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February 14, 2003

Mr. Roy P. Zimmerman
Director, Office of Nuclear Security and Incident Response
U. S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Dear Mr. Zimmerman:

ADVERSARY ATTRIBUTES FOR RADIOLOGICAL SABOTAGE

- Ref: 1. R. P. Zimmerman letter to R. A. Beedle dated January 2, 2003
Subject: Staff View of Adversary Attributes for Radiological Sabotage
2. Stephen D. Floyd letter to R. P. Zimmerman dated February 2, 2003

We have reviewed the referenced correspondence, and AmerenUE fully endorses NEI's comments contained in Ref. 2. In addition, there is one serious concern touched upon in NEI's comments that bears repeating. We strongly believe that before proceeding with additional security requirements beyond those already instituted since September 11, 2001, a clear understanding of the perceived threats and a delineation of responsibilities for combating those threats must be more fully developed.

While AmerenUE believes nuclear plant security must be maintained at a necessary and sufficient level consistent with its role as part of the nation's critical infrastructure, the nation's nuclear utilities have long ago met our reasonable obligation, as required by the federal regulations, to ensure nuclear plants are safe from acts of radiological sabotage. In addition, the industry has made substantial security enhancements since September 11, 2001. Our efforts in this area are clearly unequaled in the private sector. In the words of NRC Chairman Meserve, nuclear power facilities "are among the most formidable structures in existence and are guarded by well-trained and well-armed security forces."¹

A revised design basis threat and associated adversary characteristics capturing changes made by the industry to date is probably appropriate. However, upon reviewing the referenced correspondence, we believe NRC's direction on security issues is inappropriate and overly burdensome on the utilities and does not properly account for the federal government's role in protecting our nation's infrastructure against attack. Simply stated, the NRC's proposed Adversary Attributes for Radiological Sabotage exceed the traditional role played by private security forces and would require nuclear utilities to protect against enemies of the United States. In

¹" Nuclear Security in a New World", Richard A. Meserve, *The Industrial Physicist*, October/November 2002, American Institute of Physics



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our view, this ever-increasing security burden placed on utilities crosses over into responsibilities that should rightly be placed with the federal government. As laid out in 10 CFR 50.13, it is not the responsibility of NRC licensees to defend against such enemies. The Statements of Consideration for 10 CFR 50.13 cite, in part, that "The protection of the United States against hostile enemy acts is a responsibility of the nation's defense establishment and the various agencies having internal security functions."² One cannot expect private security forces to maintain this type of defensive capability.

That we are being asked to protect against "enemies of the United States," there is little doubt. The underlying justification behind the NRC's proposed Adversary Attributes for Radiological Sabotage is the attacks that occurred on September 11, 2001. No one would seriously argue that these terrorist acts were perpetrated by anyone other than "enemies of the United States." Their clear and premeditated intent to destabilize the country by attacking national symbols, killing citizens and causing large scale damage to property and our economy is quite evident. It is abundantly clear from the many remarks made by President Bush since the attacks that these acts of terrorism are indeed considered acts of "war" against the United States and the terrorists themselves "enemies" of these United States. "On September the 11th, enemies of freedom committed an act of war against our country"³ was one of many such statements made by President Bush.

It would appear the Commission's continuing proposals to increase the security burden on nuclear plants perpetuates a false belief that nuclear power is more vulnerable than other less protected elements of our critical infrastructure, where greater potential consequences loom. These demands on nuclear power plant operators at the exclusion of other elements of our nation's critical infrastructure are unreasonable and indefensible. This approach has the effect of creating isolated islands of defense across the country. NRC Chairman Meserve echoed this concern when he stated: "There needs to be an integrated national strategy to protect critical infrastructure of all types. The defense of nuclear facilities should not be viewed in isolation, but should be part of an overall national defensive scheme. ... Establishing and implementing an integrated national strategy will be an important task for the new Department of Homeland Security."⁴

It is time for the federal government through the newly formed Department of Homeland Security to assume the primary role of defining critical infrastructure security needs that properly integrate civilian and government resources throughout the country. The burden of national defense should not, nor can it be, shifted to NRC

² 32 FR 13445, September 26, 1967

³ Address to a Joint Session of Congress and the American People, George W. Bush, September 20, 2001

⁴ Infocast Conference, Richard A. Meserve, September 11, 2002

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licensees. It is one of the fundamental tenets of the United States, as stated in our constitution's preamble, to "...provide for the common defense..."⁵

While nuclear utilities are willing to assist and work with the Department of Homeland Security by providing the type of realistic and reasonable assistance typically expected of a private security force, we should not be ordered, nor are we able, to take on a role that is properly the Federal Government's. In the words of President Bush: "Defending our nation against its enemies is the first and fundamental commitment of the Federal Government."⁶

We appreciate the opportunity to comment on this important issue and look forward to further participation as the task of defining reasonable Adversary Attributes continues.

Sincerely,



⁵ Preamble to the United States Constitution

⁶ Introduction to The National Security Strategy of the United States of America, George W. Bush, September 17, 2002

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