

Citizens Awareness Network

The Experiment is Over!

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January 23, 2006

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January 24, 2006 (11:15am)

Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
ATTN: Adjudications Staff

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Re: Comments on Nuclear Regulatory Commission Proposed Rule 10 CFR Part 73:
Design Basis Threat [RIN 3150-AH60]

The Citizens Awareness Network is responding to the Nuclear Regulatory Commission's request for public comments on the Proposed Rule 10 CFR Part 73, regarding the Design Basis Threat for security at licensed nuclear facilities. CAN has longstanding and well-documented concerns about the inadequacy of NRC's security regulations and requirements. These concerns were elevated after the September 11, 2001 attacks on New York City and Washington, DC.

The NRC's response since those attacks was and remains unsatisfactory, and there is no evidence that the agency has responded adequately or in a way that should enable the public to have confidence that nuclear reactors or other facilities are sufficiently well protected. Many specific incidents and much evidence (some of which will be detailed in these comments) demonstrate the inadequacy of NRC requirements for licensees. The central reason for this is that NRC's goal in establishing the Design Basis Threat and its security regulations is not to ensure that the public and national security are protected from the possible consequences of attacks on nuclear facilities. Rather, it is to set limits on what private corporations that own/operate nuclear facilities are responsible for. To quote the Proposed Rule: "The revised DBTs represent the largest threat against which *private sector facilities* must be able to defend with high assurance."

The NRC's explicit and sometimes stated position is that defending against more severe threats is **not** the responsibility of the corporations that own, operate, and profit from nuclear materials. However, neither the NRC nor any other US government agency appears to have a comprehensible or adequate program to define who is responsible for protecting the people of this country from such attacks, nor what those attacks may be or what measures may be required to repel them or to minimize their consequences.

This is a violation of NRC's congressional mandate to protect the public health and safety and national security. It also constitutes a dangerously schizophrenic approach. On the one hand, it proclaims that adequate security regulations are in place – not because the goal of protecting the people of this country has been met, but because the stated purpose

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of the DBT is to set limits on what kinds of attacks the nuclear industry is responsible for preventing. On the other hand, the agency assures people that **more** severe attacks – such as fully loaded jumbo-jet airliners striking a reactor or irradiated fuel pool in a suicidal attack – are incapable of causing a meltdown. Given recent reports issued by the National Academy of Sciences in regards to the vulnerability of reactor fuel pools (and dry cask storage) to terrorism and the inadequacy of present radiation protection standards in light of human vulnerability to radiation from all sources including nuclear reactors, the NRC's proposed rule protects corporations from safeguard responsibility and litigation rather than the public. Reactor communities are presently held hostage not only to terrorism but to NRC's proposed rule.

That said, the NRC's purpose in soliciting public comment is to find out whether the proposed standards for limiting the job of on-site security are acceptable or how they should be improved. However, the people are interested in preventing nuclear facilities from being used as weapons, not the finer details of whether an attack exceeded what it was reasonable to expect the licensee to defend against. It is nevertheless impossible to determine whether the proposed regulations are adequate to that task, since the public is not allowed to know any of the details. The agency only discloses certain types or modes of attack that are considered, and continues to withhold essential information about the details of the DBTs (setback distances for vehicle barriers, numbers of attackers, size of the security force, specific types of weaponry, etc.). The National Academy of Sciences found NRC's lack of transparency dangerous and undermining to the health and safety of the public.

It appears from the Federal Register notice that the Proposed Rule is not substantially different from the changes that were made in April 2003. The primary purpose of the Proposed Rule is to permanently put into place the regime of the April 2003 revised DBTs. The publicly available information included in the Federal Register indicates that some parameters for certain threats have been changed ("attackers willing to kill or be killed," multiple conspirators inside the facility, etc.), but it is impossible to have confidence that these changes are adequate or even meaningful without knowing more of the details. CAN's concern is that the NRC's approach merely provides the appearance of meaningful public participation as a kind of public relations exercise or, as stated previously, to protect itself from potential lawsuits for violating the public's rights. This provides little comfort to the public.

However, as the Proposed Rule is substantially the same as the April 2003 revised DBTs, there is much evidence to suggest that it will not adequately protect the public health and safety and national security, which must be viewed as the NRC's primary mandate.

- **Security vulnerabilities at the Ginna reactor:** CAN filed an allegation with NRC (attached) in October 2005 after attending a public meeting at the Ginna Nuclear Power Plant. On our visit to the site, we discovered alarming security vulnerabilities that far surpassed our expectations of what site security should be after Sept. 11, particularly given NRC's representations of the revised DBTs. Although, in filing the allegation, we hoped that Constellation Nuclear was guilty

of serious violations, the worst of our fears turned out to be true: that the security program at Ginna is completely in compliance with NRC regulations. This signifies that the regulations, including the DBT, are entirely unsatisfactory.

- **Inherent design problems/violations that make reactors and waste vulnerable:** Present NRC policy and DBTs ignore vulnerabilities inherent in the design of nuclear facilities. CAN has documented these concerns through numerous petitions and allegations to the NRC: as a member of the Nuclear Security Coalition, we demanded emergency enforcement action to address the special vulnerability of Mark I and II Boiling Water Reactor fuel pools; in addition, NRC has granted exemptions to many licensees from certain safety regulations (eg, Appendix R fire protection standards) that present obvious and unacceptable vulnerabilities. For instance, the vulnerability of fire-safety related pump rooms at the FitzPatrick Nuclear Power Plant has been ignored on the basis of an Appendix R exemption based on “institutional controls” (limits) on combustible materials, adding insulation to an electrical cable, and unproven assertions made by the licensee. Clearly, NRC staff believe that such measures are sufficient to reduce the probability of an accident resulting from an accidental fire, but an attack scenario is completely disregarded.
- **Spent fuel security:** As indicated above, the National Academy of Sciences concluded that spent nuclear fuel storage pools could be vulnerable targets for attacks, with potentially disastrous consequences. Clearly, passive, structural modifications to reduce these vulnerabilities – in both the design and configuration of spent fuel storage facilities – is called for. However, not only has the NRC’s rate of response been alarmingly slow, it evinces no intention of addressing the issue in the manner it requires. The apparent absence of a concerted spent fuel security program in the Revised DBT is further evidence of this failure to recognize and address the problem.
- **Evacuation:** Consideration of the possible effects of an attack – including the ineffectiveness of emergency preparedness, response, and relief measures – must be given. It is not enough to assume that one can stop an attack if certain regulations are in place, because human error, mismanagement, and other factors may cause security to fail anyway. In fact, given site-specific problems with evacuation (eg, Indian Point) and the recent experience with mass evacuation in New Orleans and Houston, emergency response should not be relied upon as a “fallback” option for security. Given far more conservative parameters than are anticipated for nuclear accidents and terrorist attacks – eg, several days’ notice of the need to evacuate, rather than just hours (at best) – people were not able to be evacuated and sheltered in the manner and time-frame required in the case of a major radioactive release.

Many more problems, details, and examples can be cited in criticizing the Proposed Rule, and other stakeholders will certainly have enumerated them. However, the essential point is that the NRC is terribly misguided in its approach to security, which is reflected in the utter inadequacy of the proposed DBTs. CAN requests that the agency withdraw the Proposed Rule and start over – this time with the goal of maximizing security and

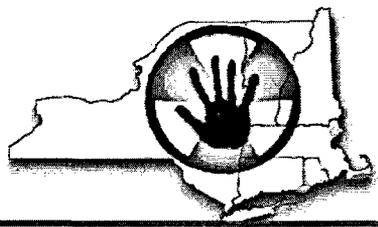
protecting the public health and safety, not limiting the “regulatory burden” on “private sector facilities.”

Sincerely,

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Citizens Awareness Network

The Experiment is Over!

October 3, 2005

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**SUBJECT: INSUFFICIENT SECURITY AT R. E. GINNA NUCLEAR
POWER PLANT**

Dear Mr. Vito:

On behalf of Citizens Awareness Network (CAN), I am making a formal allegation regarding security vulnerabilities at the R. E. Ginna reactor. On September 28, I visited the reactor site for a public meeting held by NRC to receive comment on an application by Constellation Nuclear. In the course of my visit to the site I observed what appear to be systemic security problems that undermine security at the reactor and make it vulnerable to attacks. The fact that the site was so vulnerable was especially alarming since NRC staff were on-site, as well as the public, and Constellation was unable to ascertain who was on its site. There was clearly no strong presence able and willing to defend Ginna against an attack.

The R. E. Ginna Nuclear Power Plant is located on Lake Rd. in Ontario, NY, at the intersection of Ontario Center Rd. in a primarily residential neighborhood, with some agricultural use. As I approached the reactor site on Ontario Center Rd., I noticed that the reactor building is less than 1/4-mile from the road and is plainly visible from public land. From the intersection of Lake Rd. and Ontario Center Rd., the reactor is downhill, and the only visible security presence was a single guard in a shack which used to function as the checkpoint for vehicles entering the site. The proximity of vital areas of the plant to a public road in a residential area, lying downhill from a position of good visibility, with so little security presence, appears to present a number of tactical vulnerabilities. But it gets worse.

The meeting was held at the Training Center on site, a building which appears to be adjacent to the reactor building. Incidentally, this building provides the only obstruction in the line of sight between the south side of the plant (along Lake Rd.) and the lower elevations of the reactor building. (The upper 2/3 of the

reactor building are completely unobstructed from Lake Rd.) I was instructed by NRC Resident Inspector Mark Marshfield to enter the site through a new access point, a driveway located on Lake Rd. about 1/4-mile west of the Ontario Center Rd. intersection. There were no obstructions, gates, or checkpoints impeding access to the site from Lake Rd. to the parking lot in front of the Training Center.

There were concrete barriers lining the road and forming a perimeter around the buildings to prevent a car-bomb from getting directly to the reactor building. This perimeter offered a set-back distance of less than 100 feet from the Training Center, but had holes for pedestrian walkways from the parking lot to the Training Center. This was alarming because it appeared that a vehicle could drive onto the site and deliver attackers extremely close to the reactor building, and presumably, the Control Room and other vital areas.

There were no easily visible signs indicating which door to use to go to the meeting, so I just went to the door closest to where I parked my car. I entered the building and no one was present. There was a podium about 20 feet inside, set up as a check-in point, so I stood there for about one minute waiting to see if someone would come and check me in and direct me to the meeting. After that, because I was about 20 minutes late for the meeting, I signed myself in the log book, took one of the Guest Pass badges, and began to look for the meeting location.

After turning a couple corners, I ran into a Constellation employee who appeared to be leaving work for the day. I stopped him and asked if he could direct me to the meeting. He asked me how I got into the building, and I informed him that the door was unlocked and I just came in. He then asked whether anyone else had offered me directions, and I told him there was no one there and I had just checked myself in. He seemed surprised by this, but not terribly alarmed, then he led me through the building to the auditorium where the meeting was in process. Until I met the individual who directed me to the meeting, at no point in the entire process did I feel that my presence at Ginna was even noticed.

It is essential that NRC conduct an investigation to determine whether this event represents the general state of security at Ginna. If so, this level of oversight appears to be completely inadequate, and we expect it is a significant violation of NRC regulations. However, since NRC's upgraded security requirements have never been released to the public, CAN has no way of knowing whether Constellation is in violation of any specific regulations. Certainly, NRC inspectors did not express any concern at the meeting about these vulnerabilities, at least some of which they must have observed in their visit. Regardless, it appears that security is not a priority at Ginna, and the claims that NRC has made concerning increased security post-September 11, 2001 and the institution of NRC's new security regulations two years ago were not in evidence.

To be clear, I did not attend the meeting on September 28 in order to inspect security at Ginna. Although it did seem odd to me beforehand that a public meeting would be held on the reactor site – as I had been led to believe that the general public was no longer allowed on reactor sites – I had no intention to test the limits of plant security and I did nothing intentionally to gain access to parts of the reactor site where I was not supposed to be. It was utterly confounding how freely I was able to enter the site and move about virtually unimpeded.

The NRC need not take steps to protect my confidentiality in this matter. CAN recognizes that the NRC staff may ask Constellation to respond formally to one or more of these concerns. If the NRC documents its inquiries of these concerns in one or more inspection reports, please notify CAN of those report numbers.

Sincerely,

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cc: Senator Hillary Clinton
Senator Charles Schumer
Congresswoman Louise Slaughter
Congressman James Walsh

From: Deb Katz <deb@nukbusters.org>
To: <secy@nrc.gov>
Date: Mon, Jan 23, 2006 4:35 PM
Subject: Comments on Nuclear Regulatory Commission Proposed Rule 10 CFR Part 73: Design Basis Threat [RIN 3150-AH60]

Enclosed please find comments on Nuclear Regulatory Commission Proposed Rule 10 CFR Part 73: Design Basis Threat [RIN 3150-AH60] from the Citizens Awareness Network

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Part 73: Design Basis Threat [RIN 3150-AH60]
Creation Date: Mon, Jan 23, 2006 4:34 PM
From: Deb Katz <deb@nukebusters.org>
Created By: deb@nukebusters.org

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