

December 17, 2007

Ms. Danielle Brian  
Executive Director, Project On  
Government Oversight  
666 Eleventh Street, NW, Suite 900  
Washington, D.C. 20001

Dear Ms. Brian:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your most recent letter dated October 31, 2007, regarding your concerns involving security at the Nation's commercial nuclear power sites. In my November 28, 2007 response to your letters of September 28, and October 16, 2007, I explained that NRC is addressing the issue of inattentive security officers at commercial nuclear power plants and that the NRC is taking appropriate action to correct and preclude recurrence of similar issues. Your letter expressed new concerns regarding the timeliness of the recently affirmed amendment to Title 10 of the *Code of Federal Regulations* (10 CFR), Part 26, "Fitness for Duty Programs;" the potential for a licensee to retaliate against security officers bringing forth fitness-for-duty concerns; and NRC's policy on referring allegations to licensees.

Regarding your concerns that the timetable for implementation of Part 26 rulemaking presents an opportunity for similar security officer performance issues to recur prior to rule implementation, the NRC has required licensees to implement compensatory measures related to fitness-for-duty of nuclear facility security force personnel. These requirements, along with the defense in depth existing at commercial power plants effectively mitigate the impact of incidents prior to implementation of the rule. The rulemaking was open to public participation, and more than 16 public meetings were conducted. The Commission carefully considered all comments received and found that the affirmed Part 26 requirements are robust and will require licensees to develop or revise processes and procedures for fatigue management and potentially hire and train additional personnel. As a result, licensees will need time for effective implementation. The NRC is considering whether to accelerate the work-hour control portions of the affirmed 10 CFR Part 26 rule. This was discussed during the security public meeting held on November 7, 2007; however, this assessment has not yet been completed and any recommendations will need to be approved by the Commission.

In response to the recent security officer performance issues, the NRC has taken additional regulatory actions to improve security performance at the Peach Bottom Atomic Power Station and across the nuclear industry as described in our letter to you dated November 28, 2007. NRC's site-specific and generic actions taken to date are commensurate with the agency's current understanding of the identified conditions and are intended to correct and preclude recurrence of similar issues. Agency evaluations are continuing, and the Commission will not hesitate to take additional actions if appropriate. In addition, through issuance of Bulletin 2007-01 dated December 12, 2007, the NRC has requested information from power reactor and certain fuel cycle facilities concerning the specific actions licensees have taken or plan to take to

address security officer inattentiveness from a programmatic viewpoint. NRC will evaluate the information gathered to determine if there are further generic actions required.

Regarding your comment concerning retaliation should a security officer find and announce himself or herself as being unfit for duty to the licensee, the affirmed rule will establish enhanced requirements for self-referral and fatigue assessments. The Commission believes that these and the other Part 26 enhancements will improve security officer performance, reduce the potential for retaliation upon "self-referral," and provide further assurance that potential adverse performance conditions are identified and effectively addressed by licensees.

You were also concerned that the NRC allegation process refers many allegations to the licensees for evaluation and that this information could enable a licensee to retaliate against security officers when they identify and communicate concerns to their management. The NRC will not tolerate retaliation against employees who raise concerns about issues involving plant safety and security. When allegations are identified to the NRC, they are handled properly and in a timely manner to ensure that appropriate allegor identity protection measures are taken as necessary.

The NRC performs its own analysis of allegations and the conduct of its licensees. I note that we are continuously looking for ways to improve our processes, and this includes how we handle allegations. An allegation "referral" involves a written request for information from the NRC to senior management of the licensee or entity, and results in the recipient providing the NRC with a documented evaluation of the concerns raised. The NRC uses this licensee response, the comments obtained from NRC staff review, and other evaluations as necessary, to ascertain the validity of each particular concern, assess the adequacy of the licensee actions to correct and preclude recurrence, and propose enforcement, if necessary. The NRC evaluates all circumstances that could preclude referral, such as issues related to identity protection, the possibility of compromising an ongoing investigation, and whether the licensee will be able to conduct a timely and comprehensive review. In addition, the NRC will consider any objections raised by the allegor regarding referral to a licensee. The NRC staff must be satisfied with the licensee's review, and in some instances, it may be necessary for NRC to request additional information or independently inspect and/or investigate the referred allegation concerns. For cases in which retaliation is alleged, actions by the NRC's Office of Investigations are taken to evaluate any retaliatory practices.

I want to assure you that security at nuclear power plants is of the utmost importance to the NRC and that the ongoing review of security officer performance will be thorough and comprehensive. Nuclear power plants continue to be among the best protected private sector facilities in the Nation, and through the inspection and oversight processes, the NRC is committed to ensuring strong security at these facilities, including the role performed by security officers.

Sincerely,

*/RA/*

Dale E. Klein