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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

**PR 50, 72 and 73
(71FR62663)**

Before the

UNITED STATES NUCLEAR REGULATORY COMMISSION

39

In the Matter of)
)
PROPOSED AMENDMENTS TO)
10 C.F.R. Parts 50, 72, and 73 -)
)
Power Reactor Security Requirements)
)

Docket No. RIN 3150-AG63

**COMMENTS OF
THE OFFICE OF THE
ATTORNEY GENERAL OF THE STATE OF NEW YORK**

SUMMARY

The Office of the Attorney General of the State of New York respectfully submits these comments in support of upgrading the defenses of nuclear power plants against terrorist attack. Recent events have proven that terrorists can strike anywhere in the world, that they can attack by air, water, or land, that they can mobilize significant numbers, and that they can use a wide variety of conventional and unconventional weapons. The February 1993 detonation of a truck bomb in a World Trade Center parking garage demonstrated that no place is safe from terrorists. September 11, 2001 showed that terrorist groups can use jet airliners in highly destructive ways to wreak havoc – simultaneously at multiple sites – in the United States. The October 2000 water-borne attack on the U.S.S. Cole and the 2006 missile attacks on Israel demonstrate that terrorists can strike by water and by air - and the 2006 attacks against Israel indicate that the threat is increasing in both sophistication and scope. We should have no illusions about the

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ability of terrorists to attack by land, water, or air anywhere and in significant numbers using extremely powerful weapons.

Despite the demonstrated terrorist threat, the Nuclear Regulatory Commission (“NRC” or “Commission”) has complacently allowed the owners of nuclear power plants to shirk their corporate responsibility to prepare their plants to resist terrorist attacks. After the air attacks on the World Trade Center and the Pentagon, the NRC allowed its security regulations, which were promulgated before 9/11, to remain in place. To be sure, following 9/11, the NRC did issue secret and confidential orders directing nuclear plant owners to take undisclosed security changes. However, because those NRC security orders are secret, until this rulemaking proceeding, the public had no way of assessing whether nuclear power plant owners were doing enough to improve nuclear power plant defenses against terrorist attack.

The information provided during this rulemaking indicates that nuclear power plant owners have not shouldered their responsibility for plant security since 9/11 – and that the NRC is content to allow that status quo to continue going forward. Simply put, the proposed regulations demonstrate that the NRC plans to allow the corporate owners of these profitable facilities to avoid taking common-sense measures to protect their plants from terrorists. One glaring deficiency is the absence of any requirement to have physical barriers against aircraft, missiles, or mortar fire. As discussed below, the failure to require air attack defenses is only one of the deficiencies in the proposed regulations.

The fact that the proposed regulations do not require nuclear power plant owners to pull their own weight moving forward mirrors the NRC’s indulgence of plant owners since 9/11. The Federal Register notice proposing the nuclear power plant security regulation changes that are the subject of this proceeding states, in part, that the changes are mostly “derived directly from,

or through implementation of” four of the confidential orders.¹ We take this statement to mean that the bulk of the proposed regulatory changes merely codify in public the security the NRC already requires of nuclear power plant owners. If this is so, the corporations which own the plants are not doing enough to protect their nuclear plants.

In addition to indulging plant owners, the proposed regulatory changes include provisions that would make nuclear power plants more vulnerable to terrorist attack. Most troubling is the proposal to actually *weaken* security for plutonium when such weapons material is within the perimeter of a civilian nuclear power plant in the form of unirradiated fuel. Weakening the security for such plutonium increases the possibility of its theft. The addition of plutonium to fuel rods in civilian nuclear power plants is part of the federal government’s program to dispose of plutonium. While the federal government should take steps to dispose of such weapons material, that goal should not justify weakening the security for plutonium distributed to the approximately 103 nuclear power plants around the country. The federal government’s need to neutralize such plutonium in no way justifies lowering the special high security required for such dangerous materials. Indeed, the purpose of the plutonium disposal program is to keep bomb material out of the wrong hands.

INTEREST OF THE NEW YORK STATE ATTORNEY GENERAL

The New York State Attorney General is the State’s chief law officer and is charged with enforcing environmental, antitrust, consumer, securities, and other laws to protect the health and safety of New York’s citizens, the environment they live in, and the economy of the State that

¹ 71 Fed. Reg. 62,664 (October 26, 2006).

contains the world's most important financial center. To carry out these responsibilities, the Attorney General, *inter alia*, conducts investigations, litigates in various courts and before regulatory and administrative agencies, and participates in rulemakings, including the Design Basis Threat proceeding² and other matters³ before the NRC. These comments are submitted in the interest of protecting New York and its citizens from the potentially devastating consequences of a successful terrorist attack on any nuclear power plant and to promote the security of such plants, in particular the Indian Point reactors operating within the largest population concentration in the United States and just a few miles from the nation's – and the world's – financial hub.

DISCUSSION

I. BACKGROUND

The United States has over one hundred nuclear power plants, five of them in New York. Some nuclear plants are located near major population and economic centers. In particular, there are three nuclear plants at Indian Point within the New York City metropolitan area that is home to tens of millions of people and the nation's financial center.⁴ Any significant release of radiation from such nuclear power plants could cause unimaginable human injury and economic loss.

² Docket Nos RIN 3150-AH60 and PRM-73-12.

³ *See, e.g.*, Docket PRM-51-10 - Petition of the Massachusetts Attorney General Concerning the Environmental Impact of High-Density Storage of Spent Nuclear Power Plant Fuel Rods.

⁴While Indian Point Unit 1 no longer generates power, its spent fuel rods still are stored at the facility along with the spent fuel from Units 2 and 3. Each of the three units has its own separate spent fuel pool.

The Atomic Energy Act of 1954⁵ assigns the NRC responsibility for ensuring the safety of our nuclear power plants, including the protection of these facilities from sabotage by terrorists.

The NRC does not safeguard nuclear power plants itself, but rather sets the safety and security standards that nuclear plant owners must meet. For nuclear power plants the major portion of the NRC's security requirements are set out in 10 CFR Part 73 - Physical Protection of Plants and Materials, in particular §73.55 - Requirements for Physical Protection of Licensed Activities in Nuclear Power Reactors Against Radiological Sabotage and §73.56 - Personnel Access Authorization Requirements for Nuclear Power Plants. As their titles indicate, §73.55 and §73.56 set out the standards for the physical security structures and personnel controls nuclear power plant owners are required to have as a condition for operating a plant. In addition, §73.55 sets out the requirements for the security force an owner must deploy to protect a nuclear power plant.

Nuclear power plant security is based on the assumption that the plant is fueled by "special nuclear material," *i.e.*, enriched uranium containing less than a certain amount of uranium-235, uranium-233, or plutonium. 10 CFR §§73.2 - Definitions & 73.55(a). In other words, civilian nuclear power plants in the United States do not use strategic special nuclear material, and, accordingly, their security regimes do not include measures to secure and protect such highly dangerous material. In contrast, "strategic special nuclear material," *i.e.*, material that contains enough uranium-235, uranium-233, or plutonium to make an atomic bomb, is subject to different and more strict security standards. 10 CFR §§73.2, 73.20 - General

⁵ 42 U.S.C. §2011 *et seq.*, as amended.

Performance Objectives and Requirements, 73.45 - Performance Capabilities for Fixed Site Physical Protection Systems & 73.46 - Fixed Site Physical Protection Systems, Subsystems, Components, and Procedures.

The fundamental differences between the two security requirements is that an energy corporation that possesses “special nuclear material” must protect against sabotage of reactors and their components, while an entity possessing “strategic special nuclear material” must prevent the theft or diversion of the strategic special nuclear material. Additionally, strategic special nuclear material must address a greater “design basis threat” than must special nuclear material.⁶ Compare 10 CFR §73.55 with §73.20 and §73.1 - General Provisions, subsection (a)(1) - Radiological Sabotage with subsection (a)(2) - Theft or Diversion of Formula Quantities of Strategic Special Nuclear Material. The differing purposes and threats result in different physical facilities, security regimes, and safety processes for the different materials.

Before 9/11, nuclear power plant security was based on stale and obsolete assumptions that had been in place for a generation and remained unchanged, save for the addition of truck bombs to the design basis threat in 1994.⁷ After 9/11, the NRC issued certain confidential orders directing nuclear power plant owners to make changes in the security preparations at their plants.⁸

⁶ The question of the “design basis threat” that a nuclear power plant owner must be prepared to resist is the subject of a different, but related, NRC rulemaking proceeding. 70 Fed. Reg. 67,380 - 67, 388 (November 7, 2005).

⁷ 59 Fed. Reg. 38,889 - 38,900 (1994).

⁸ See, e.g., EA-02-026, “Interim Compensatory Measure (ICM) Order,” dated February 25, 2002; 67 Fed. Reg. 9,972 (2002).

II. THE RULEMAKING PETITION

On April 28, 2003, San Luis Obispo Mothers for Peace and the Union of Concerned Scientists (collectively “San Luis Obispo”) petitioned the NRC for regulations requiring nuclear power plant owners to: (1) formally evaluate whether proposed changes in a plant’s equipment or procedures might decrease plant security and, if so, obtain prior NRC authorization before making any such change; and (2) formally evaluate each plant’s vulnerability to “aerial hazards” and take appropriate action to eliminate or reduce any such vulnerabilities. The San Luis Obispo petition identified aircraft, mortar shells, and missiles as possible “aerial hazards,” *i.e.*, methods of air attack.

The NRC assigned the San Luis Obispo petition Docket Number PRM-50-80, and released the petition for public comment. Two years later, on November 17, 2005, the NRC published a notice informing the public that: (1) the NRC would incorporate the issue of security impact analysis of proposed changes at nuclear power plants into an ongoing rulemaking; and (2) the NRC would “defer” the petition’s request for aerial hazard analysis and remediation until the NRC addressed proposed changes to the “design basis threat” regulations which would identify the threats a nuclear power plant owner must be prepared to resist.⁹

III. THE PROPOSED REGULATIONS

On October 26, 2006, the NRC published certain proposed changes in its regulations governing the security obligations of nuclear power plant owners.¹⁰ The notice indicated that

⁹ 70 Fed. Reg. 69,690 - 69,692 (2005).

¹⁰ 71 Fed. Reg. 62,664 - 62,874 (2006).

there was little in the proposed regulations that the NRC's confidential orders did not already require of plant owners.¹¹

The few substantive changes in nuclear power plant security proposed include: (1) the security impact analysis before plant changes that San Luis Obispo had requested¹²; (2) cyber-security for plant computer systems¹³; (3) a *relaxation* of the security required for plutonium incorporated into fresh reactor fuel¹⁴; (4) *elimination* of the armed escort for certain vehicles operating within a plant's protected or vital areas¹⁵; and (5) implementation of the Energy Policy Act of 2005's grant of authority for plant security personnel use of machine guns and other high capacity weapons.¹⁶

Conspicuously absent from the proposed regulations is any requirement that nuclear power plant owners provide security against air attack by terrorists using aircraft, missiles, or mortars.

¹¹ 71 Fed. Reg. 62,664 - 62,665 (2006). Our understanding is that the NRC's post-9/11 nuclear power plant security orders include a requirement for preparations to resist water-borne attacks.

¹² Set out as a new section, 10 CFR §73.58 - Safety/Security Interface Requirements for Nuclear Power Plants, 71 Fed. Reg. 62,867 (2006).

¹³ Set out as 10 CFR §73.55(f)(2), 71 Fed. Reg. 62,853 (2006) and 10 CFR §73.55(m), 71 Fed. Reg. 62,853 (2006).

¹⁴ Proposed as 10 CFR §73.55(l), 71 Fed. Reg. 62,857 - 62,858 (2006).

¹⁵ Proposed as 10 CFR §73.55(g)(5)(ii), 71 Fed. Reg. 62,854 (2006).

¹⁶ Proposed as new 10 CFR Part 18 - Firearms Background Check for Armed Security Personnel and 10 CFR Part 19 - Authorization for Preemption of Firearms Laws and Use of Enhanced Weapons, 71 Fed. Reg. 62,847 - 62,850 (2006).

IV. DISCUSSION

A. **The NRC Should Require Physical Barriers Against Air Attack.**

The use of airliners in the attack on the World Trade Center and the Department of Defense Headquarters at the Pentagon, the flight of two of those aircraft close to the two Indian Point operating nuclear power plants at Indian Point, and documents indicating that the attackers considered targeting nuclear plants¹⁷ has made air attack a continuing issue in the consideration of nuclear plant security. The fact that the regulatory changes proposed in this proceeding lack any provision for security against aerial attack, whether with aircraft, missiles, mortars, or other methods, confirms that the NRC has not asked and is not asking nuclear power plant owners to do anything to resist such attacks. Such favoritism toward plant owners is neither rational nor fair. Exempting the plant owners is not rational because it denies the public in depth security that owners are in the best position to provide. Such an exemption also is unfair because it allows corporations to profit from their operation of nuclear plants without assuming the true cost of defending those plants from terrorist attack.

Apart from this favoritism toward corporate owners, the omission of such defensive measures reflects a profound abdication of responsibility by the NRC itself. The proposed regulations do not require the plant owners to take steps to protect against air attacks. Yet, surely the NRC is aware that in the past seven years al-Qaeda and other terrorist groups have employed plane, missile, and mortar attacks around the world. Not to require common-sense defensive

¹⁷ See, e.g., National Commission on Terrorist Attacks Upon the United States, The 9/11 Commission Report, pp. 32 (flight paths of hijacked planes), 154 (nuclear facilities as targets) (July 22, 2004).

measures against such attacks reflects either complacency or blindness towards such demonstrated threats.

The NRC has staked out the position that nuclear power plant owners have no obligation to defend against air attacks, including terrorist attacks.¹⁸ The NRC's stated justification appears to be based on roughly equal parts of intellectual blindness and complacency. The complacency is evidenced by the NRC's assertions that *active* defense against aircraft attack is the sole responsibility of the Department of Defense,¹⁹ that security against other air attacks on nuclear plants is the responsibility of the Department of Homeland Security and law enforcement agencies,²⁰ that improved security for civilian aviation has largely eliminated the possibility that aircraft could be used to attack a nuclear plant,²¹ that plants have in place mitigation measures that would prevent the release of radiation if an air attack is successful,²² and that even if an attack causes a significant radiation release there will be sufficient time between the attack and the release to implement mitigation and off-site emergency plans.²³ For reasons set out below, such complacency is not justified.

The NRC's shortsightedness is also evidenced by its exclusive focus on active defense against attacks involving large commercial aircraft, by its disregard for the value of preventing

¹⁸ See, e.g., Final Rule in Docket RIN 3150-AH60 - Design Basis Threat, 72 Fed. Reg. 12,705 - 12,727 (2007).

¹⁹ See, e.g., 72 Fed. Reg. 12,710 (2007).

²⁰ *Ibid.*

²¹ *Ibid.*

²² See, e.g., 72 Fed. Reg. 12,711 (2007).

²³ See, e.g., 72 Fed. Reg. 12,712 (2007).

damage to a nuclear power plant, and by its dismissal of physical barriers, which provide a *passive* defense against aerial attack. The NRC's comments in the recently published final Design Basis Threat Rule refers to aircraft either generically or as "jumbo jet[s],"²⁴ "large aircraft,"²⁵ "large commercial aircraft,"²⁶ and "commercial airlin[ers],"²⁷ There is no indication that the NRC has given adequate consideration to the threat posed by general aviation aircraft – the thousands of one- and two-engined aircraft that are outside the security regime applied to airliners and other large aircraft. Ignoring general aviation has led the NRC to overlook the potential for using passive physical barriers to protect nuclear power plants from attacks by these smaller aircraft and other aerial threats. Such passive barriers would reduce or eliminate the "approach avenues" that could be used by larger planes or jets controlled by terrorists. Such passive barriers could include, for example, appropriately-located grids of vertical and horizontal "I" beams, steel cables, steel mesh curtains, cooling towers, or barrage balloons.

Also absent from the discussion of the final Design Basis Threat regulation is any mention of missiles or mortar attacks, two threats specifically mentioned in the 2003 San Luis Obispo petition. Since it previously indicated that it would respond to this San Luis Obispo request in its treatment of the Design Basis Rule,²⁸ the NRC is either ignoring its previous commitment or dismissing missiles and mortars as threats nuclear power plant owners need consider.

²⁴ 72 Fed. Reg. 12,710 (2007).

²⁵ 72 Fed. Reg. 12,210 & 12,712 (2007).

²⁶ 72 Fed. Reg. 12,710 & 12,711 (2007).

²⁷ 72 Fed. Reg. 12,712 (2007).

²⁸ 71 Fed. Reg. 69,692 (2006).

It is unclear to what extent its failure to consider the use of physical barriers to defend against air attack involving general aviation, missiles, or mortars figured in the NRC's decision to omit air attacks from the Design Basis Threat. In that proceeding the NRC rejected the proposal to require the construction of steel screens to shield nuclear plants from attack by large aircraft.²⁹

Notably, the NRC does not find that a steel screen would not protect plants from attacks by large aircraft. Instead, the NRC observed that “*active* protection against the airborne threat rests with other organizations of the federal government” (emphasis added) and concluded that if such an attack damaged a plant “mitigation measures” already in place at the plant would be “sufficient to ensure adequate protection of the public health and safety.”³⁰ No security system or active defense is perfect. In addition, as illustrated by 9/11, active defenses generally require a minimum lead time to be effective.³¹ Physical barriers generally do not require lead time or coordination. Finally, the combination of active defenses and passive physical barriers provides a defense-in-depth that is more effective than a system based simply on an active defense strategy.

The NRC's observation about other federal agency responsibility for active defense of nuclear power plants against aerial attack is not responsive to a proposal for a physical barrier. Physical barriers are passive defenses and are not unfamiliar to the NRC. The NRC has long required plant owners to have passive physical barriers to land attacks. Indeed, in this proceeding the NRC proposes to require (or, more precisely, to codify an existing confidential requirement) nuclear power plant owners build physical barriers to water-borne attacks.

²⁹ 72 Fed. Reg. 12,711 (2007).

³⁰ *Ibid.*

³¹ See generally The 9/11 Commission Report, pp. 20-34.

The NRC requires physical barriers to water-borne attack even though the Coast Guard and the Navy have exclusive control over the equipment that would be used in active defense against a water attack. The NRC required such barriers against water-borne attack for good reasons. The 2000 attack on the U.S.S. Cole in Aden harbor demonstrated terrorists' ability to mount water-borne attacks. Several nuclear power plants are adjacent to rivers, lakes, or oceans with significant shipping channels. By way of example, the three Indian Point plants are located on the Hudson River, a busy shipping channel between New York City and Troy. Given that the NRC will require physical barriers against water-borne attacks, it similarly should require physical barriers against air attacks.

Since its stated justification about other agencies' "responsibility" to repel air attacks does not withstand scrutiny, the NRC's refusal to require nuclear power plant owners to build physical barriers rests solely on the assumption that no matter what damage an air attack causes, the "mitigation measures" at a plant will "ensure" that the plant does not release radiation in a way that "harms the public health and safety."³² It is questionable whether such confidence is warranted; no system is perfect. Moreover, if a plant's "mitigation measures" make physical barriers against air attack unnecessary, the same rationale would undercut the requirements for any

³² "Ensure" means "to make sure or certain; guarantee." Webster's New World Dictionary of the American Language (2d college ed. 1980), p. 466. What the NRC is guaranteeing at 72 Fed. Reg. 12,711 is unclear. What the NRC may be claiming to guarantee is that nuclear power plant safety equipment will delay radiation release long enough for the population to evacuate or take other actions that the NRC considers adequate protection. Given the long standing and continuing dispute about whether evacuation or other measures would protect the public from a large radiation release, there is no basis for such a guarantee. See, e.g., James Lee Witt Associates, LLC, Review of Emergency Preparedness of Areas Adjacent to Indian Point and Millstone (2003), <http://www.wittassociates.com/upload/wysiwyg/NYReport.pdf>. In any event, the guarantee claimed is only for health and safety; the NRC is silent about the ability of an air attack to cause a radiation release that causes tens of billions of dollars of economic damage.

physical barriers against land or water-borne attack or, indeed, any active defense measures against land, water, or air attacks.

The reality is that there is some risk that an air attack on a nuclear power plant could cause a radiation release that harms people, and a larger risk of a release that could cause enormous economic damage. At least some of the risk of air attack can be reduced with physical barriers. General aviation aircraft are much smaller than airliners and thus much more easily defeated by physical barriers. A properly designed cable mesh installed around a nuclear power plant would stop most, if not all general aviation aircraft (or even larger aircraft) from reaching the plant. Impact with the mesh would reduce any aircraft's momentum and should detonate any explosives set to trigger on impact. Pieces of wreckage might get through and possibly some fuel, but a cable mesh barrier would significantly reduce the threat of an attack using general aviation aircraft.

Missiles, mortars, and other means of delivering explosives³³ can be defeated by relatively simple physical barriers. Compared to even general aviation aircraft, missiles, mortar shells and other non-aircraft devices that can be used for air attack have very little kinetic energy and can carry only a limited amount of explosives. Such weapons are unlikely to be able to penetrate a reactor containment. Consequently, missiles, mortars and their kin are a significant threat only if they can be aimed accurately at vital plant facilities outside the containment area.

Accurate fire is possible only if the target can be seen. For example, a solid fence or translucent (rather than transparent) glass in a window between a crucial nuclear power plant

³³ Mortars and certain missiles are relatively easy to conceal and thus more likely to be used by terrorists, but the same analysis concerning the possible use of physical barriers against attack would apply to conventional artillery.

facility and the locations from which a mortar or missile could be fired, would make aimed fire difficult, if not impossible.³⁴

The relatively small payloads of mortars and missiles make it possible to protect some, if not most, vital nuclear power plant facilities against hits from such weapons. Reinforced concrete structures can provide such protection. Indeed, if thick enough, such a structure could defeat or mitigate an aircraft, missile, or mortar attack.

Given the potential value of physical barriers against air attack, the NRC should require nuclear power plant owners to install such barriers to prevent or reduce the probability of success of all air attacks, including attacks by large aircraft.³⁵ If ordering this requires setting aside or revising the NRC decision on the Design Basis Threat regulations, so be it.

B. The NRC Should Not Relax Security for Plutonium.

The NRC identifies plutonium as “strategic special nuclear material.”³⁶ “Strategic special nuclear material” describes material that could be used to make an atomic bomb. The NRC’s current regulations require any entity under its jurisdiction to provide heightened security if the entity possess what is referred to as a “formula quantity,” of strategic special nuclear material.³⁷

³⁴ To prepare against a sophisticated military-style directed fire attack involving an observer at one location providing aiming information to a weapon crew that has no or only a limited view of what they are shooting at, the screen should block the view in all directions.

³⁵ One such physical barrier against air attack was proposed in the Design Basis Threat proceeding. There are alternatives, including modern barrage balloons currently used to monitor and protect our borders. The wide wingspan and limited maneuverability of the large commercial aircraft that pose the greatest threat to nuclear power plants should make it possible to design such defenses around physical barriers. If not feasible everywhere, physical defenses against large aircraft may be practical at Indian Point and other locations where hills or existing structures already provide a partial barrier.

³⁶ 10 CFR §73.2.

³⁷ 10 CFR §73.20.

If the only strategic special nuclear material involved is plutonium, the requirement for heightened security is triggered by possession of 2,000 grams, or about 4.5 pounds.³⁸ Entities can ask the NRC for an exemption, but the only such exemption granted so far was that given to the Duke Energy Corporation in 2005 for four mixed uranium oxide - plutonium oxide (“MOX”) fuel rod assemblies to be used to test the potential for disposing of surplus bomb material.³⁹

Now the NRC is proposing to exempt any nuclear power plant from the formula quantity heightened security requirement if the plutonium is in MOX fuel.⁴⁰ There is no limit proposed for the amount of exempt MOX fuel an entity could possess.

The rationale the NRC advances for relaxing security for MOX fuel, that such fuel is not an attractive target for theft or diversion by terrorists because (1) plutonium is difficult to separate from MOX, (2) MOX fuel assemblies are heavy and awkward, and (3) MOX has only low concentrations of plutonium,⁴¹ does not justify the proposed generic lowering of security for such material.

As the party opposing Duke Energy’s request pointed out, a terrorist’s ability to extract

³⁸ 10 CFR §73.2.

³⁹ Docket Nos. 50-413-OLA,50-414-OLA, In the Matter of Duke Energy Corporation (Catawba Nuclear Station, Unit 1 and 2), “CLI-05-14 Memorandum and Order” (June 20, 2005).

⁴⁰ Proposed new 10 CFR §73.55(l)(2), 71 Fed. Reg. 62,857 (2006).

⁴¹ 71 Fed. Reg. 62,722 (2006). *See also* Docket Nos. 50-413-OLA,50-414-OLA, In the Matter of Duke Energy Corporation (Catawba Nuclear Station, Unit 1 and 2), “CLI-05-14 Memorandum and Order” (June 20, 2005); and Docket Nos. 50-413-OLA,50-414-OLA (ASLB No. 03-815-03-OLA), In the Matter of Duke Energy Corporation (Catawba Nuclear Station, Unit 1 and 2), “Final Partial Initial Decision - Public Redacted Version (Issues Relating to BREDL Security Contention 5,” 61 NRC 241 (April 18, 2005 (originally dated March 10, 2005)).

plutonium from MOX would depend on the terrorist's experience.⁴² As to the portability of MOX fuel, the fuel assemblies have a given weight and configuration only if they remain intact. Finally, as to the NRC's ability to predict the intention of terrorists concerning MOX fuel, history has a virtually inexhaustible supply of examples of disasters caused by relying on predictions about the other side's intentions rather than paying attention to the other side's capabilities, dedication, and objectives.

C. The NRC Should Continue to Require Armed Security for Vehicles Not Designated for Use in a Nuclear Power Plant's Protected or Vital Areas.

The NRC proposes to loosen the requirement for armed security for all vehicles inside a nuclear power plant's protected or vital areas unless the vehicle is specially designated for use in such areas. In place of armed security for most vehicles, plant owners would be permitted to allow authorized individuals unescorted access to the plant to drive any vehicle inside the secured areas, and to substitute unarmed "escorts" to accompany other vehicles.⁴³

The comment accompanying the proposed regulatory changes provides no rationale for the proposed changes to the vehicle escort requirement other than the bare statement that changes are intended to "relieve" nuclear power plant owners of the obligation to provide armed security. This is a description, not a rationale. There is no indication of any change in the threat environment that justifies either allowing more unaccompanied vehicles inside the wire or

⁴² Docket Nos. 50-413-OLA, 50-414-OLA (ASLB No. 03-815-03-OLA), In the Matter of Duke Energy Corporation (Catawba Nuclear Station, Unit 1 and 2), "Final Partial Initial Decision - Public Redacted Version (Issues Relating to BREDL Security Contention 5," 61 NRC 241 (April 18, 2005 (originally dated March 10, 2005)).

⁴³ Proposed new §73.55(g)(5)(ii), 71 Fed. Reg. 62,854 (2006).

eliminating armed security from vehicles driven by individuals who may have received only the most minimal vetting.

If the proposed changes in the vehicle escort requirements are for the elimination of existing requirements that the NRC staff “found to be unnecessary,”⁴⁴ the NRC must explain how the staff reached this conclusion. Until this explanation is provided and the public is given an opportunity to comment on the proposed change in light of the explanation, the NRC should continue the current level of vehicle security at nuclear power plants.

CONCLUSION

For the reasons set out above, the Office of the Attorney General of the State of New York respectfully submits that the NRC should issue final regulations amending 10 CFR §73.55 that are consistent with these comments, including: (1) requiring the owners of nuclear power plants to assess the vulnerabilities of their plants to air attack and then install physical barriers against such attacks; (2) maintaining heightened security for MOX fuel; and (3) continuing the current level of vehicle security at such plants.

Respectfully submitted,

/S

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⁴⁴ 71 Fed. Reg. 62,667 (2006).

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Dated: March 26, 2007

From: Carol Gallagher
To: SECY
Date: Tue, Mar 27, 2007 2:52 PM
Subject: Comment letter on Power Reactor Security Requirements

Attached for docketing is a comment letter on the above noted proposed rule from the NYS Attorney General's Office that I received via the rulemaking website on 3/26/07.

Carol

Mail Envelope Properties (460967D1.A59 : 5 : 35764)

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