

July 20, 2001

The Honorable David Price
United States House of Representatives
Washington, D.C. 20515

Dear Congressman Price:

I am responding on behalf of the Nuclear Regulatory Commission (NRC) to your letter of May 18, 2001, regarding your concern about the consideration of terrorist threats by the NRC in its decision-making processes. You stated that this concern arose during a recent meeting with a group of elected officials in Wake County, North Carolina. In particular, your letter referred to a February 3, 1999, memorandum to Dr. William Travers, Executive Director for Operations at the NRC, from Mr. David Orrick, a Security Specialist in the Office of Nuclear Reactor Regulation (NRR), concerning the status of the Operational Safeguards Response Evaluation (OSRE) program. Although your letter references the Shearon Harris spent fuel pool expansion proceeding, my responses relate to the generic concerns raised by Mr. Orrick. This response is not related to any matter under consideration in the Shearon Harris matter, which is now pending before the United States Court of Appeals for the District of Columbia Circuit following completion of administrative proceedings.

Your letter specifically requested the following: (1) an update on the status of the OSRE program and Mr. Orrick's concerns about it, (2) information detailing how the NRC evaluates risks from terrorism and incorporates the risks into its decision-making process, and (3) a detailed description of the standards which nuclear facilities must meet to ensure their ability to repel a terrorist attack and the manner in which the NRC evaluates facilities' preparedness. A brief history of the OSRE program and responses to your requested information are described below.

In 1982, the staff began conducting onsite evaluations of power reactor licensee capabilities to respond to safeguards contingency events through the Regulatory Effectiveness Review (RER) program. In 1991, lessons learned from the RER program were folded into the OSRE program, the follow on program to conduct these reviews. As a result of an integrated planning and budgeting process, the NRC decided to terminate the OSRE program at the end of fiscal year 1998. However, stakeholders were concerned about this decision and, as a result, the Commission directed the staff to reinstate the OSRE program in November 1998. After some program improvements, the OSRE program resumed in April 1999 and it continues to this day.

In the fall of 1998, NRR formed the Safeguards Performance Assessment (SPA) Task Force to explore whether there were more efficient and effective means of evaluating licensees' development and implementation of protective capabilities. On June 29, 1999, the Commission approved the recommendations forwarded by the Task Force and directed the NRC staff to develop a plan to modify the regulations to require power reactor licensees to (1) identify target

sets of equipment that must be protected to maintain safe operation or achieve safe shutdown of the plant, (2) develop strategies to protect against an assault consistent with the design basis threat (DBT) for radiological sabotage, and (3) exercise these strategies periodically. On November 22, 1999, the Commission approved the rulemaking plan for the re-evaluation of 10 CFR 73.55, "Requirements for Physical Protection of Licensed Activities at Nuclear Power Reactors Against Radiological Sabotage." The NRC staff then conducted a series of public meetings to obtain feedback from stakeholders. The Commission is currently considering the proposed rule.

The staff has undertaken several initiatives to clarify and improve the OSRE program. These initiatives have involved the conduct of public meetings with stakeholders on OSRE issues and the development and issuance of guidance documents providing rules of engagement and clarification of the OSRE adversary characteristics. The staff continues to identify and address lessons learned from the conduct of the OSRE program and is using this information to improve the program and enhance the rulemaking effort. Related safeguards assessment activities include an industry-initiated SPA program, which is intended to pilot new concepts for the self-assessment of performance by licensees subject to independent evaluation by the NRC. Development of the SPA program has involved extensive interactions with internal and external stakeholders and the Commission recently approved a one-year pilot of the SPA program. The lessons learned from the SPA pilot will be considered in the 10 CFR 73.55 rulemaking effort.

On August 7, 1998, Mr. Orrik provided a Differing Professional View (DPV) regarding the termination of the OSRE program in a memorandum to Samuel J. Collins, Director of NRR (Enclosure 1). Mr. Collins designated a three-member panel to review Mr. Orrik's DPV and in accordance with NRC procedures, the panel reported its findings, conclusions, and recommendations in a memorandum to Samuel J. Collins dated November 4, 1998 (Enclosure 2). Mr. Collins directed the NRC staff to follow-up on the report in a December 11, 1998, memorandum to Jack W. Roe, Acting Director of the Division of Reactor Program Management (Enclosure 3).

On February 3, 1999, Mr. Orrik provided a Differing Professional Opinion (DPO) regarding the NRC staff recommendations for a followup OSRE program in his memorandum to William D. Travers. The memorandum expressed concerns and disagreement with the conclusions and recommendations of the DPV panel. The NRC reviewed Mr. Orrik's concerns, while at the same time continuing its review of existing physical security requirements through the SPA Task Force and the proposed rulemaking activities. As a result of these activities, the NRC was able to address and resolve Mr. Orrik's concerns. Mr. Orrik was kept informed of this determination and has stated that his concerns have been addressed.

You also requested information as to how the NRC evaluates risks from terrorism and how the agency incorporates such risks into its decision-making processes. The NRC defined a DBT in the late 1970s that is to be used in designing safeguards systems to protect against acts of radiological sabotage or theft of special nuclear material. NRC requires nuclear power reactor licensees to establish and maintain an onsite physical protection system and security organization to ensure that activities at the reactor site do not constitute an unreasonable risk to public health and safety and that the physical protection system and security organization are designed to protect against the DBT. The characteristics embodied in the DBT are guided by

consultation with the Intelligence Community and are based on extensive analyses of actual terrorist and other criminal characteristics that could reasonably be expected in an adversary. To assure the continuing adequacy of the DBT, the staff routinely interacts with the Federal Bureau of Investigation (FBI), the Department of Energy (DOE), and other Federal agencies concerned with counterterrorism and threats. The results of these efforts and staff conclusions are formally documented and provided to the Commission every 6 months, or as needed. In addition, during the past year, the staff has begun formally documenting the sensitive details of the adversary characteristics described in the DBT and the methodology for developing these details.

Your letter also requested a detailed description of the standards which nuclear facilities must meet to ensure their ability to repel a terrorist attack and the manner in which the NRC evaluates the preparedness of the facilities. Nuclear facilities have established physical security programs designed to meet the requirements set forth in 10 CFR § 73.55. The requirements relate to physical security organization, physical barriers, detection and assessment systems, access controls, alarm stations, communications, equipment testing and maintenance, and response strategies. The NRC conducts inspections of licensees' security forces to ensure compliance with the regulations, the licensees' commitments, and the facilities' NRC-approved physical protection plans. These inspections are accomplished through implementation of the baseline inspection program in areas such as facility access authorization, access control measures, response to contingency events, and on-site observations. In addition, as part of the OSRE program, the NRC conducts force-on-force exercises with mock adversaries to assess each power reactor licensee's protective strategy.

As I stated earlier in my letter, the NRC is considering a proposed rulemaking to amend physical protection requirements at nuclear facilities. In addition, as noted above, the NRC is implementing a pilot SPA program to assess the effectiveness of licensees' physical protection programs. These efforts are being undertaken with significant external and internal stakeholder input.

Thank you for your letter. I hope this response has addressed your concerns.

Sincerely,

/RA/

Richard A. Meserve

Enclosures: As stated