September 25, 2003

Mr. Gary J. Taylor
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SUBJECT: ORDERS MODIFYING LICENSES FOR REVISED DESIGN BASIS THREAT AND FOR TRAINING AND PHYSICAL FITNESS ENHANCEMENTS APPLICABLE TO SECURITY FORCE PERSONNEL (TAC NOS. MB9257, MB9258, MB9292, MB9295, MB9300, MB9301, MB9327, MB9334, MB9355, MB9358, MB9361, MB9362, MB9396, MB9399, MB9404, MB9405, MB9431, MB9438, MB9459 AND MB9462)

Dear Mr. Taylor:

On April 29, 2003, the U.S. Nuclear Regulatory Commission (NRC or the Commission) issued Orders modifying the operating licenses for Arkansas Nuclear One, Unit Nos. 1 and 2, James A. FitzPatrick Nuclear Power Plant, Grand Gulf Nuclear Station, Unit 1, Indian Point Nuclear Generating Station, Unit Nos. 2 and 3, Pilgrim Nuclear Power Station, Unit 1, River Bend Station, Vermont Yankee Nuclear Power Station, and Waterford Steam Electric Generating Station, Unit 3 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 3, 2003, you submitted a response to the Orders for Arkansas Nuclear One, Unit Nos. 1 and 2, James A. FitzPatrick Nuclear Power Plant, Grand Gulf Nuclear Station, Unit 1, Indian Point Nuclear Generating Station, Unit Nos. 2 and 3, Pilgrim Nuclear Power Station, Unit 1, River Bend Station, Vermont Yankee Nuclear Power Station, and Waterford Steam Electric Generating Station, Unit 3. 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.

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

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 3, 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
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Office of Nuclear Reactor Regulation

Docket Nos. 50-313, 50-368, 50-333, 50-416, 50-247, 50-286, 50-293, 50-458, 50-271 and 50-382

Enclosures: As stated

cc w/o encls: See next page

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.

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cc w/o encls: See next page

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** Concurrence via e-mail dated 8/26/03
* See previous concurrence

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

Enclosure 1

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 actions and activities which the licensee 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.

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