proposed rule would require licensees and license applicants to ensure that neither they, nor their contractors or subcontractors, impose conditions in settlement agreements under Section 210 of the Energy Reorganization Act, or in other agreements affecting employment, that would prohibit, restrict, or otherwise discourage an employee from providing the Commission with information on potential safety violations. This proposed rule is necessary to prohibit the use of provisions which would inhibit the free flow of safety information to the Commission in agreements related to employment.

Published in the Federal Register on 7-18-89

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Treby

DATES: The comment period expires September 18, 1989. Comments received after this date will be considered if it is practical to do so, but assurance of consideration is given only for comments filed on or before that date.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C., 20555, Attention: Docketing and Service Branch. Deliver comments to One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. weekdays. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW, Lower Level, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stuart A. Treby, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone: (301) 492-1636.

SUPPLEMENTARY INFORMATION:

Section 210 of the Energy Reorganization Act of 1974, as amended, was added as a new section to that Act in 1978 (Public Law 95-601). Section 210 offers protection to employees of a Commission licensee, or of a contractor or a subcontractor of a Commission licensee or applicant. The protection afforded is to those who believe they have been fired or discriminated against as a result of the fact that, among other things, they have testified or given

evidence on potential safety violations, or brought suit under Section 210 of the Energy Reorganization Act. Employees who have been discriminated against for raising safety issues have the right to file complaints with the Department of Labor for the purpose of obtaining a remedy for the personal harm caused by the discrimination. Following the filing of a complaint, the Department of Labor performs an investigation. If either the employee or the employer is not satisfied with the outcome of the investigation, a hearing can be held before an Administrative Law Judge, with review by the Secretary of Labor. The Secretary of Labor can issue an order for the employee to be rehired, or otherwise compensated if the employee's case is justified.

In many cases, the employee and the employer reach settlement of the issues raised in the Department of Labor proceeding before completion of the formal process and a finding by the Secretary of Labor. In general the Commission supports settlements as they provide remedies to employees without the need for litigation. However, a recent case has brought to the Commission's attention the potential for settlement agreements negotiated under Section 210 to impose restrictions upon the freedom of employees or former employees protected by Section 210 to testify or participate in NRC licensing and regulatory proceedings, as amended, or to otherwise provide information on potential safety violations to the Commission or the NRC staff. See Texas Utilities Electric Co., Comanche Peak Steam Electric Station (Units 1 and 2), CLI-88-12, 28 NRC 605 (1988); Texas Utilities Electric Co., Comanche Peak Steam Electric Station (Units 1 and 2), CLI-89-06, ___ NRC ___ (1989)).

The Commission believes that a Section 210 settlement agreement, or any other agreement affecting employment, which restricts the freedom of an employee or a former employee who is subject to its provisions, to freely and fully communicate with the Nuclear Regulatory Commission about nuclear safety matters is incompatible with the objectives of that section. These provisions would have a chilling effect on communications about nuclear safety matters, and would restrict, impede, or frustrate full and candid disclosure to the Nuclear Regulatory Commission about nuclear safety matters. Any such agreement under which a person contracts to withhold safety-significant information or testimony from the Nuclear Regulatory Commission could itself be a threat to safety and therefore jeopardize the execution of the Agency's overall statutory duties.

Accordingly, the Commission is proposing to amend its regulations to require licensees and license applicants to ensure that neither they, nor their contractors or subcontractors, impose conditions in settlement agreements under Section 210 of the Energy Reorganization Act, or in other agreements affecting employment, that would prohibit, restrict, or otherwise discourage an employee from providing the Commission with information on potential safety violations. The proposed rule would also require licensees and license applicants to establish procedures to ensure that their contractors and subcontractors are informed of the prohibition, that they are notified of any complaints of discrimination by an employee of a contractor or subcontractor for providing such information related to work performed for the licensee or license applicant, and to require review by the licensee or license applicant

of any settlement agreements related to any employee complaints of such discrimination by a contractor or subcontractor related to work performed for the licensee or license applicant.

The proposed rule would only apply to agreements that relate to the compensation, terms, conditions, and privileges of employment, including Section 210 settlement agreements, and not to agreements in general. The proposed rule applies to all provisions which might discourage an employee from providing safety information to the Commission, to Commission adjudicatory boards, or to the NRC staff.

In addition to comments in general on the proposed rule, the Commission would specifically request comments on the following issues--

1. Should the rule prohibit all restrictions on providing information to the Commission, or should limitations on an individual appearing before a Commission adjudicatory board (e.g., requiring an individual to resist a subpoena) be permissible as long as other avenues for providing information to the Commission are available?

2. Should the rule impose an additional requirement that licensees and license applicants must ensure that all agreements affecting employment, including those of their contractors or subcontractors, contain a provision stating that the agreement in no way restricts the employee from providing safety information to the Commission?

Finally, the Commission would emphasize that it will not hesitate to take immediate action against a licensee who does not comply with these regulations when effective, notwithstanding the pendency of a Section 210 matter before the Department of Labor.

SEPARATE VIEWS OF COMMISSIONER ROBERTS

I continue to question the need to impose such broad restrictions on employers' options in negotiating settlement agreements with their employees. Agreements which do not foreclose a whistleblower's freedom to bring safety information to the Commission are legally permissible in my view. Therefore, I see no public health and safety justification for a rule that would prohibit the bargaining away of any avenues of access to the NRC. Such a rule will tend to promote unnecessary litigation before both NRC and DOL. Moreover, I believe the proposed rule constitutes government interference in the contractual relations between licensees and their contractors that is not needed to assure adequate protection of public health and safety or of whistleblowers' freedom to bring their safety concerns to the NRC.

Should a majority approve issuance of the proposed rule I request that my views be included for comment also.

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule falls within the scope of the actions described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed rule.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). This rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

Regulatory Analysis

The proposed rule requires Commission licensees or license applicants to ensure that they, or their contractors or subcontractors, do not enter into agreements affecting employment that restrict employees from providing information to the Commission on potential safety violations, and to develop procedures to implement this requirement. The objectives of the proposed rule are to ensure that such agreements do not restrict the free flow of safety information to the Commission and that the intent of Section 210 of the Energy Reorganization Act is not frustrated. The Commission believes that the clearest and most effective method of achieving these objectives, and avoiding potential uncertainty and conflict regarding the interpretation of specific

provisions, is to prohibit provisions in these agreements that in any way restrict the flow of information tc the Commission, the Commission's adjudicatory boards, or the NRC staff. The alternative of imposing an additional requirement on licensees and license applicants to require any agreement affecting employment to include a provision stating that the agreement in no way restricts the employee from providing information to the Commission was rejected as unnecessary to achieve the objectives of the rule. The rule, as proposed, will not impose any substantial costs on licensees or license applicants.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. Although the proposed rule would apply to a wide range of Commission licensees of varying size, the proposed rule requires Commission licensees or license applicants to ensure that, they or their contractors, do not enter into agreements with employees that restrict employees from providing information to the Commission on potential safety violations and to prepare procedures to implement this requirement. The Commission believes that this will not impose a significant economic impact on Commission licensees who would be considered "small entities."

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule and, therefore, that a backfit analysis is not required for this proposed rule because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects

10 CFR Part 30

Byproduct material, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Penalty, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 40

Government contracts, Hazardous materials - transportation, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 50

Antitrust, Classified information, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria. Reporting and recordkeeping requirements.

10 CFR Part 60

High-level waste, Nuclear power plants and reactors, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Waste treatment and disposal.

10 CFR Part 70

Hazardous materials - transportation, Nuclear materials, Packaging and containers, Penalty, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 72

Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

10 CFR Part 150

Hazardous materials - transportation, Intergovernmental relations, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Security measures, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is proposing to adopt the following amendments to 10 CFR Parts 30, 40, 40, 60, 70, 72 and 150.

PART 30 - RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

1. The authority citation for Part 30 is revised to read as follows:

AUTHORITY: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§30.3, 30.7(g), 30.34(b), (c) and (f), 30.41(a) and (c), and 30.53 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§30.6, 30.9, 30.36, 30.51, 30.52, 30.55, and 30.56(b) and (c) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 30.7, paragraph (g) is added to read as follows:

§ 30.7 Employee protection.

* * * * *

(g)(1) Each licensee and applicant for a Commission license shall assure that neither they nor their contractors or subcontractors impose, as a condition of any agreement affecting the compensation, terms, conditions and privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to Section 210 of the Energy Reorganization Act of 1974, any provision which would prohibit, restrict, or otherwise discourage, an employee from voluntarily providing to any person within the Commission information about possible violations of requirements imposed under the Atomic Energy Act or the Energy Reorganization Act, and NRC regulations, orders, and licenses.

(2) Each licensee and license applicant shall, within sixty days of the effective date of this regulation, adopt appropriate procedures to:

(i) Assure that its contractors and subcontractors are informed of the requirements of paragraph (g)(1) of this section;

(ii) Assure that it is informed by its contractors and subcontractors of each complaint, related to work performed for the licensee or license applicant, filed by an employee against the contractor or subcontractor pursuant to Section 210 of the Energy Reorganization Act relating to discrimination for protected activities as described in this section; and

(iii) Provide for prior review by the licensee or license applicant of settlement agreements negotiated under section 210 of the Energy Reorganization Act of 1974 by its contractors and subcontractors, to assure

that such agreements contain no provisions of the type described in paragraph (g)(1) of this section.

PART 40 - DOMESTIC LICENSING OF SOURCE MATERIAL

3. The authority citation for Part 40 is revised to read as follows:

AUTHORITY: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95-604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86-373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97-415, 96 Stat. 2067 (42 U.S.C. 2022).

Section 40.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§40.3, 40.7(g), 40.25(d)(1)-(3), 40.35(a)-(d) and (f), 40.41(b) and (c), 40.46, 40.51(a) and (c), and 40.63 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§40.5, 40.9, 40.25(c), (d)(3), and (4),

40.26(c)(2), 40.35(e), 40.42, 40.61, 40.62, 40.64, and 40.65 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

4. In § 40.7, paragraph (g) is added to read as follows:

§ 40.7 Employee protection.

* * * * *

(g)(1) Each licensee and applicant for a Commission license shall assure that neither they nor their contractors or subcontractors impose, as a condition of any agreement affecting the compensation, terms, conditions and privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to Section 210 of the Energy Reorganization Act of 1974, any provision which would prohibit, restrict, or otherwise discourage, an employee from voluntarily providing to any person within the Commission information about possible violations of requirements imposed under the Atomic Energy Act or the Energy Reorganization Act, and NRC regulations, orders, and licenses.

(2) Each licensee or license applicant shall, within sixty days of the effective date of this regulation, adopt appropriate procedures to:

(i) Assure that its contractors and subcontractors are informed of the requirements of paragraph (g)(1) of this section;

(ii) Assure that it is informed by its contractors and subcontractors of each complaint, related to work performed for the licensee or license applicant, filed by an employee against the contractor or subcontractor

pursuant to Section 210 of the Energy Reorganization Act relating to discrimination for protected activities as described in this section; and

(iii) Provide for prior review by the licensee or license applicant of settlement agreements negotiated under section 210 of the Energy Reorganization Act of 1974 by its contractors and subcontractors, to assure that such agreements contain no provisions of the type described in paragraph (g)(1) of this section.

PART 50 - DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

5. The authority citation for Part 50 is revised to read as follows:

AUTHORITY: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13 and 50.54(dd) also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91-190, 83

Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80 through 50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§50.7(f), 50.46(a) and (b), and 50.54(c) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§50.7(a), 50.10(a)-(c), 50.34(a) and (e), 50.44(a)-(c), 50.46(a) and (b), 50.47(b), 50.48(a), (c), (d), and (e), 50.49(a), 50.54(a), (i), (i)(1), (l)-(n), (p), (q), (t), (v), and (y), 50.55(f), 50.55a(a), (c)-(e), (g), and (h), 50.59(c), 50.60(a), 50.62(c), 50.64(b), and 50.80(a) and (b) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§50.49(d), (h), and (j), 50.54(w), (z), (bb), (cc), and (dd), 50.55(e), 50.59(b), 50.61(b), 50.62(b), 50.70(a), 50.71(a)-(c) and (e), 50.72(a), 50.73(a) and (b), 50.74, 50.78, and 50.90 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

6. In § 50.7, paragraph (f) is added to read as follows:

§ 50.7 Employee protection.

* * * * *

(f)(1) Each licensee and applicant for a Commission license shall assure that neither they nor their contractors or subcontractors impose, as a condition of any agreement affecting the compensation, terms, conditions and privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to Section 210 of the Energy Reorganization Act of 1974, any provision which would prohibit, restrict, or otherwise discourage, an employee from voluntarily providing to any person within the Commission information about possible violations of requirements imposed under the Atomic Energy Act or the Energy Reorganization Act, and NRC regulations, orders, and licenses.

(2) Each licensee or license applicant shall, within sixty days of the effective date of this regulation, adopt appropriate procedures to:

(i) Assure that its contractors and subcontractors are informed of the requirements of paragraph (f)(1) of this section;

(ii) Assure that it is informed by its contractors and subcontractors of each complaint, related to work performed for the licensee or license applicant, filed by an employee against the contractor or subcontractor pursuant to Section 210 of the Energy Reorganization Act relating to discrimination for protected activities as described in this section; and

(iii) Provide for prior review by the licensee or license applicant of settlement agreements negotiated under section 210 of the Energy Reorganization Act of 1974 by its contractors and subcontractors, to assure that such agreements contain no provisions of the type described in paragraph (f)(1) of this section.

PART 60 - DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTES IN GEOLOGIC REPOSITORIES

7. The authority citation for Part 60 is revised to read as follows:

AUTHORITY: Secs. 51, 53, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 929, 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2071, 2073, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95-601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332); sec. 121, Pub. L. 97-425, 96 Stat. 2228 (42 U.S.C. 10141).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§60.9(f), 60.10, 60.71 to 60.75 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

8. In § 60.9, paragraph (f) is added to read as follows:

§ 60.9 Employee protection

* * * * *

(f)(1) Each licensee and applicant for a Commission license shall assure that neither they nor their contractors or subcontractors impose, as a condition of any agreement affecting the compensation, terms, conditions and privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to Section 210 of the Energy Reorganization Act of 1974, any provision which would prohibit, restrict, or otherwise discourage, an employee from voluntarily providing to

any person within the Commission information about possible violations of requirements imposed under the Atomic Energy Act or the Energy Reorganization Act, and NRC regulations, orders, and licenses.

(2) Each licensee or license applicant shall, within sixty days of the effective date of this regulation, adopt appropriate procedures to:

(i) Assure that its contractors and subcontractors are informed of the requirements of paragraph (f)(1) of this section;

(ii) Assure that it is informed by its contractors and subcontractors of each complaint, related to work performed for the licensee or license applicant, filed by an employee against the contractor or subcontractor pursuant to Section 210 of the Energy Reorganization Act relating to discrimination for protected activities as described in this section; and

(iii) Provide for prior review by the licensee or license applicant of settlement agreements negotiated under section 210 of the Energy Reorganization Act of 1974 by its contractors and subcontractors, to assure that such agreements contain no provisions of the type described in paragraph (f)(1) of this section.

PART 70 - DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

9. The authority citation for Part 70 is revised to read as follows:

AUTHORITY: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93-377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§70.3, 70.7(g), 70.19(c), 70.21(c), 70.22(a), (b), (d)-(k), 70.24(a) and (b), 70.32(a)(3), (5), (6), (d), and (i), 70.36, 70.39(b) and (c), 70.41(a), 70.42(a) and (c), 70.56, 70.57(b), (c), and (d), 70.58(a)-(g)(3), and (h)-(j) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§70.7, 70.20a(a) and (d), 70.20b(c) and (e), 70.21(c), 70.24(b), 70.32(a)(6), (c), (d), (e), and (g), 70.36, 70.51(c)-(g), 70.56, 70.57(b) and (d), and 70.58 (a)-(g)(3) and (h)-(j) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§70.5, 70.9, 70.20b(d) and (e), 70.38, 70.51(b) and (i), 70.52, 70.53, 70.54, 70.55, 70.58(g)(4), (k), and (l), 70.59, and 70.60(b) and (c) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

10. In § 70.7, paragraph (g) is added to read as follows:

§ 70.7 Employee protection.

* * * * *

(g)(1) Each licensee and applicant for a Commission license shall assure that neither they nor their contractors or subcontractors impose, as a condition of any agreement affecting the compensation, terms, conditions and privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to Section 210 of the Energy Reorganization Act of 1974, any provision which would prohibit, restrict, or otherwise discourage, an employee from voluntarily providing to any person within the Commission information about possible violations of requirements imposed under the Atomic Energy Act or the Energy Reorganization Act, and NRC regulations, orders, and licenses.

(2) Each licensee or license applicant shall, within sixty days of the effective date of this regulation, adopt appropriate procedures to:

(i) Assure that its contractors and subcontractors are informed of the requirements of paragraph (g)(1) of this section;

(ii) Assure that it is informed by its contractors and subcontractors of each complaint, related to work performed for a licensee or license applicant, filed by an employee against the contractor or subcontractor pursuant to Section 210 of the Energy Reorganization Act relating to discrimination for protected activities as described in this section; and

(iii) Provide for prior review by the licensee or license applicant of settlement agreements negotiated under section 210 of the Energy Reorganization Act of 1974 by its contractors and subcontractors, to assure that such agreements contain no provisions of the type described in paragraph (g)(1) of this section.

PART 72 - LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

11. The authority citation for Part 72 is revised to read as follows:

AUTHORITY: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86-373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332); Secs. 131, 132, 133, 135, 137, 141, Pub. L. 97-425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100-203, 101 Stat. 1330-235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100-203, 101 Stat. 1330-232, 1330-236 (42 U.S.C. 10162(b), 10168(c), (d)).

Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97-425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100-203, 101 Stat. 1330-235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97-425, 96 Stat. 2202, 2203, 2204, 2222, 2224 (42 U.S.C. 10101, 10137(a), 10161(h)).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§72.6, 72.10(f), 72.22, 72.24, 72.26, 72.28(d), 72.30, 72.32, 72.44(a), (b)(1), (4), (5), (c), (d)(1), (2), (e), (f), 72.48(a), 72.50(a), 72.52(b), 72.72(b), (c), 72.74(a), (b), 72.76, 72.78, 72.104, 72.106, 72.120, 72.122, 72.124, 72.126, 72.128, 72.130, 72.140(b), (c), 72.148, 72.154, 72.156, 72.160, 72.166, 72.168, 72.170, 72.172, 72.176, 72.180, 72.184, 72.186 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§72.10(a), (e), 72.22, 72.24, 72.26, 72.28, 72.30, 72.32, 72.44(a), (b)(1), (4), (5), (c), (d)(1), (2), (e), (f), 72.48 (a), 72.50(a), 72.52(b), 72.90(a)-(d), 72.92, 72.94, 72.98, 72.100, 72.102(c), (d), (f), 72.104, 72.106, 72.120, 72.122, 72.124, 72.126, 72.128, 72.130, 72.140(b), (c), 72.142, 72.144, 72.146, 72.148, 72.150, 72.152, 72.154, 72.156, 72.158, 72.160, 72.162, 72.164, 72.166, 72.168, 72.170, 72.172, 72.176, 72.180, 72.182, 72.184, 72.186, 72.190, 72.192, 72.194 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§72.10(e), 72.11, 72.16, 72.22, 72.24, 72.26, 72.28, 72.30, 72.32, 72.44(b)(3), (c)(5), (d)(3), (e), (f), 72.48(b), (c), 72.50(b), 72.54(a), (b), (c), 72.56, 72.70, 72.72, 72.74(a), (b), 72.76(a), 72.78(a), 72.80, 72.82, 72.92(b), 72.94(b), 72.140(b), (c), (d), 72.144(a), 72.146, 72.148, 72.150, 72.152, 72.154(a),

(b), 72.156, 72.160, 72.162, 72.168, 72.170, 72.172, 72.174, 72.176, 72.180, 72.184, 72.186, 72.192 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

12. In § 72.10, paragraph (f) is added to read as follows:

§ 72.10 Employee protection

* * * * *

(f)(1) Each licensee and applicant for a Commission license shall assure that neither they nor their contractors or subcontractors impose, as a condition of any agreement affecting the compensation, terms, conditions and privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to Section 210 of the Energy Reorganization Act of 1974, any provision which would prohibit, restrict, or otherwise discourage, an employee from voluntarily providing to any person within the Commission information about possible violations of requirements imposed under the Atomic Energy Act or the Energy Reorganization Act, and NRC regulations, orders, and licenses.

(2) Each licensee or license applicant shall, within sixty days of the effective date of this regulation, adopt appropriate procedures to:

(i) Assure that its contractors and subcontractors are informed of the requirements of paragraph (f)(1) of this section;

(ii) Assure that it is informed by its contractors and subcontractors of each complaint, related to work performed for the licensee or license

applicant, filed by an employee against the contractor or subcontractor pursuant to Section 210 of the Energy Reorganization Act relating to discrimination for protected activities as described in this section; and

(iii) Provide for prior review by the licensee or license applicant of settlement agreements negotiated under section 210 of the Energy Reorganization Act of 1974 by its contractors and subcontractors, to assure that such agreements contain no provisions of the type described in paragraph (f)(1) of this section.

PART 150 - EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274

13. The authority citation for Part 150 continues to read as follows:

AUTHORITY: Sec. 161, 68 Stat. 948, as amended, sec. 274, 73 Stat. 688 (42 U.S.C. 2201, 2021); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Sections 150.3, 150.15, 150.15a, 150.31, 150.32 also issued under secs. 11e(2), 81, 68 Stat. 923, 935, as amended, secs. 83, 84, 92 Stat. 3033, 3039 (42 U.S.C. 2014e(2), 2111, 2113, 2114). Section 150.14 also issued under sec. 53, 68 Stat. 930, as amended (42 U.S.C. 2073). Section 150.15 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 150.17a also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 150.30 also issued under sec. 234, 83 Stat. 444 (42 U.S.C. 2282).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§150.20(b)(2)-(4) and 150.21 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §150.14 is issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§150.16-150.19 and 150.20(b)(1) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

14. In § 150.20, the introductory text of paragraph (b) is revised to read as follows:

§ 150.20 Recognition of Agreement State licenses

* * * * *

(b) Notwithstanding any provision to the contrary in any specific license issued by an Agreement State to a person engaging in activities in a non-Agreement State or in offshore waters under the general licenses provided in this section, the general licenses provided in this section are subject to the provisions of §§ 30.7(a) through (f), 30.9, 30.14(d) and §§ 30.34, 30.41, and 30.51 to 30.63, inclusive, of Part 30 of this chapter; § 40.7(a) through (f), § 40.9, and §§ 40.41, 40.51, 40.61, 40.63 inclusive, §§ 40.71 and 40.81 of Part 40 of this chapter; and § 70.7(a) through (f), § 70.9, and §§ 70.32, 70.42, 70.51 to 70.56, inclusive, §§ 70.60 to 70.62, inclusive, and § 70.7 of Part 70 of this chapter; and to the provisions of Parts 19, 20 and 71 and Subpart B of Part 34 of this chapter. In addition, any person engaging in activities in non-Agreement

States or in offshore waters under the general licenses provided in this section:

* * * * *

Dated at Rockville, MD, this 12th day of July, 1989.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,
Secretary of the Commission.