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From: Louis Zeller <BREDL@skybest.com>
To: <SECY@nrc.gov>
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Subject: Proposed Rulemaking on Nuclear Power Plant Security (RIN 3150-AH60)

BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE

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(64)

January 23, 2006

Secretary, U.S. Nuclear Regulatory Commission

Washington, DC 20555-0001

ATTN: Rulemakings and Adjudications Staff

SECY@nrc.gov

Re: Proposed Rulemaking on Nuclear Power Plant Security (RIN 3150-AH60)

Dear Mr. Secretary:

On behalf of the Blue Ridge Environmental Defense League, I write to comment on the proposed changes to the nuclear power plant security regulations.

Plutonium fuel * in nuclear power reactors raises special security issues because of its use in atomic weapons. Last year Duke Energy received a license amendment from NRC to test plutonium fuel in its Catawba Nuclear Power Station just south of Charlotte, NC (Docket Nos. 50-413-OLA, 50-414-OLA). The Blue Ridge Environmental Defense League challenged Duke's application for an exemption from Nuclear Regulatory Commission security regulations, rules which increased the level of protection required to defend against the more aggressive assaults predicted after the terrorist attacks of September 11, 2001. Our legal intervention raised the issue of nuclear plant vulnerability to theft and sabotage.

In its application to amend its operating license at Catawba, Duke Energy's requested exemptions from post-9/11 federal requirements designed to protect plutonium and other nuclear materials from theft or sabotage. Duke sought exemption from the regulations for Category I facilities, sites which have special strategic nuclear materials such as 2 kilograms or more of plutonium. During ongoing tests at the Catawba plant, Duke Energy will have 180 pounds (80 kilograms) of plutonium on site. Less than 18 pounds of plutonium is sufficient to make a nuclear weapon. For comparison, the atomic bomb which leveled Nagasaki in 1945 contained just 13 pounds of plutonium. The Atomic Safety and Licensing Board granted the exemption but determined that some Category I security requirements should apply to plutonium fuel tests at the Catawba plant and that Duke must comply; in other words, Duke Energy was not entitled to a blanket exemption from post-9/11 security requirements for nuclear facilities

The particular regulations which Duke objected to involve worker security clearances, access and search provisions, physical protection barriers, and tactical team response capabilities: Federal Regulations 10 C.F.R. §§ 11.11(b), 10 C.F.R. §§ 73.46(d)(9), 10 C.F.R. §§ 73.46(c)(1), 10 C.F.R. §§ 73.46(h)(3) and (b)(3-12), respectively. According to federal regulations, such exemptions cannot be granted unless they will not constitute an undue risk to the common defense and security, nor endanger life or property. The benchmark for such a determination is the design basis threat; that is, the conceivable theft, diversion, or sabotage which the owner-operator of a nuclear facility must be prepared to defend against. Standard nuclear power stations must meet one such standard, but a higher standard is required for facilities which handle Category I quantities of special strategic nuclear materials.

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However, the Nuclear Regulatory Commission took upon itself to overturn the decision by the ASLB that bomb-grade materials must be given special protection. The Commission abrogated the judicial process. The NRC did not seem to care that, as the ASLB had ruled, that Duke failed to show that "the requested exemptions from 10 C.F.R. § 73.46, subsections (c)(1); (h)(3) and (b)(3)-(12); and (d)(9) were authorized by law, would not constitute an undue risk to the common defense and security, and otherwise would be consistent with law and in the public interest." [ASLB Decision, April 18, 2005, Section IV]

Today we see that Duke's exemption has opened the door to further rollbacks of regulations. The proposed rulemaking on nuclear power plant security (RIN 3150-AH60) is one example. Where the current rule describes internal threats, such as theft posed by an individual or a conspiracy within the nuclear power plant, the NRC proposes "flexibility," thereby reducing the level of detail necessary to prepare an effective defense. The NRC explains such a change as follows:

The language would be revised to provide flexibility in defining the scope of the internal threat without adding details that may be useful to an adversary.

The language in the current rule which would be eliminated is:

2)(ii) An individual, including an employee (in any position), and (2)(iii) A conspiracy between individuals in any position who may have:

(A) Access to and detailed knowledge of nuclear power plants or the facilities referred to in § 73.20(a), or

(B) items that could facilitate theft of special nuclear material (e.g., small tools, substitute material, false documents, etc.), or both.

Does the NRC believe that domestic or international terrorists would not think to utilize "small tools" or "false documents" in their sabotage plans? Nonsense. It is foolish to reduce the actual level of preparedness for the purported sake of secrecy.

The design-based threat is the regulatory benchmark against which utility security plans are measured. As we and others have shown, the DBT does not address real world threats. For example, Army and Navy attack squads (Special Forces and SEALS) number 12 to 14. Some government building's security forces prepare for double the number of terrorists posed by the DBT. The Design Basis Threat as written and as proposed does not protect the American public from credible attacks on nuclear power stations.

We concur with the comments lodged in this rulemaking by Diane Curran and Mothers For Peace.

Respectfully,

Louis A. Zeller

* Commercial nuclear fuel typically contains the oxide form of uranium. The nuclear industry's term for this novel fuel is "MOX" because it is a mixed oxide containing both uranium and plutonium. But the primary fissile isotope of the fuel is plutonium, so we use the more accurate term "plutonium fuel."

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