

EDO Principal Correspondence Control

FROM: DUE: 11/12/04 EDO CONTROL: G20040747
DOC DT: 10/29/04
FINAL REPLY:

Representative Edward J. Markey

TO:

Chairman Diaz

FOR SIGNATURE OF : ** PRI ** CRC NO: 04-0682

Chairman

DESC:

Concerns Temporary Suspension of Access to
Publicly Available ADAMS Database Due to
Security Concerns Related to Certain Documents
that were Recently Found

ROUTING:

Reyes
Virgilio
Kane
Norry
Merschhoff
Dean
Burns/Cyr
Silber, CIO
Zimmerman, NSIR
Brenner, OPA
Schroll, SECY

DATE: 10/29/04

ASSIGNED TO: CONTACT:
EDO Huffert

SPECIAL INSTRUCTIONS OR REMARKS:

Coordinate response with CIO, NSIR, OPA, OGC &
SECY.

Template SECY-017

E-REDS: SECY-01

OFFICE OF THE SECRETARY
CORRESPONDENCE CONTROL TICKET

Date Printed: Oct 29, 2004 13:50

PAPER NUMBER: LTR-04-0682 **LOGGING DATE:** 10/29/2004
ACTION OFFICE: EDO

AUTHOR: REP Edward Markey
AFFILIATION: REP
ADDRESSEE: Nils Diaz
SUBJECT: Concerns temporary suspension of access to publicly available ADAMS database due to security concerns related to certain documents that were recently found

ACTION: Signature of Chairman
DISTRIBUTION: Chairman, Cmrs, RF, OCA to Ack

LETTER DATE: 10/29/2004
ACKNOWLEDGED: No
SPECIAL HANDLING: Comm Correspondence

NOTES:
FILE LOCATION: ADAMS
DATE DUE: 11/15¹⁵/2004 **DATE SIGNED:**

EDO --G20040747

EDWARD J. MARKEY
7TH DISTRICT, MASSACHUSETTS

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SUBCOMMITTEE ON
TELECOMMUNICATIONS AND
THE INTERNET

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October 29, 2004

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

Dear Chairman Diaz:

I am writing regarding the recent announcement that the Commission has temporarily suspended access to its usually publicly available ADAMS database due to security concerns related to certain documents that were recently found there. While I fully support efforts to ensure that terrorists cannot use documents found on ADAMS that would materially assist them in carrying out attacks, I also want to ensure that efforts to secure the ADAMS website do not unnecessarily bar or restrict the public from fully participating in the Commission's ongoing regulatory activities. In particular, I ask that you also temporarily suspend all non-essential Commission proceedings until public access is restored.

As you know, I have long been concerned that terrorists could use publicly available materials to assist them in their efforts to attack America. I have favored caution when deciding whether to release potentially sensitive but unclassified documents regarding nuclear facilities or materials to the public, and have always deferred to the Commission's requests to withhold any documentation or details when sensitive data is involved. However, I am also concerned that since September 11, the Commission appears to have unnecessarily limited public access and input to its activities, while providing largely unfettered access to representatives of the nuclear industry. For example:

- On October 15, 2001, I wrote then-Chairman Meserve regarding the NRC decision to remove all documents from its website pending a security review (see http://www.house.gov/markey/Issues/iss_terrorism_ltr011015.pdf). I followed the Commission's November 13, 2001 response (see http://www.house.gov/markey/Issues/iss_terrorism_ltr011115.pdf) up with a second letter with additional questions on November 15, 2001 (see http://www.house.gov/markey/Issues/iss_terrorism_ltr011115a.pdf) about the basis for the Commission's withdrawal of certain information from its website, and requesting an identification of all of the documents removed.

- On December 9, 2002 I wrote you to express my concerns regarding reports of secret meetings that occurred between the Commission and the NEI, the lobbying group for the nuclear industry (see http://www.house.gov/markey/Issues/iss_nuclear_ltr021209.pdf), to discuss potential upgrades to security at nuclear reactors (while non-industry security experts were essentially barred from participating in the process).
- On March 11, 2004, I wrote you regarding the Commission's decision to bar non-industry stakeholders with security clearances from obtaining access to materials they required to prepare a petition to oppose an licensee application, while granting industry stakeholders unfettered access to such materials (see http://www.house.gov/markey/Issues/iss_nuclear_ltr040311.pdf).
- On August 23, 2004 and October 12, 2004 I wrote you regarding the Commission's decision to allow NEI, the lobbying group for the nuclear industry, be placed in charge of testing guard forces at nuclear plants, and allowing NEI in turn to hire Wackenhut to serve as a mock terrorist force to test security at nuclear reactors, while keeping the results of those tests secret (see http://www.house.gov/markey/Issues/iss_nuclear_ltr040823.pdf and http://www.house.gov/markey/Issues/iss_nuclear_ltr040823.pdf).

I believe that a balance must be struck between security and public access, but that in many cases since September 11th the Commission has failed to strike a balance consistent with its responsibilities to the public. I am concerned that the Commission may now be using security as an excuse to further erode the public's right to find out about and participate in the Commission's activities. Consequently, I ask that you provide me with your prompt responses to the following questions:

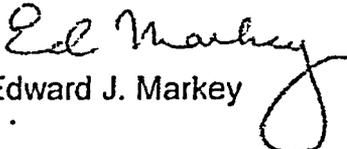
- 1) How long do you anticipate that access to ADAMS will be suspended?
- 2) In the months following 9/11, the Commission directed its Atomic Safety and Licensing Boards to eliminate security contentions related to terrorist threats from licensing proceedings because such threats were deemed speculative. Does the Commission believe that the threat from terrorists exploiting information found within ADAMS to be greater than that postulated in those security contentions?
 - a) If so, why, and why did the NRC wait more than three years after 09/11 to take steps to address this threat?
 - b) If not, why is it necessary to bar public access to ADAMS while the NRC staff reviews its documents for sensitive information?
- 3) Who at the Commission made the decision to bar public access to ADAMS? NRC spokespersons have said it was a Commission decision, but I have been informed that at least one Commissioner did not learn of

the decision until after it had been made and implemented. Is that true? Please provide me with a complete description of the specific process used by the Commission to make the decision to suspend access to ADAMS. If the matter was voted on by the Commission, please indicate how each Commissioner voted. If the matter was decided by the staff, please indicate who on the NRC staff made the decision.

- 4) Will the Commission also suspend activity on all non-essential proceedings until after public access to ADAMS is restored? If not, why not? After all, even though some of these proceedings may continue to be noticed in the Federal Register, non-industry stakeholders may not be able to obtain documentation that would normally be available in ADAMS to assist them in preparing their input to the Commission.
- 5) Will industry stakeholders continue to have access to ADAMS while access to the public is suspended? Will licensees, for example, be using the system to make any filings required pursuant to NRC regulations, or to comment on or intervene into any rulemakings or other regulatory proceedings by the Commission?
- 6) On November 15, 2001, I wrote and requested that you provide me with a list of the actual documents that had been withdrawn from the NRC website along with the rationale for doing so (see http://www.house.gov/markey/Issues/iss_terrorism_ltr011115a.pdf). On March 4, 2002 you responded to my correspondence but did not provide this list as it had not been completed (http://www.house.gov/markey/Issues/iss_nuclear_ltr020325a.pdf). The NRC never subsequently provided the promised documentation or information. Why was it never provided? Please provide the information I requested now.
- 7) Please provide a list of all documents that have been removed from ADAMS pursuant to the Commission's recent announcement, along with the rationale for doing so. Were any classified documents posted on ADAMS? If so, why? If not, why are these documents being removed?

Thank you very much for your attention to this important matter. Please provide your response by Friday November 19, 2004. If you have any questions or concerns, please have your staff contact Dr. Michal Freedhoff of my staff at 202-225-2836.

Sincerely,


Edward J. Markey