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DOCKET NUMBER
PETITION RULE FROM 73-12
(69FR 64690)

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To: <secy@nrc.gov>
Date: Fri, Jan 21, 2005 5:36 PM
Subject: Public Citizen comments on PRM-73-12

January 21, 2005

Secretary, U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
ATTN: Rulemakings and Adjudications Staff
via email: SECY@nrc.gov

Re: PRM-73-12

PUBLIC CITIZEN COMMENTS ON COMMITTEE TO BRIDGE THE GAP PETITION FOR RULEMAKING, PROPOSED AMENDMENTS TO 10 C.F.R. PART 73 (UPGRADING THE DESIGN BASIS THREAT REGULATIONS FOR PROTECTION AGAINST TERRORIST ATTACKS ON NUCLEAR REACTORS)

Our country's commercial nuclear facilities are vulnerable. If the likelihood of a terrorist attack were low, perhaps it would be easier to excuse the inadequacy of current response levels. But the probability of an attack on a nuclear plant is not low. Reports by experts and government panels have confirmed that an attack is a real possibility, and that it has even been seriously contemplated, if not yet attempted. One report, authored by the National Research Council in July 2002, finds that

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USNRC
February 3, 2005 (11:53am)
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[n]uclear power plants may present a tempting high-visibility target for terrorist attack, and the potential for a September 11-type surprise attack in the near term using U.S. assets such as airplanes appears to be high. Such attacks could potentially have severe consequences if the attack were large enough and, were such an attack successfully carried out, could do great harm to the nation's near-term energy security and civilian nuclear power as a long-term energy option.

The 9/11 Commission Report noted that the attacks of September 11 started out, according to terrorist mastermind Khalid Sheikh Mohammed, as "a grandiose original plan: a total of ten aircraft to be hijacked, nine of which would crash into targets on both coasts—they included those eventually hit on September 11 plus CIA and FBI headquarters, nuclear power plants, and the tallest buildings in California and the state of Washington," (emphasis added). The National Governors Association has also recognized the seriousness of an attack on a nuclear plant.

The consequences of a successful attack are even more sobering. A recent study authored by Dr. Edwin S. Lyman, and commissioned by the environmental group Riverkeeper, found that a successful attack on the Indian Point nuclear plant in New York could directly cause up to 26,200 early fatalities, 518,000 latent cancer fatalities, and over two trillion dollars in damage. The indirect impacts are likely to be even more widespread, as the entire nuclear industry would likely shut down for an indefinite period of time following an attack, similar to the grounding of the space shuttle fleet following the Challenger and Columbia disasters. That would wreak havoc on electricity consumers,

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utility companies and shareholders, and the entire U.S. and world economy.

In response, it is vital that we recognize the full extent of this threat and react in an imaginative, comprehensive, and proactive way. The most important lesson of September 11 was that the unimaginable is possible and that we should expect the unexpected. As the basis for nearly all other security planning, the U.S Nuclear Regulatory Commission's (NRC) design basis threat (DBT) should be well thought out and must reflect not only attack scenarios and intensity we have seen in the past, but also those we may see in the future. It's the only way we can hope to thwart an attempted terrorist attack on a nuclear facility.

Committee to Bridge the Gap (Petitioner) does a superb job of exposing the risk of a nuclear attack as well as the potential consequences. Public Citizen fully supports the conclusions drawn by the Petitioner: that NRC has been slow in the past to recognize the full extent of domestic terrorist threats and possible ramifications for nuclear plant security, and that security needs to be increased by orders of magnitude, not marginally, if we are to prevent a successful and devastating attack.

Specifically, we take note of and endorse Petitioner's request that the revised DBT include at least 19 attackers, plus a margin of safety above that level. Further, a revised DBT also must consider that such a large attack force will operate as multiple, coordinated teams (including several active insiders) attacking one plant at different points simultaneously with sophisticated weapons. Most importantly, as the petition states, improved regulations must postulate that the attackers are "ruthless, highly motivated, willing and even intent on dying, very creative, thorough, and [capable of] long planning and preparation."

Additionally, to consider only attacks from ground forces is to ignore not only distinct possibilities but recent history. The atrocities of 9/11 were perpetrated using hijacked commercial aircraft. All nuclear power plants are located adjacent to large bodies of water to provide cooling. As Petitioner requests, the DBT regulations should include attacks from boats and the air. The regulations addressing air attack should include a fully loaded jumbo jet of maximum size in commercial service with full fuel tanks, including the Airbus A380, which is larger than any plane now in use and is slated to enter commercial service in 2006.

Though not addressed by Petitioner, ensuring nuclear plant security involves not only adequate regulations, but a transparent and accountable method of applying and enforcing those regulations. A strict DBT is meaningless if its employment cannot be verified, enforced, and tested to ensure the requirements are met. Recent controversy over the use of Wackenhut forces to test security at the country's nuclear plants through force-on-force exercises has thrown a shadow of doubt over the integrity of the testing process. The conflict of interest inherent in Wackenhut's role in both providing security at 31 nuclear plants around the country and in testing security at both those and the facilities of its competitors, as well as the ease with which that position could be abused, means that the public, regulators, lawmakers and even nuclear plant owners and operators will never have a

clear understanding of the exact capabilities of nuclear plant security forces. This situation must be rectified immediately by dismissing Wackenhut if revised or even current DBT requirements are to carry any weight. Independent, monitored force-on-force exercises should also take place annually rather than only once every three years, with a maximum of two weeks notice, to ensure plant security forces remain in top form.

The second major component of Petitioner's request, in addition to a thoroughly revised DBT, is development and deployment of the "beamhenge" defense concept. Considering the cost effectiveness and speed with which such a structure could be put into use, and the effectiveness with which it may prevent catastrophic damage from an airplane crash or even shoulder-fired rockets, Petitioner's request for the NRC to either immediately mandate the use of beamhenge or justify their refusal to do so seems entirely reasonable. We therefore support Petitioner's request.

While the substance of the new regulations is the most important aspect of the requested regulatory revision, the process by which new regulations are promulgated is crucial for ensuring their strength, comprehensiveness, legitimacy, and, hence, their value in deterring and deflecting any attack. To that end, any revisions to the DBT need to take place with full public involvement through a notice-and-comment rulemaking. According to a motion filed by NRC in the U.S. Court of Appeals for the D.C. Circuit on January 14, 2005, in the case of Public Citizen v. NRC, preparations for such a rulemaking appear to be underway, with a proposed rule scheduled for submission to the Commission in June 2005. While details of the proposed rule do not necessarily need to be made public, we believe there are generic aspects that can safely be released to the public domain in order to invite more informed comments. We urge the NRC to consider carefully the balance between secrecy and security and, when in doubt, err on the side of openness. We will also expect that any comments received in response to publication of the proposed rule will be fully considered and prudent suggestions reflected in the final rule.

In conclusion, we find Petitioner's requests to be forward-looking and wise, and can recommend without reservation that Petitioner's proposals be included in the Commission's anticipated notice of proposed rulemaking regarding the DBT in order to ensure that the danger inherent in operating a nuclear power plant is contained as safely as possible, rather than harnessed and channeled toward destruction. Time is of the essence; we are more than three years removed from the events of 9/11, and further still from past tragic lessons. If we cannot learn those lessons and apply them presently, we invite future failures which may again be on a scale greater than what we have now experienced or imagined. We request that NRC accept these requests and act immediately to better secure our country's nuclear plants.

Respectfully submitted,

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Director
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Mail Envelope Properties (41F1862D.0BA : 10 : 16570)

Subject: Protect Americans from a Nuclear Disaster
Creation Date: Fri, Jan 21, 2005 5:46 PM
From: "Brendan Hoffman" <thehoffman@aol.com>

Created By: thehoffman@aol.com

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MESSAGE
Mime.822

Size

3826
4857

Date & Time

Friday, January 21, 2005 5:46 PM

Options

Expiration Date: None
Priority: Standard
Reply Requested: No
Return Notification: None

Concealed Subject: No
Security: Standard