

P.O. Box 4790
Walnut Creek
CA 94596
3063 Citrus Circle
510 933.6060
FAX 510 933.0115

'94 AUG -1 P3:16

26 July 1994

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

IBEW

International
Brotherhood of
Electrical
Workers, AFL-CIO

Jack McNally
Business Manager

Howard Stiefer
President

Docketing and Services Branch
United States Nuclear Regulatory Commission
Washington, D.C. 20555

RE: **10 CFR Part 26 [Consideration of Changes
to Fitness-For-Duty Requirements]**

Dear Commission:

In response to the notice in the May 11, 1994, Federal Register relating to 10 CFR Part 26, Local 1245 of the International Brotherhood of Electrical Workers, AFL-CIO, submits the following comments.

Local 1245 represents clerical, maintenance, and operating employees at the Pacific Gas and Electric Company's Diablo Canyon Nuclear Power Plant. Through administrative filings and litigation in the Ninth Circuit, the Commission is fully aware of Local 1245's opposition to random drug testing. In short, Local 1245 believes that the invasive and demeaning nature of random urine testing, coupled with the inability of urine testing to detect an employee's lack of fitness for duty, leave random urine testing as a counter-productive measure.

The Commission has posed several options for consideration in its ongoing effort to assure safe operation of all nuclear power plants.

OPTION 1: Local 1245 does not believe that the Commission should retain the current scope of the random urine testing requirements. The net which the Commission has cast in its current testing requirements is far too great, including clerical and administrative workers whose duties are not arguably safety-related and who do not have access to the safety-sensitive areas at Diablo Canyon.

OPTIONS 2, 3 and 4: These options all narrow the pool of individuals subject to random testing. From a constitutional point of view, Option 4 is the purest and safest approach. Every Court which has considered random urine testing has emphasized that the invasion of an individual's privacy can be justified only in cases where safety or security are at risk. While difficult from an operational point of view, this approach is precisely that taken by other agencies such as the Department of Transportation. It is the option of constitutional choice.

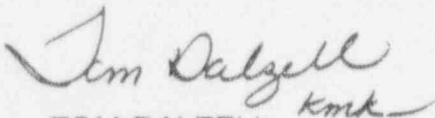
Option 2 is, at least from Local 1245's perspective at Diablo Canyon, not particularly workable. Local 1245 has asked that most - but not all - clerical employees at Diablo Canyon be exempt from random urine testing. A small group of clerical employees work in the control room, and their duties and access to vital equipment would, Local 1245 believes, justify their classification as safety sensitive.

Option 3 is from our point of view the second best alternative. By loose definition, workers with vital access are safety-sensitive while workers with protected area access only are not. This approach avoids the operational problems associated with the employee-by-employee or at least classification-by-classification approach envisioned by Option 4 while narrowing testing in broad terms to safety-sensitive employees.

OPTION 5: For cause testing is the most reliable and the most valid. At Diablo Canyon, more than 90% of the for cause tests have been positive, while less than 1% of the random tests have been positive. Additionally, with for cause testing there is a suspicion of impairment, an element which is totally missing from random urine testing.

Local 1245 believes that employees who are not safety-sensitive need not be subjected to any form of random testing of any sort, and that plant operators (and ultimately ratepayers) should be not subjected to costly random tests of employees who are not safety-sensitive.

Sincerely,

A handwritten signature in cursive script that reads "Tom Dalzell". To the right of the signature, the letters "Kmk" are written in a smaller, simpler script.

TOM DALZELL
Staff Attorney

:bhh