

February 8, 2001

Mr. Paul Leventhal, President
Dr. Edwin S. Lyman, Scientific Director
Nuclear Control Institute
1000 Connecticut Avenue, N.W., Suite 804
Washington, D.C. 20036

Dear Mr. Leventhal and Dr. Lyman:

In your letter of December 21, 2000, you expressed several concerns regarding the Nuclear Regulatory Commission's (NRC's) nuclear power plant physical protection oversight program. It is important to note that the Commission recently addressed many of your concerns in its staff requirements memorandum (SRM) associated with COMSECY-00-0036, dated January 25, 2001. I have included COMSECY-00-0036 and its associated SRM as enclosures to this letter.

The Commission and the Nuclear Control Institute (NCI) agree on many issues related to the physical protection of nuclear power plants. The Commission takes the threat of radiological sabotage at these plants very seriously. We strongly believe that these plants must remain some of the most secure commercial industrial facilities in the United States with a capable and well-exercised security force to serve as a deterrent to potential adversaries. The Commission fully supports the use of force-on-force exercises to evaluate the effectiveness of our licensees' protective strategies. The Commission recently approved an interim physical protection significance determination process (PPSDP) which we believe is technically rigorous and a significant improvement over the initial PPSDP which it replaces. The interim PPSDP will more appropriately classify inspection findings based on the results of Operational Safeguards Response Evaluation (OSRE) exercises. The Commission fully expects licensees to take prompt and effective corrective actions in response to OSRE findings, and to implement immediate compensatory actions when circumstances warrant them.

The Commission disagrees with NCI's assertions associated with the enforcement of 10 CFR 73.55(a). The Commission fully supports an enforcement policy that is fair, clear, and predictable. The Commission has found that the NRC's enforcement of 10 CFR 73.55(a) does not fully meet this standard and has directed the staff to bring greater clarity to enforcement of its provisions. The Commission has decided not to issue Notices of Violation (NOVs) and non-cited violations (NCVs) pursuant to 10 CFR 73.55(a) for force-on-force findings at this time. However, this decision does not preclude NRC's issuance of NOVs and NCVs pursuant to other provisions of Section 73.55. The Commission's direction relative to 10 CFR 73.55(a) in no way diminishes our ability to ensure that prompt and effective corrective actions are taken in response to weaknesses identified in force-on-force exercises, and is consistent with how we

oversee physical protection at our category 1 fuel cycle facilities pursuant to the provisions of 10 CFR 73.20(a) and 10 CFR 73.46(b)(9).

The Commission's actions pertaining to 10 CFR 73.55(a) do not constitute a reduction of security plan commitments and the associated costs. In fact, licensees remain subject to enforcement action if they fail to comply with their security plan commitments. In addition, in accordance with 10 CFR 50.54(p), licensees are not permitted to decrease the effectiveness of security plan commitments without prior approval by the NRC.

You raised concerns about fortuitous operator actions and the utilization of equipment not specified in the security plan. Operator actions to place mitigation equipment in service for recovery actions are only credited if the following criteria are met: (1) sufficient time is available to implement these actions; (2) environmental conditions allow access where needed, including any unconstrained adversary activity; (3) approved procedures exist; (4) training is conducted on the existing procedures under conditions similar to the scenario assumed; and (5) any equipment needed to complete these actions is available and ready for use. I trust that this approach addresses your concerns.

Finally, you expressed concerns about the NRC's physical protection significance determination process. As I mentioned above, the Commission recently approved an interim PPSDP which is technically rigorous and more appropriately classifies OSRE findings. The interim PPSDP enables the determination of the significance of a finding in terms of the associated increase in risk to public health and safety. The Commission has directed the staff to use the interim PPSDP until a more formal effort to revise the PPSDP can be accomplished. This effort will include opportunities for stakeholder input. The Commission also directed the staff to seek stakeholder input on how and whether NOVs and NCVs should be used as a regulatory tool in response to the results of force-on-force exercises. The Commission will ensure that the staff seeks stakeholder input in an open and transparent manner.

Clearly, there is much work to be done to further improve our regulatory processes in this important area. The Commission looks forward to NCI's active involvement in these efforts. However, the Commission continues to believe that the existing NRC programs are adequate to maintain safety by ensuring that licensees protect against the design basis threat of radiological sabotage.

If you have any questions, or would like to discuss this matter further, I, as well as my fellow Commissioners, would be pleased to meet with you.

Sincerely,

/RA/

Richard A. Meserve

Enclosure: COMSECY-00-0036 & associated
Staff Requirements Memorandum