

EDO Principal Correspondence Control

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FINAL REPLY:

Representative Edward J. Markey

TO:

Chairman Diaz

FOR SIGNATURE OF :

** PRI **

CRC NO: 04-0542

Chairman Diaz

DESC:

Wackenhut Corporation to Act as Mock Terrorist
Force-on-Force Tests at Nuclear Reactors

ROUTING:

Reyes
Virgilio
Kane
Merschhoff
Norry
Dean
Burns/Cyr
Dyer, NRR

DATE: 08/26/04

ASSIGNED TO:

CONTACT:

NSIR

Zimmerman

SPECIAL INSTRUCTIONS OR REMARKS:

Template: SECY-017

E-RIDS: SECY-01

EDWARD J. MARKEY

7TH DISTRICT, MASSACHUSETTS

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August 23, 2004

The Honorable Nils J. Diaz
Chairman
Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852

Dear Chairman Diaz:

I am writing regarding reports that the Nuclear Energy Institute (NEI), the lobbying group that represents the nuclear industry, has hired Wackenhut Corporation to act as a mock terrorist force in force-on-force (FOF) tests at nuclear reactors. Since Wackenhut also provides security services for 30 of the nation's nuclear power plants, including at those plants where Wackenhut will conduct FOF tests, using Wackenhut to test security poses a blatant conflict of interest. More fundamentally, I believe that *any* NEI involvement in assessing security at nuclear reactors is ill-advised, poses a conflict of interest, and should be prohibited by the Commission. Given NEI's self-described role as an advocate and promoter of nuclear power and the fact that NEI is the principal trade association representing the nuclear utilities industry, it is totally inappropriate for NEI to be involved in assessing the adequacy of security of its member companies. Finally, I am concerned by a recent notice by the Commission that it will no longer provide any information related to assessing security at nuclear reactors to the public. Allowing the nuclear industry to administer its own security tests and then refusing to publicly release the results of those tests will further deepen public skepticism of the Commission's performance and calls into question whether the Commission is doing what it must do to keep nuclear reactors safe from terrorist attack.

As you know, I have long been concerned about the adequacy of the Commission's FOF testing program. In 1998, I wrote the Commission regarding its plans to eliminate the Operational Safeguards Response Evaluation (OSRE) program, a program in which the NRC evaluated the FOF tests at nuclear reactors (see http://www.house.gov/markey/Issues/iss_nuclear_pr981110.pdf). The FOF tests conducted under the OSRE program determined that about 50% of nuclear power plants failed to thwart the mock terrorist attacks. After the plans to eliminate the OSRE program became public, the Commission decided not to eliminate the program after all, but then quickly decided it would alter the program to allow the nuclear industry to design, implement, and evaluate the

Commission is going to withhold the outcomes of security tests from the public, the public must have confidence in the security testing process. Using NEI funds and Wackenhut as the adversary force cannot possibly instill that confidence. Rather, it undermines it. Consequently, I ask for your prompt responses to the following questions:

- 1) Please fully describe the Commission's re-vamped FOF program. How often will FOF exercises be conducted? Who is responsible for designing the FOF exercises? Who will conduct them? How will they be evaluated? What enforcement actions can be taken if a licensee "fails" an FOF exercise? What are the criteria for "passing" an FOF exercise?
- 2) Why isn't the NRC providing its own dedicated mock terrorist force to conduct FOF exercises at nuclear reactors, or making arrangements with other federal agencies with experience in this area, rather than allowing NEI – the trade association and lobbying arm of the nuclear industry – to perform this function ?
- 3) The nuclear industry has long resisted most efforts to increase security at nuclear reactors, and has even challenged the Commission's authority to perform FOF tests in the first place (see NRC email cited in http://www.house.gov/markey/Issues/iss_nuclear_ltr990708.pdf). Don't you think there would be a disincentive for any mock terrorist force paid for by the nuclear industry to conduct FOF exercises in a rigorous manner that could uncover systemic weaknesses in security at nuclear reactors? If not, why not?
- 4) Wackenhut is responsible for nuclear reactor security at 30 of 64 nuclear power plants in the U.S. Don't you think that there would be a disincentive for the Wackenhut mock terrorist force to rigorously test security at power plants at which Wackenhut also provided the security guard forces as rigorously as it would at power plants at which Wackenhut's competitors provided the security guard forces? If not, why not?
- 5) Was the NRC aware that NEI planned to hire Wackenhut to conduct the FOF tests, even though Wackenhut is responsible for security at 30 of 64 nuclear power plants? If so, why did NRC allow a contract that poses such a blatant conflict of interest to proceed?
- 6) The Commission recently announced that it would no longer provide any information regarding the assessment of security at nuclear reactors or enforcement actions taken regarding security at nuclear reactors to the public. Please explain why this decision was made. Why can't any information, even information that is not specific to particular reactor vulnerabilities, be publicly available?

FOF tests. The new program was named the "Self-Assessment Program" (SAP), and later re-named the "Safeguards Performance Assurance" (SPA) program. I have long believed that allowing the nuclear industry to test and grade itself posed an unacceptable conflict of interest, and entered into an extensive correspondence with the Commission regarding my concerns (see http://www.house.gov/markey/Issues/iss_nuclear_pr990223.pdf, http://www.house.gov/markey/Issues/iss_nuclear_ltr990708.pdf, and http://www.house.gov/markey/Issues/iss_nuclear_ltr000204.pdf). After the terrorist attacks of September 11, 2001, I continued to express my concerns that the SPA program was ill-advised (see http://www.house.gov/markey/Issues/iss_nuclear_ltr010920nrc.pdf) and authored legislation that was acted on favorably by the House of Representatives to ensure that the NRC, not the nuclear industry, evaluate the FOF tests.

On June 9, 2004, NEI announced that it had selected Wackenhut Corporation to train and manage the mock terrorist teams that would be used in FOF tests on nuclear reactors (see <http://www.nei.org/doc.asp?docid=1203>). While I have always supported the use of a dedicated mock terrorist force to assess security at nuclear reactors, it is unwise and counter-productive to use the same firm to both guard nuclear power plants and also test the adequacy of the security at these very same plants. I also oppose NEI's involvement in these activities and have repeatedly advocated for the NRC to run all aspects of these security tests. The only way to be certain that FOF exercises provide an objective assessment of the adequacy of security at nuclear reactors is to have the mock terrorist team paid for by the Commission, and have it consist of individuals trained in terrorist tactics that do not have pre-existing ties to any company that currently provides security services to nuclear reactors.

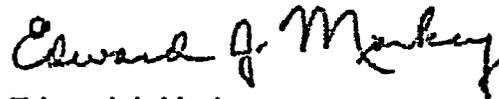
On August 4, 2004, the Commission announced that it would "continue to inspect and assess physical security of nuclear facilities, but the results will no longer be made publicly available and will be exempt from Freedom of Information Act requests. Enforcement information associated with physical protection of nuclear facilities will be withheld as well" (see <http://www.nrc.gov/reading-rm/doc-collections/news/2004/04-091.html>).

Not only has the Commission evidently decided to allow the nuclear industry to play an unacceptable role in the evaluation of nuclear reactor security, it also has evidently decided to keep all of the results of security assessment at nuclear reactors secret. We have long known that nuclear reactors are attractive terrorist targets; most recently, the 9/11 Commission Report stated that the 9/11 hijackers even considered targeting a nuclear power plant (implied to be Indian Point, located near New York City) at one point during the attack planning process. Allowing the industry to test its own security and withholding information regarding the results of NRC oversight will not strengthen security at nuclear power plants – to the contrary, it will further erode public confidence in the Commission and could result in a weaker security posture at the reactors. If the

- 7) Please provide copies of all correspondence, emails, memoranda and telephone logs in the possession of the NRC, including those received by and sent to representatives of the nuclear industry, regarding the decision to withhold this information from the public.

Thank you very much for your consideration of this important matter. Please provide your response no later than Friday September 10, 2004. If you have any questions or concerns, please have your staff contact Dr. Michal Freedhoff of my staff at 202-225-2836.

Sincerely,

A handwritten signature in black ink that reads "Edward J. Markey". The signature is written in a cursive style with a large, prominent "E" and "M".

Edward J. Markey