

NRC PUBLIC DOCUMENT ROOM
DUKE POWER COMPANY

POWER BUILDING

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VICE PRESIDENT
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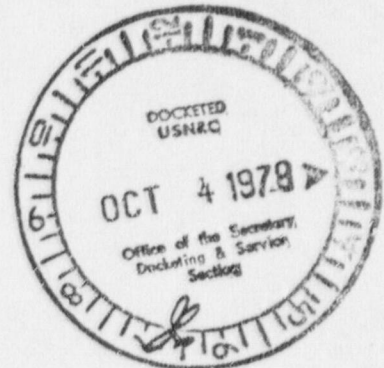
PROPOSED RULE

(15)
PR-70,73(43FR35321)

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

Attention: Docketing and Service Branch

Reference: 10CFR Parts 70 and 73
Physical Protection of Plants and Materials
Proposed Rules



Dear Sir:

On August 9, 1978 the Nuclear Regulatory Commission published in the Federal Register (FR Doc 78-21791) proposed amendments to 10CFR Parts 70 and 73. Comments on the proposed rules are provided as follows.

In the Summary of the proposed rulemaking it is stated that these amendments pertain to the strengthening of physical protection for strategic special nuclear material and for certain fuel cycle facilities, associated transportation and other activities involving significant quantities of strategic special nuclear material. A review of the proposed amendments makes it evident that in addition to the protection of strategic special nuclear material, these amendments make changes to the regulations concerning the protection of special nuclear material at fixed sites. These changes will be discussed in greater detail in the following paragraphs. In discussions with other nuclear reactor licensees it is apparent that many licensees felt after reading this summary that the proposed changes applied only to strategic special nuclear material, i.e. did not apply to nuclear reactor sites, and therefore these licensees did not review the rule in depth. It is strongly considered that these proposed changes, involving changes to the status of 10CFR Sections 73.55 were inappropriately published and should be renoticed with adequate statements of consideration for full review and comment. The concern expressed above was brought to the attention of the Commission on August 12, 1977 in my letter to the Secretary of the Commission.

In 10CFR Section 73.2 and throughout the proposed changes, the term "industrial sabotage" has been replaced with the term "radiological sabotage." The term "radiological sabotage" incorporated a reference to acts of sabotage directed against a "transport" and deleted the phrase exempting "acts by an enemy of the United States, whether foreign government or other person" which

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was part of the definition of "industrial sabotage." It is considered that deletion of this last phrase is inappropriate in that it is the responsibility of the federal government to provide protection against enemies of the United States. Also note that Part 73.40a and Parts 73.55(h)(4)(iii)(A) and 73.55h(5) still retain references to "industrial sabotage."

Although Duke Power Company does not fall under the requirements of Sections 73.20, 73.25, 73.26, 73.27, 73.45, or 73.46, these requirements may impact upon licensing activities in nuclear power reactors at some future date; therefore, the following comments are provided on certain sections. In Section 73.26, individuals engaged in the protection of a shipment are required to have an NRC or DOE material access authorization. Duke Power Company is opposed to the requirement for NRC or DOE material access authorization as discussed in submittals to the hearing board convened in the matter of amendments to 10CFR Parts 11, 50 and 70 concerning authority for access or control over special nuclear material. Although the arguments submitted in support of this opposition discussed the use of such clearances for individuals involved in the operation of nuclear power reactors, it is felt that many of the arguments apply also to the use of such clearances for individuals engaged in the protection of shipments of strategic special nuclear material or the protection of strategic special nuclear material at fixed sites. Specifically, it is considered that criteria upon which clearances are granted are questionable and unconstitutionally vague and overbroad. In addition, it is felt that the proposed access program violates the individual freedoms of speech, association and privacy guaranteed by the first, fourth, fifth and ninth amendments. The proposed program also violates procedural due process and other constitutional considerations. These and other arguments supporting Duke Power Company's opposition to the use of NRC or DOE material access authorizations are presented in more detail in our July 6, 1978 submittal to the hearing board in the matter of amendments to 10CFR Parts 11, 50 and 70 concerning authority for access or control over special nuclear material (Docket No. RM 50-7). It is requested that these arguments be considered in any move to require NRC or DOE material access authorizations.

In Sections 73.26d(3) and 73.55b(3), it is considered that the discussion on written security procedures is overly detailed in that provisions for written approval of procedures and revisions are the responsibility of the licensee and should not be subject to regulation.

In Section 73.26f(2), it is considered that the requirements for at least nine armed escorts or other armed personnel is excessive, especially considering the backup of a movement control center, local law enforcement agencies and a remote monitoring location at transfer points.

In Section 73.55g(4), the requirement for review of the security program every twelve months is excessive. It is felt that a more appropriate interval would be 24 months. In addition, the requirement for an audit of commitments established for response by local law enforcement authorities is vague and

Secretary of the Commission
September 25, 1978
Page Three

leaves the appropriate content of such an audit open to interpretation.

The requirement for informing local law enforcement agencies of a threat and requesting assistance as discussed in Section 73.55(h)(4)(iii)(b) is not considered appropriate at all times, therefore, it is suggested that this paragraph be reworded to state that appropriate immediate concurrent measures to neutralize the threat by informing local law enforcement agencies of the threat and requesting assistance if necessary be taken.

In conclusion, we feel that revisions to Section 73.55 were inappropriately included in this proposed rulemaking in that these regulations do not concern the protection of strategic special nuclear material. Since no discussion has been provided on these revisions it is impossible to determine their intent or how the various revisions will be applied to power reactor sites. In order to insure adequate public comment, it is considered that the proposed revisions to 10CFR 73.55 should be published in a separate Federal Register notice.

Very truly yours,

William O Parker Jr

William O. Parker, Jr. *by WAH*

LJB:scs