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OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

Marvin S. Fertel  
SENIOR VICE PRESIDENT AND  
CHIEF NUCLEAR OFFICER

January 5, 2007

The Honorable Dale E. Klein  
Chairman  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

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**SUBJECT:** Security Rulemakings and Related Activities

Dear Chairman Klein:

Security remains a priority issue for the commercial nuclear industry. While significant enhancements to the security posture of our plants have been made, there continues to be an intensive level of activity associated with security rulemakings, implementation of Commission orders, and integration of industry efforts with federal, state and local programs that protect the nation's critical infrastructure. Given these efforts, the purpose of this letter is to ensure that critical items are finalized appropriately, and that communication on policy matters between the industry and the Commission is clear.

The Commission currently has the final draft 10 CFR 73.1, the design basis threat (DBT) rule, before it for approval. The industry remains concerned that the rule fails to explicitly reference the effective revision of the Adversary Characteristics Document (ACD) that establishes the details of the DBT. Absent this provision, the DBT can be changed without rulemaking, which we believe would circumvent the Administrative Procedure Act and NRC's own procedures related to regulatory and backfit analyses. Incorporating the reference to the ACD in the rule would ensure that all parties are afforded proper notice and comment opportunities when a change to the DBT is being promulgated. We urge the Commission to resolve this issue in the final rule.

With regard to ensuring clear communications on policy matters between the NRC and the industry, we would like to request a safeguards meeting with the Commission. It has been over one year since the last such meeting. In the past we found exchanges between industry executives and the Commission extremely beneficial in ensuring there is a shared understanding of expectations on critical policy issues. In this regard, we

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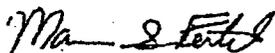
believe the timing is right to have such a meeting to discuss at least the following topics:

- (1) Implications to the DBT of continued threat assessments performed by the NRC and other government agencies, and the implications to security at the sites, including appropriate actions to address the question of "gradual degradation."
- (2) Actions required to enhance the integration of the activities of the NRC, DHS, the FBI, local law enforcement and the sites that would improve security at the sites.
- (3) Discussion of industry lessons-learned from the force-on-force exercises conducted to date, and actions being taken by the industry based on the lessons-learned, including the use of the Composite Adversary Force.
- (4) Initiatives taken by the industry to share security-specific "operational experiences" and to assess the performance of individual site security programs.

While we will be prepared to discuss any additional areas the Commission may wish to address, we believe an open dialogue on the above topics would be valuable as the Commission considers its policy positions regarding nuclear power plant security, and as both the industry and the NRC work to assure the continued effectiveness of the existing security programs.

We appreciate your consideration of our request to modify 10 CFR 73.1 and our request for a safeguards level Commission meeting with industry executives on nuclear power plant security.

Sincerely,



Marvin S. Fertel

- c: The Honorable Edward McGaffigan, Jr., Commissioner, NRC  
The Honorable Jeffrey S. Merrifield, Commissioner, NRC  
The Honorable Peter B. Lyons, Commissioner, NRC  
The Honorable Gregory B. Jaczko, Commissioner, NRC  
Mr. Luis A. Reyes, Executive Director for Operations, NRC  
Mr. William F. Kane, Deputy Executive Director for Reactor and Preparedness Programs, NRC  
Mr. Roy P. Zimmerman, Director, Office of Nuclear Security and Incident Response, NRC