November 9, 2005

Mr. David Lochbaum
Union of Concerned Scientists
1707 H Street NW
Suite 600
Washington, D.C. 20006-3919

SUBJECT: PETITION FOR RULEMAKING PRM-50-80: BETTER PROTECTION OF U.S. NUCLEAR POWER PLANTS AGAINST RADIOLOGICAL SABOTAGE

Dear Mr. Lochbaum:

I am responding to your letter dated April 28, 2003, in which you submitted a petition for rulemaking (PRM) requesting that the U.S. Nuclear Regulatory Commission (NRC) amend its regulations to better protect nuclear power plants against radiological sabotage. The petition proposed two rulemaking actions. The first proposed action requested that 10 CFR 50.54(p), "Conditions of licenses," and 10 CFR 50.59, "Changes, tests, and experiments," be revised to require licensees to evaluate whether proposed changes, tests, and experiments cause protection against radiological sabotage to be decreased and, if so, that such actions only be conducted with prior NRC approval. The second proposed action requested that 10 CFR Part 50 be amended to require licensees to evaluate their facilities against specified aerial hazards and make necessary changes to provide reasonable assurance that the ability of the facility to reach and maintain safe shutdown will not be compromised by an accidental or intentional aerial assault.

You also requested, in accordance with 10 CFR 2.802(d), that the Commission suspend the Diablo Canyon Independent Spent Fuel Storage Installation proceeding during the NRC's consideration of PRM-50-80. As you are aware, that request was denied by Commission Memorandum and Order CLI-03-04, dated May 16, 2003.

Your petition was published in the *Federal Register* for comment on June 16, 2003. Four comments were received opposing the petition. No comments were received supporting the petition.

We received the following comments on the first proposed action: (1) that 10 CFR 50.59 and 50.54(p) are necessarily different; (2) industry guidance on performing 10 CFR 50.59 evaluations (NEI 96-07, "Guidelines for 10 CFR 50.59 Evaluations") already requires all applicable regulations to be considered for changes, tests, and experiments, and that a required dual review of all changes is unnecessary; (3) there are already requirements for sabotage, including the recent orders and security requirements in both Part 73 and Part 50; and (4) there is no direct correlation between security plan effectiveness and plant condition.

We received the following comments on the second proposed action: (1) one commenter opposed inclusion of general aviation aircraft in the design basis threat (DBT) given the current flight restrictions near nuclear power plants and the actions taken by Federal and industry airport and aircraft security organizations; (2) general aviation aircraft are not a significant threat to nuclear power plants; (3) industry and government have already studied the effect of a large airborne object and concluded there would be no massive releases from such an event; (4) nuclear power plants already have diverse, divided trains and shutdown capability; (5) NRC would promulgate any regulations needed, based on ongoing vulnerability studies at Sandia National Laboratory; (6) the Federal Government, not the licensee, is responsible for protection of nuclear power plants from aircraft attacks; and (7) extensive aircraft impact analyses are not justified, given an industry study of the risk from an armed terrorist ground attack that concluded there would be noncatastrophic consequences.

We have decided to consider rulemaking in response to the first proposed action that would, if adopted as a final rule, essentially grant the requested action. In reviewing the first proposed action and the relevant regulations, we determined that the requested rulemaking could help maintain safety and security. In making this determination, we noted that nuclear power plant licensees are already required to address the continued safety of the plant with regards to any change, test, or experiment (10 CFR 50.59), and also to ". . . establish, maintain, and follow an NRC-approved safeguards contingency plan for responding to threats, thefts, and radiological sabotage . . ." (10 CFR 73.55(h)(1)). Additionally, licensees are required to ". . . establish and maintain an onsite physical protection system and security organization that will have as its objective to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety . . ." (10 CFR 73.55(a)), and ". . . may make no change which would decrease the effectiveness of a security plan . . ." (10 CFR 50.54(p)(1)). However, we determined that the issue described in the first proposed action is not specified in a single comprehensive regulation.

The NRC's interoffice Safety/Security Interface Advisory Panel (SSIAP) has advised the staff on the most effective and efficient method to integrate this rulemaking with other ongoing safety/security actions to require that licensees evaluate changes to the facility or to the security plan for adverse interactions. Further, in its SRM on June 28, 2005, the Commission directed the staff to include this issue as part of ongoing rulemaking for 10 CFR 73.55, currently due to the Commission on May 31, 2006.

We evaluated the second proposed action and are deferring resolution of the request at this time. The NRC intends to address the second requested action of the petition when the NRC responds to comments on the proposed Design Basis Threat rule. That rule was published in the *Federal Register* on November 7, 2005.

Further details are discussed in the enclosed notice, Petition for Rulemaking, Partial grant, that will be published in the *Federal Register.*

Sincerely,

/RA/

Annette L. Vietti-Cook
Secretary of the Commission

Enclosure:
Federal Register Notice -
Petition for rulemaking: Partial grant.

cc: San Luis Obispo Mothers for Peace
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