

SAFEGUARDS INFORMATION

September 25, 2003

Mr. J. D. Woodard
Executive Vice President
Southern Nuclear Operating Company, Inc.
40 Inverness Center Parkway
Birmingham, AL 35242

SUBJECT: ORDERS MODIFYING LICENSES FOR REVISED DESIGN BASIS THREAT AND FOR TRAINING AND PHYSICAL FITNESS ENHANCEMENTS APPLICABLE TO SECURITY FORCE PERSONNEL (TAC NOS. MB9289, MB9290, MB9297, MB9298, MB9356, MB9357, MB9393, MB9394, MB9401, MB9402, MB9460 AND MB9461)

Dear Mr. Woodard:

On April 29, 2003, the U.S. Nuclear Regulatory Commission (NRC or the Commission) issued Orders modifying the operating licenses for Joseph M. Farley Nuclear Plant, Unit 2, Edwin I. Hatch, Unit Nos. 1 and 2, and Vogtle Electric Generating Plant, Unit Nos. 1 and 2 to: (1) require compliance with a revised Design Basis Threat (DBT); (2) implement new security force personnel training and physical fitness requirements; and (3) prescribe compensatory measures related to fitness-for-duty enhancements applicable to security force personnel.

The Orders required that licensees respond to the Commission within thirty-five (35) days. By letters dated June 2, 2003, you submitted a response to the Orders for Joseph M. Farley Nuclear Plant, Unit 2, Edwin I. Hatch, Unit Nos. 1 and 2, and Vogtle Electric Generating Plant, Unit Nos. 1 and 2. In your response to the Orders, you requested that the NRC provide clarification of five DBT-related issues described in the safeguards attachment to a letter from Mr. Colvin, President and CEO of the Nuclear Energy Institute, to Chairman Diaz dated May 16, 2003. You specifically requested that the NRC provide further clarification associated with the NRC's use of force-on-force testing upon implementation of the revised safeguards contingency plans, security plans and security officer training and qualification plans. You requested a timely response from the Commission on this matter, since the Commission's clarifications may affect the manner of your compliance with the Orders.

<p><u>NOTICE:</u> Enclosure 1 to this letter contains Safeguards Information. Upon separation from Enclosure 1, this letter and Enclosure 2 are DECONTROLLED.</p>
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SAFEGUARDS INFORMATION

By letter dated July 18, 2003, Chairman Diaz replied to Mr. Colvin's letter, providing the Commission's response and clarification on the five DBT-related issues. In response to your request, a copy of Chairman Diaz's July 18, 2003, letter, including the safeguards attachment, is provided as Enclosure 1. Furthermore, I am including a list of guiding principles (Enclosure 2) that the NRC staff intends to follow when it reviews the revised security plans that will be submitted in response to the April 29, 2003, Orders. This information was previously shared with members of the Nuclear Energy Institute, and other industry representatives, during a meeting held on August 28, 2003.

Finally, in your letters dated June 2, 2003, you stated your "understanding that the Commission intends to exercise enforcement discretion to accommodate issues which may arise as licensees, in good faith, take reasonable actions to implement the specific requirements of this Order." You further stated that you understood that the Commission would exercise enforcement discretion for "the period necessary to resolve such issues," and to integrate the requirements of these Orders with the Order issued February 25, 2002, as well as with other pertinent regulatory requirements, and safeguards contingency plans, security plans and security officer training and qualification plans. The NRC staff is currently evaluating the enforcement-related aspects of implementing the Orders to determine the extent to which enforcement discretion is appropriate, and the NRC intends to clarify its policy on this matter in separate correspondence.

The NRC staff is reviewing your response to the Orders, and will reply to you with its determination of whether or not your response met the requirements of the Orders in separate correspondence.

Please contact Robert J. Fretz at 301-415-1324, if you have any other questions on these issues.

Sincerely,

/RA by ELeeds for/

Ledyard B. Marsh, Director
Division of Licensing Project Management
Office of Nuclear Reactor Regulation

Docket Nos. 50-348, 50-364, 50-321, 50-366, 50-424 and 50-425

Enclosures: As stated

cc w/o encls: See next page

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 Ledyard B. Marsh, Director
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CHolden	DLPM Project Directors	OGC
JClifford	DLPM Section Chiefs	ACRS

** Concurrence via e-mail dated 8/26/03

* See previous concurrence

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OFFICE	PDI-2/LPM	PDI-2/LPM*	PDI-2/LA	PDI-2/SC*
NAME	RFretz	VNerses	CRaynor	JClifford
DATE	09/25/03	09/16/03	09/25/03	09/16/03
OFFICE	OGC**	NSIR/DNS*	PDI/D*	DLPM/D
NAME	JGoldberg	GTracy	CHolden	ELeeds for TMarsh
DATE	08/26/03	09/17/03	09/16/03	09/25/03

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**LETTER FROM NILS DIAZ, NRC CHAIRMAN,
TO MR. JOE COLVIN, PRESIDENT AND CEO, NUCLEAR ENERGY INSTITUTE,
DATED JULY 18, 2003**

U.S. NUCLEAR REGULATORY COMMISSION STAFF GUIDING PRINCIPLES AND CRITERIA FOR CONDUCTING THE REVIEW OF REVISED PHYSICAL SECURITY PLANS, SAFEGUARDS CONTINGENCY PLANS, AND TRAINING AND QUALIFICATION PLANS

PURPOSE:

To inform affected licensees of the criteria the U.S. Nuclear Regulatory Commission (NRC or the Commission) staff intends to adhere to in reviewing revisions made to site-specific Physical Security Plans, Safeguards Contingency Plans, and Training and Qualification Plans as a result of the nuclear security and safeguards-related Commission Orders dated February 25, 2002, January 7, 2003, and April 29, 2003.

DISCUSSION:

The information presented herein is intended to provide general information to licensees regarding the NRC staff's review criteria, but is not intended to be all-inclusive. The NRC staff is currently developing detailed criteria against which the revised site-specific plans will be reviewed for acceptance and approval. The NRC staff is also coordinating this effort with the Nuclear Energy Institute and industry working groups. Final review guidance will be developed no later than December 31, 2003.

GUIDING PRINCIPLES:

1. Revised plans must comprehensively comply with all requirements of Orders (February 25, 2002; January 7, 2003; and April 29, 2003) except to the extent that a more stringent requirement is set forth in the licensee's current plans.
2. Revised plans must comprehensively comply with Title 10 of the *Code of Federal Regulations* (10 CFR), Section 73.55, in particular, the plans must comply with Section 73.55, paragraphs (b) through (h) unless other alternative measures are explicitly approved by the NRC staff.
3. Measures other than those in 10 CFR 73.55, paragraphs (b) through (h), may be approved by the staff if, and only if, they meet the objective of "high assurance" and provide a level of protection equivalent to that provided by paragraphs (b) through (h).
4. Upon NRC approval of the revised plans and their full implementation, licensees may seek relaxation or rescission, in whole or in part, of the Interim Compensatory Measures (ICMs) provided in the Orders dated February 25, 2002.
5. Subsequent to NRC approval of the revised plans, licensees may make changes to their revised plans, without prior NRC approval, in accordance with 10 CFR 50.54(p), *i.e.*, if the changes would not decrease the effectiveness of the plans (plan changes may also be made in accordance with the provisions of 10 CFR 50.90, and 73.5).
6. All licensee actions and activities which the staff deems essential, necessary, or important in complying with the Orders or 10 CFR 73.55 must be included in the plans and, therefore, will be enforceable.

ADDITIONAL GUIDANCE:

Consistent with guiding principles 1 and 2:

- Pursuant to 10 CFR 73.55 and the DBT Orders, licensees must develop and implement an effective site-specific security system and organization that will protect against the threat capabilities of the revised DBT, satisfy the requirements of all the Orders, and comply with 10 CFR 73.55, paragraphs (b) through (h).
- Each plan should clearly and specifically identify each Commission requirement that is to be complied with, or is intended to be satisfied, by each site-specific measure, procedure, policy, or action addressed in the plan.

Consistent with guiding principles 3 and 6:

- While a licensee may identify a more efficient or effective method for satisfying a specific requirement of the Orders or 10 CFR 73.55, paragraphs (b) through (h), such site-specific measures, procedures, policies, or actions that are intended to be an alternative to a specific requirement of the Orders or 10 CFR 73.55, paragraphs (b) through (h), should be clearly and explicitly identified in each plan.
- The NRC may authorize a licensee to provide alternative measures for protection against radiological sabotage other than those required by the Orders or 10 CFR 73.55, paragraphs (b) through (h), if:
 - a. the licensee demonstrates that the proposed alternative measure has the same high-assurance objective specified by 10 CFR 73.55(a),
 - b. the overall level of system performance provides protection against radiological sabotage equivalent to that which would be provided by compliance with the specific requirement of the Orders or 10 CFR 73.55, paragraphs (b) through (h), for which the measure is an alternative, and
 - c. the plan contains sufficient detailed information to support an NRC staff conclusion that the proposed alternative measure is consistent with a. and b. above through satisfying the intent of the specific requirement for which it is an alternative.
- Where a licensee does not clearly and explicitly identify a site-specific measure, procedure, policy, or action as a proposed alternative to a specific Commission requirement, the NRC staff will conduct its review on the basis that the intent of the licensee is to comply with the specific requirement as written in the Orders or 10 CFR 73.55, paragraphs (b) through (h).

Consistent with guiding principle 4 and 5:

- Upon NRC approval of the revised plans, or no later than October 29, 2004, licensees must, in accordance with the DBT Order, implement all site-specific measures, procedures, policies, actions, and alternatives, as written in each plan.
- The NRC staff intends to provide timely information to all licensees regarding the possible use of enforcement discretion at a later date.

SUMMARY:

The NRC intends to review and approve all revised site-specific plans between April 29 and October 29, 2004. If, for whatever reason, the NRC has not yet approved a revised site-specific plan by the full-implementation date, each licensee is, nonetheless, required to implement the revised plans in accordance with the DBT Order, no later than October 29, 2004.

Joseph M. Farley Nuclear Plant

cc:

Mr. Don E. Grissette
General Manager -
Southern Nuclear Operating Company
Post Office Box 470
Ashford, Alabama 36312

Mr. B. D. McKinney, Licensing Manager
Southern Nuclear Operating Company
Post Office Box 1295
Birmingham, Alabama 35201-1295

Mr. M. Stanford Blanton
Balch and Bingham Law Firm
Post Office Box 306
1710 Sixth Avenue North
Birmingham, Alabama 35201

Mr. J. D. Woodard
Executive Vice President
Southern Nuclear Operating Company
Post Office Box 1295
Birmingham, Alabama 35201

State Health Officer
Alabama Department of Public Health
434 Monroe Street
Montgomery, Alabama 36130-1701

Chairman
Houston County Commission
Post Office Box 6406
Dothan, Alabama 36302

Resident Inspector
U.S. Nuclear Regulatory Commission
7388 N. State Highway 95
Columbia, Alabama 36319

William D. Oldfield
SAER Supervisor
Southern Nuclear Operating Company
P. O. Box 470
Ashford, Alabama 36312

Mr. J. B. Beasley, Jr.
Vice President - Farley Project
Southern Nuclear Operating
Company, Inc.
Post Office Box 1295
Birmingham, Alabama 35201-1295

Edwin I. Hatch Nuclear Plant

cc:

Laurence Bergen
Oglethorpe Power Corporation
2100 East Exchange Place
P.O. Box 1349
Tucker, GA 30085-1349

Mr. R. D. Baker
Manager - Licensing
Southern Nuclear Operating
Company, Inc.
P. O. Box 1295
Birmingham, Alabama 35201-1295

Resident Inspector
Plant Hatch
11030 Hatch Parkway N.
Baxley, Georgia 31531

Mr. Charles H. Badger
Office of Planning and Budget
Room 610
270 Washington Street, SW.
Atlanta, Georgia 30334

Harold Reheis, Director
Department of Natural Resources
205 Butler Street, SE., Suite 1252
Atlanta, Georgia 30334

Steven M. Jackson
Senior Engineer - Power Supply
Municipal Electric Authority
of Georgia
1470 Riveredge Parkway, NW
Atlanta, Georgia 30328-4684

Mr. Reece McAlister
Executive Secretary
Georgia Public Service Commission
244 Washington St., S. W.
Atlanta, Ga. 30334

Arthur H. Domby, Esq.
Troutman Sanders
Nations Bank Plaza
600 Peachtree Street, NE, Suite 5200
Atlanta, GA 30308-2216

Chairman
Appling County Commissioners
County Courthouse
Baxley, Georgia 31513

Mr. J. D. Woodard
Executive Vice President
Southern Nuclear Operating
Company, Inc.
P. O. Box 1295
Birmingham, Alabama 35201-1295

Mr. G. R. Frederick
General Manager, Edwin I. Hatch
Nuclear Plant
Southern Nuclear Operating
Company, Inc.
U.S. Highway 1 North
P. O. Box 2010
Baxley, Georgia 31515

Mr. K. Rosanski
Resident Manager
Oglethorpe Power Corporation
Edwin I. Hatch Nuclear Plant
P. O. Box 2010
Baxley, Georgia 31515

Mr. H. L. Sumner, Jr.
Vice President - Nuclear
Hatch Project
Southern Nuclear Operating
Company, Inc.
Post Office Box 1295
Birmingham, Alabama 35201-1295

Vogtle Electric Generating Plant

cc:

Mr. N.J. Stringfellow
Manager, Licensing
Southern Nuclear Operating
Company, Inc.
P. O. Box 1295
Birmingham, Alabama 35201-1295

Mr.G. R. Frederick
General Manager, Vogtle Electric
Generating Plant
Southern Nuclear Operating
Company, Inc.
P. O. Box 1600
Waynesboro, Georgia 30830

Mr. J. D. Woodard
Executive Vice President
Southern Nuclear Operating
Company, Inc.
P. O. Box 1295
Birmingham, Alabama 35201-1295

Steven M. Jackson
Senior Engineer - Power Supply
Municipal Electric Authority
of Georgia
1470 Riveredge Parkway, NW.
Atlanta, Georgia 30328-4684

Mr. Reece McAlister
Executive Secretary
Georgia Public Service Commission
244 Washington St., S. W.
Atlanta, Ga. 30334

Harold Reheis, Director
Department of Natural Resources
205 Butler Street, SE. Suite 1252
Atlanta, Georgia 30334

Attorney General
Law Department
132 Judicial Building
Atlanta, Georgia 30334

Mr. J. D. Sharpe
Resident Manager
Oglethorpe Power Corporation
Alvin W. Vogtle Nuclear Plant
P. O. Box 1600
Waynesboro, Georgia 30830

Charles A. Patrizia, Esquire
Paul, Hastings, Janofsky & Walker
10th Floor
1299 Pennsylvania Avenue
Washington, DC 20004-9500

Arthur H. Domby, Esquire
Troutman Sanders
NationsBank Plaza
600 Peachtree Street, NE.
Suite 5200
Atlanta, Georgia 30308-2216

Resident Inspector
Vogtle Plant
8805 River Road
Waynesboro, Georgia 30830

Office of the County Commissioner
Burke County Commission
Waynesboro, Georgia 30830

Mr. J. T. Gasser
Vice President
Southern Nuclear Operating
Company, Inc.
Post Office Box 1295
Birmingham, Alabama 35201-1295