



## **Comments by The Society of Energy Professionals Fitness for Duty: Managing Worker Fatigue REGDOC-2.2.4**

### **INTRODUCTION**

The Society of Energy Professionals (The Society) represents almost 8,000 employees working for 13 employers in the electricity industry in Ontario, including Ontario Power Generation, Hydro One, Bruce Power, the Nuclear Waste Management Organization, AMEC-Nuclear Safety Solutions, the Independent Electricity System Operator, the Ontario Energy Board and others. Approximately 3,500 Society members are employed in nuclear generation at Bruce Power (BP) and at the nuclear division of Ontario Power Generation (OPG).

Our members are employed as first-line managers and supervisors, professional engineers, scientists, information systems professionals, economists, auditors and accountants, as well as many other professional, administrative, and associated occupations. Society members provide technical expertise in areas of conventional health and safety, radiation safety, emergency preparedness and environment. Society-represented safety sensitive occupations include ergonomists, safety specialists, industrial hygienists, safety officers, health physicists, emergency managers, environmental scientists and environmental engineers.

Approximately 90% of our membership holds post-secondary degrees and diplomas, with 70% holding degrees at the Bachelor's, Master's or Ph.D. levels. Society members are knowledge workers, working to the best of their abilities, who take great pride in exercising their civic, social and professional responsibilities. As a Union, we stand behind our members' professionalism, integrity, and commitment to excellence in all areas, particularly workplace safety, public health and environmental sustainability.

The Society is a strong proponent of having the most up-to-date and effective safety measures in place at nuclear generation facilities. Those measures must be based on sound scientific principles and founded on peer reviewed technical documentation. We commend the CNSC for using this consultation process to allow the Society and other stakeholders to raise issues and questions around worker fatigue and hours of work. We believe we can add value by helping to inform this process and accordingly we have some specific suggestions, questions and concerns which we hope the CNSC will consider and take guidance from when finalizing the REGDOC.

## THE NEED FOR HARMONIZATION AND ALIGNMENT

There is a need to harmonize the CNSC's fatigue-limiting proposals with other regulations, legislation, policies and binding documents which are potentially at odds with one another. As the exclusive bargaining agent for professional employees at OPG and BP, we have negotiated legally binding terms and conditions of employment with these employers, including those dealing with our members' obligations and rights as they pertain to hours of work, shift work, overtime, time off provisions and other topics related to worker safety issues addressed in REGDOC-2.2.4.

The language in our collective agreements is the result of negotiations that were informed by an intimate knowledge of the workforce, the workplace and its complexities, as well as the balancing of interests which characterizes all collective bargaining. The terms and conditions that the parties have arrived at are not arbitrary. Both parties have a legal right to expect they will be adhered to.

Any attempt to alter such provisions outside of negotiations in a way which could be perceived as advantaging or disadvantaging either party, without appropriate consultation and consent, would likely be met with objection, resistance and legal challenge. This should be scrupulously avoided given the importance of stakeholder buy-in to any safety program.

We are optimistic that by appropriately consulting and working with the parties toward mutually agreeable consent to any changes, rather than seeking to impose them in a top-down manner, the CNSC can avoid such an eventuality. Should such consensus and consent prove impossible to achieve, we believe the CNSC's approach should be governed by the basic principle in labour law that parties to a collective agreement cannot contract "outside the law". That is to say parties to an agreement are free to negotiate conditions which are superior to legislated or regulated floors or minimums; however, any agreement that provides conditions below legislated or regulated minimums is neither binding nor enforceable and the superior standards prevail.

Another potential area which may be out of alignment with the proposed CNSC measures is found in the legislation under the Ontario Health and Safety Act (OHSA) and the Ontario Employment Standards Act (ESA). Should such a misalignment be identified, it raises the question of which provisions prevail, those of the Ontario OHSA/ESA or the provisions the CNSC proposes. The 1993 decision to delegate the labour-related issues for Ontario Hydro, now OPG and BP, to the province from federal jurisdiction also must be borne in mind.

As well, given the highly-regimented nature of nuclear power generation, there are also many internal OPG/BP policies, procedures and programs which are found outside the collective agreement and the legislative framework, which may also bring to bear other contradictions and conflicts. Any inconsistencies between OPG/BP policies, procedures and programs with CNSC requirements would need to be resolved. This, in turn, would require the time necessary for an orderly transition to the CNSC's new requirements.

The Society believes that the CNSC must consider the potential for conflicts and seek ways to find harmonization between collective agreement provisions, the legislated provisions of the OHSA and ESA, and

the measures now being proposed by the CNSC.

The potential impacts flowing from the actions of other regulatory tribunals, such as the Ontario Energy Board (OEB), must also be considered. The primary role of the OEB, as it pertains to nuclear generation, is to set rates which compensate a rate regulated licensee (in this case OPG) based on their reasonable and appropriate expenditures. It is the opinion of the Society that in recent years the OEB has overstepped that role by making poorly informed pronouncements on appropriate staffing levels. This includes pronouncements with respect to such nuclear safety sensitive positions as Radiation Protection Technicians. The OEB essentially has attempted to dictate nuclear staffing levels to a licensed nuclear operator by imposing a punishing financial sanction via disallowance of a great deal of compensation for nuclear staff from being included in the rate base. Given a constant amount of work to be done, increasing rest periods and time away from work is going to increase the number of workers required for safe operations, somewhat increasing staffing costs. The Society believes that is a reasonable and necessary price to be paid for enhanced safety. We do not believe that it should be within the purview of a rate tribunal to, in effect, dictate safety sensitive staffing decisions to a licensed nuclear operator. We are concerned that the OEB might similarly make a poorly informed decision to financially penalize any increase in staffing levels following from the current CNSC process regarding worker fatigue. The Society believes that the CNSC must clearly communicate and explain to the OEB any changes that it mandates that could affect staffing levels.

#### **THE EFFECT OF 'BUSINESS TRANSFORMATION' AT OPG**

Seemingly bowing to pressure from the OEB that it has too many employees who are too well compensated, OPG has been undergoing a cost-cutting process since January 2011. The process, dubbed Business Transformation (BT), is intended to reduce costs by reducing staff and realigning resources. According to OPG, staffing reductions resulting from BT will be through a managed process of transfer of work, reassignment and attrition. To be clear, this is downsizing by any other name.

The effect of this is that long-service workers who meet the retirement rules are leaving, as are some younger workers with lesser service who are concerned about the long-term future of the company. At the same time, OPG is not replacing many of the workers who depart with new hires. As a consequence, there are fewer experienced regular workers left to do the required work.

In many cases, this means that the remaining workers have to do more with less and may have to put in more hours to deal with their workload. We are concerned that the staff complement reductions accompanying Business Transformation may have an impact on operations if a remaining reduced complement of employees have their work time further circumscribed by the mandatory time off being proposed by the CNSC in this draft REGDOC.

#### **CONTRACT EMPLOYEES**

In the context of an operation like a nuclear generating station, certain work just has to get done, regardless of any other constraints, to ensure safe operations. Considering the additional restrictions on the hours of work the CNSC provisions would create, we have a concern that OPG, after the Business Transformation staff reductions, will not have enough full-time, on-going regular employees to do the work required and

increasingly rely on contract employees to fill the gap. Although Bruce Power is not undergoing the same sort of process at this time, there are often similar trends to increase the amount of work that is contracted out to non-Bruce workers.

Monitoring and regulating the hours of work and mandatory rest time is a relatively simple task with respect to those directly employed by a licensee. The fact that they are spelled out in our collective agreements and deviations are trackable means that the Society itself has an ability to monitor this. The Society is concerned that the hours of work, overtime, shift scheduling and time off provisions of our collective agreement and, in our view, the safety norms of OPG and BP, do not apply to the employees of contractors, nor do we have any way, as a legislated partner in safety, of monitoring or verifying that contractors are respecting hours of work restrictions. We, therefore, commend the CNSC for including in the draft REGDOC language that clearly includes and applies to contractors and their employees. To underline the importance of including contract workers in the REGDOC, the Society has become aware that BP has sought and the CNSC has permitted a “contractor” to hold licenses for the safety sensitive positions of CRSS (Control Room Shift Supervisor) and SM (Shift Manger) covering shifts in both those roles.

OPG and BP do not require all contractors to record all the hours worked. Rather, a contractor doing managed -task work only advises OPG and BP of the total costs of all items. Total labour costs are not broken out, let alone hours worked. It would not be possible to track the hours worked by a contractor’s employees using current processes. This must be changed to ensure that the rules applied to OPG and BP employees under REGDOC-2.2.4 are also applied to all contract workers.

It is our experience that there are dozens of contract employees who work in short-term or contracted periods tied to the length of a construction or outage project. These people are stationed in the same buildings as our members, but report to the contract supervisor, not to an OPG or BP manager for the area in which they are working. For work that is defined as ‘owner only’ OPG and BP have no oversight of the safety and tasks performed by contract workers because that is the sole responsibility of the contractor.

We would expect the CNSC to apply its new norms on restrictions to hours of work equally to contract employees and to regular OPG and BP employees. Moreover, we would expect that the CNSC would need to oversee implementation of a credible monitoring and compliance regime for which both the contractor and the licensee would be jointly accountable.

Similarly, all construction workers must be covered under the same CNSC hours of work rules as regular OPG and BP employees. The Society is of the opinion that the definition of construction must also include the work performed during outages or projects at the nuclear plants.

Contract workers should be covered by the hours of work limits but, based on our experience, we remain to be convinced that contract employees will be held to the same standard of fatigue management measures as direct employees of the licensee. This is a significant issue because we believe there are likely to be some 500 to 1,000 contractors at any time doing work for OPG and BP at the Pickering, Darlington, and Bruce plants which, during outages, jumps to well over 1,000 contract workers. These numbers are very likely to increase as the planned refurbishments of the Bruce and Darlington stations get underway. The CNSC needs to make clear that the standard to which contract employees will be held is the same as that of direct employees of

the licensees.

To that end, the Society believes that the draft REGDOC should include an enforcement mechanism or sanctions on licensees/employers who fail to ensure that the CNSC's worker fatigue requirements are the same as for direct employees of BP and OPG

The Society is of the opinion that given the number of employees at OPG and Bruce Power who would be impacted by the application of the CNSC's proposed limits, a slight increase to the number of employees needed to ensure the safe operation of the plants would be required. To make sure that any changes resulting from this REGDOC continue to ensure safe operations, we would propose that there be an increase to the current minimum complement below which the licensees/employers could not go. It is also important to build in a sufficient buffer to be able to deal with all situations; adding staff to the minimum complement would help do that.

A factor which is not currently properly considered in the draft REGDOC is travel time. Travel time needs to be accounted for when calculating the hours of work limits and particularly the 60-hour per week limit. When a person is travelling it takes away from rest time and the minimum rest periods between shifts. The current REGDOC does not consider that minimum rest periods can be significantly reduced if the person has to travel one to two hours home and the same back to work thereby reducing the true rest time a person may have between shifts.

## **REST PERIODS**

The Society believes that rest periods should be made an official part of the fatigue reduction program. Currently, some areas of OPG and BP allow for rest periods to take place, even though such rest periods do not form part of official company policy. We are concerned the unofficial status of rest periods lends itself to confusion whereby some are permitted to take part and others may risk being accused of sleeping on the job and thereby subject to discipline. This might discourage some from exercising appropriate use of rest periods. A better approach would be to formalize the inclusion of rest periods into the fatigue reduction program and set out the rules under which such rest periods would be acceptable.

If rest periods were adopted to combat fatigue, we concur that there be appropriate designated facilities for the purpose with flat surfaces, sufficient darkness and freedom from noise or distraction.

## **SCOPE**

The Society commends the CNSC for clarifying that different provisions of the REGDOC would apply to two categories of workers: the "broad population"; and safety-sensitive positions. We also support the CNSC for requiring that safety-sensitive positions be identified and that certain measures relating to them be codified.

That said, the Society believes the CNSC should also address the following concerns.

1. The definitions for the "broad population" and "safety-sensitive positions" need to be clarified further. It is not entirely clear to us where one category begins and the other ends.
2. While the Society fully agrees that safety sensitive positions must be identified, in our view that is

not something for the licensee/employer alone to do. Rather, this is a matter that should be determined through negotiation between the licensees/employers and their bargaining agents.

3. Similarly, licensees/employers should negotiate with the bargaining agents with respect to the CNSC's proposed requirement to "specify how the management system's generic requirements apply to managing worker fatigue." This would include such things as establishing limits on hours of work and recovery periods, identifying and managing worker fatigue, training and education, control of changes to shift schedules and so forth.

We submit that skilled workers could become frustrated by a reduced opportunity to perform in their areas of expertise. Similarly, those trying to upgrade skills for promotion purposes may see a reduction in opportunities to gain experience. Another factor is that of the hiring and retention of employees. Fewer opportunities to increase compensation through extra work hours makes work at these plants less attractive to the kind of highly-skilled workers the industry needs. Details of implementation and coverage matter here.

### **OTHER CONCERNS**

1. At Bruce Power, the choice of shift schedules is left to a vote by the Power Workers' Union and employees represented by The Society of Energy Professionals are deemed to have accepted the same shift schedules chosen by PWU-represented shift workers. Is there any reason why the CNSC couldn't stipulate that the choice of shift (one which did not require mandatory overtime) would be made taking into account the wishes of all the workers on the shift regardless of union affiliation?
2. The Society is concerned that a worker could be subject to discipline if a manager decides that she/he is fatigued to the point of impairment. What if the worker disagrees with the manager's assessment and what recourse would she/he have? As well, since some Society members also are supervisors, what norms are they to follow in determining that someone they supervise is fatigued? As part of the CNSC's approach calls for workers to self-report fatigue, workers should be assured that they will be held blameless and not risk discipline if they self-report. Without this assurance, there will be a disincentive to the self-reporting of fatigue.

### **CONCLUSION**

Fatigue is not compatible with optimal safety. The Society fully supports efforts to further improve our already safe nuclear operations by addressing workplace routines and structures in such a way that they reduce fatigue and its potential impacts. We do believe that such interventions must be designed and implemented with the recognition that if a group of employees is spending less time on task in an effort to reduce fatigue, some increase in staffing levels will be required to maintain productivity and efficiency in accomplishing required tasks.

There are a number of potential conflicts and roadblocks to the successful design and implementation of a new regime. We believe that the CNSC should recognize and deal with these proactively. They include: the need to accommodate collectively bargained contract provisions in a way that respects the rights, and maintains the buy-in, of the workplace parties; the need to recognize the potential conflicts between any

new regime and existing legislation related to hours of work and work scheduling; the impacts of decisions made by other regulatory bodies such as the Ontario Energy Board; the impacts of workplace restructuring efforts as exemplified by the Business Transformation program at OPG; and, the need to ensure accurate monitoring of and compliance by workers not directly employed by the licensee.

We would welcome the opportunity to meet with the CNSC in order to gain a greater understanding of its reasons for proposing new and more stringent work limit rules on workers at nuclear operations and/or to respond to any questions that may be related to this submission.

All of which is respectfully submitted,

Scott Travers  
President  
The Society of Energy Professionals

