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May 8, 2003

Catherine M. Holzle, Esq.  
Senior Attorney  
Office of the General Counsel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

Re: Applicability of 10 C.F.R. 2.790 Requirements to Safeguards Information

Dear Ms. Holzle:

I am writing to you as the designated contact for the Nuclear Regulatory Commission's ("NRC's") recently-issued final rule amending 10 C.F.R. § 2.790 with regard to availability of official records. See 68 Fed. Reg. 18,836 (Apr. 17, 2003). The purpose of this letter is to obtain agency confirmation that the newly-revised Section 2.790 requirements (which are silent on this matter) will not be applied to licensee submissions of safeguards material.

10 C.F.R. § 73.21 contains detailed agency requirements on the protection and transmission of safeguards information, including with regard to marking documents to indicate the presence of such information. 10 C.F.R. § 2.790(d)(1) designates information or records concerning a licensee's physical protection program as "commercial or financial information." It appears evident, given the lack of discussion of safeguards information in revised Section 2.790, that the NRC did not intend to apply the new requirements of that regulation to safeguards information governed by pre-existing Part 73 requirements. Nonetheless, it would be helpful to obtain a definitive statement to ensure that confusion does not arise at a future date.

Thank you for your assistance in this matter. If I can answer any questions, please do not hesitate to contact me.

Sincerely,



Mark J. Wetterhahn