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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

CHAIRMAN

June 27, 2002

The Honorable Richard Burr
United States House of Representatives
Washington, D.C. 20515

Dear Congressman Burr:

The Nuclear Regulatory Commission (NRC) welcomes this opportunity to comment on the House- and the Senate-passed versions of H.R. 4 and H.R. 2983. We urge passage of several of the provisions, especially those reauthorizing the Price-Anderson Act, eliminating the NRC's antitrust jurisdiction, and enhancing the NRC's ability to attract employees with specialized skills. We counsel against passage of section 304 of the House bill, which would impose greater Government in the Sunshine Act restrictions on the NRC than on any other agency subject to that Act, as well as sections 11, 12, and 14 of H.R. 2983. Our comments on the pertinent provisions are provided in Enclosure 1.

The Commission requests that the conferees include in the final bill the enclosed security legislation that the Commission has submitted to the Congress (Enclosure 2). The Commission's proposals, which are fully endorsed by the Executive Branch, would help deter any attacks on nuclear power plants by giving guards more flexibility to respond as circumstances demand, and by expanding Federal criminal sanctions against such attacks. We have testified a number of times before Congress and have written many individual members to urge passage of our proposed legislation. We request that our proposals be included in the final bill developed by the conferees.

If you have any questions or need additional information, please do not hesitate to contact me.

Sincerely,

Richard A. Meserve

Enclosures:
1. Comments on H.R. 4 and H.R. 2983
2. NRC Proposed Security Legislation

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Senate-Passed Version of H.R. 4

Sections 501-509 of the Senate-passed bill would reauthorize the Price-Anderson Act. That Act, codified as Section 170 of the Atomic Energy Act, sets forth a framework for liability and compensation to the public for injury arising from a nuclear accident. Although the House-passed energy bill does not address Price-Anderson Act reauthorization, in 2001 the House passed H.R. 2983, legislation which would also reauthorize that Act. Thus, we compare the Senate-passed provisions with those in H.R. 2983.

The Price-Anderson Act provisions in the two bills are substantively identical with one exception, that being the duration of the renewal. **Section 502** extends indemnification authority for ten years, until August 2012. Although in its 1998 report to the Congress on Price-Anderson Act renewal the Commission recommended a 10-year renewal, the Commission now supports the 15-year renewal contained in **section 2** of H.R. 2983. At the time of that recommendation, the Commission expected a decreasing number of power reactor licensees and thought the 10-year mark would be a useful time for Congress to re-examine the statute in light of the smaller number of licensees who participate in the compensation system. However, more power reactor licensees than anticipated have announced an intent to renew their licenses, and therefore the Commission believes that the Act should be extended for 15 years, as it was in 1988.

The Commission continues to believe that the Price-Anderson Act sets forth a needed, fair and just liability regime that affords protection to the public and in so doing sets an

international model. Therefore, the Commission urges Congress to reauthorize the Act before its August 1, 2002 expiration date.

Section 521, like section 301 of the House bill, would provide that an initial combined construction permit and operating license issued under the Commission's regulations in 10 CFR Part 52 could last for up to 40 years beyond the date on which the Commission found that the licensee had met the acceptance criteria for operation contained in the license. The Commission supports enactment of this section. It would remove any doubts that the Atomic Energy Act provides that plants licensed under the Commission's newer regulations for advanced, standardized, designs are permitted to operate for the same number of years as existing nuclear power plants.

Section 531 would eliminate the NRC's antitrust review authority over any license application for a utilization facility under Section 103 or 104b. of the Atomic Energy Act that is filed after the date of enactment. The NRC would be required to notify the Attorney General when the NRC proposes to issue a license, and the Attorney General would have 90 days from the date of notification to determine whether the proposed license would tend to create or maintain a situation inconsistent with the antitrust laws. The Commission strongly supports this provision because it would eliminate redundant federal agency antitrust reviews. This support is based on our understanding, as reflected in the legislative history to the Senate-passed bill, that the Attorney General's antitrust determination would be wholly independent of the NRC's licensing process and thus not affect the substance or timing of the NRC's licensing action in any way.

Section 532 would provide explicit statutory authority for the NRC to retain authority over decommissioning funds held by former licensees. The provision would also prevent NRC licensees, former licensees, or any other person from using decommissioning funds held by a licensee to satisfy the claims of any creditor before decommissioning is completed to the NRC's satisfaction. This section also would prevent the use of Price-Anderson insurance premiums to satisfy claims of any creditor until the indemnification agreement is terminated. The NRC supports this provision because it gives assurance that these funds will be used only for their intended purpose -- the safe completion of decommissioning and the payment of the licensee's Price-Anderson obligation.

Section 541 would greatly aid the NRC because it would make it more attractive for retired NRC employees with specialized skills to serve as consultants to the NRC while the NRC recruits and trains the next generation of nuclear regulators. Currently, retired NRC employees are reluctant to work for the NRC because the pay for such activities is reduced by the amount received from the Federal government in the form of pension payments. By allowing retirees with critical skills to receive full pay from the NRC for their consulting services, the NRC could more readily obtain critical skills to sustain high-quality regulatory efforts.

Section 542 would allow the NRC to establish a training and fellowship program to address shortages of individuals with critical safety skills. For Fiscal Years 2003-2006, $1 million per year would be authorized to be appropriated to carry out this program. As the Congress knows, there has been a significant decline in the number of nuclear-related academic programs. This is of great concern to the Commission because these programs

produce the skilled employees that the NRC needs to carry out its mission. Thus, to help stem this decline, the Commission strongly urges that this provision be included in the legislation.

Section 1707 would direct the Department of Transportation (DOT) to enter into an agreement with the National Academy of Sciences under which agreement that body would conduct a study of the procedures by which DOE, together with DOT and the NRC, selects routes for the shipment of spent nuclear fuel from DOE research reactors to existing DOE facilities currently licensed to accept such spent nuclear fuel. Contrary to the provision in the legislation, the NRC is not involved in regulating spent fuel shipments between DOE facilities. The NRC therefore recommends that the reference to the NRC in section 1707 be deleted.

House-Passed Version of H.R. 4

Section 301 would provide that an initial combined licensed issued under Part 52 could last for up to 40 years beyond the date on which the Commission found that the licensee had met the acceptance criteria contained in the license. As noted above in our discussion of section 521 of the Senate-passed bill, the NRC supports the retention of this proposal.

Section 302 would authorize the NRC to charge fees to Federal agencies for licensing and inspections. Without this authority, the NRC must recoup the costs of these activities through the annual fees charged to other licensees. Section 302 would eliminate this inequity, thereby creating a more fair and just fee schedule.

Section 304 would require the Commission to keep transcripts of Commission business discussions not covered by the Government in the Sunshine Act. The Commission would be required to advise the public of such discussions after the fact, to record the discussions, and to release discussion transcripts upon request, withholding only that information authorized by law, generally under the Freedom of Information Act. The NRC strongly opposes this provision. The NRC's Sunshine Act definition of "meeting," found in its Sunshine Act regulations, is in complete accord with the Supreme Court's opinion in *FCC v. ITT World Communications, Inc.*, 466 U.S. 463 (1984). In fact, the NRC's definition was challenged in court and upheld by the D.C. Circuit in *NRDC v. NRC*, 216 F. 3d 1180 (D.C. Cir. 2000). The NRC's approach also is supported by the American Bar Association and other legal experts. Section 304 would unjustifiably single out the NRC for unique requirements extending Sunshine Act requirements to non-Sunshine Act discussions. To our knowledge, no other agency's non-Sunshine Act discussions are subject to a Sunshine Act regime. The provision would discourage the kind of exchange and collegiality that can be one of the primary strengths of a multi-member agency; it would frustrate or impede the efficient conduct of Commission business; and it would hamper "good government" by isolating individual Commission members and imposing unnecessary constraints on general discussions among Commissioners.

Section 308 would direct DOE to report to Congress on the "feasibility" of commercial nuclear energy at DOE sites. The report would be required to cover, among other things, "potential improvements in the licensing and safety oversight procedures of nuclear power plants located on Federal sites." Those plants would be regulated by the NRC, and therefore the provision should direct DOE to consult with the NRC during preparation of the report.

Sections 1 through 10 of H.R. 2983 would extend the Price-Anderson Act for 15 years. As indicated above in discussing the Senate bill, the NRC supports extension of the Act for 15 years.

Section 11 would require that all shipments of radioactive materials be accompanied by manifests describing the type and amount of materials being transported, that drivers be subject to a Federal security background check, and that the material be transported only to facilities licensed by the NRC or an Agreement State. Our concern with this section is not with its purpose; the agency already is strengthening its transportation requirements. Our concern is with the section's breadth, schedule, and focus. As drafted, it would capture all Atomic Energy Act materials, even ones that pose trivial risks to the public's health and safety (for example, slightly contaminated concrete that would be less radioactive than the granite in the Capitol). This could have serious consequences because the needless expansion of requirements could significantly impede transportation of radioisotopes used in medicine. Although the section permits the agency to make appropriate exceptions to the section, the exceptions can be made only through rulemaking. The schedule for actions in the provision also does not take into consideration either the agency's on-going review of its security standards, or its consultation with other agencies on those standards. Finally, the section treats nuclear transport in isolation from transportation of other potentially toxic materials. This would be inconsistent with an optimum application of resources to the whole range of risks. In summary, we see aspects of this provision as needlessly burdensome and limiting and other aspects as unnecessary. We urge that it not be enacted.

Section 12 would direct the President, in consultation with the NRC and other appropriate Federal, State and local agencies and private entities, to conduct a study to identify the types of threats that pose an appreciable risk to the security of the facilities regulated by the NRC. The section would also direct the NRC to promulgate by rule a design basis threat based on the threats identified in the study, and to establish an operational safeguards response evaluation program that tested licensees' ability to defeat the design basis threat. The Commission believes this section is not necessary because it either needlessly requires what is already being done, or prematurely decides issues before the work now underway has been completed. In addition, the requirement to promulgate a new design basis threat by rule needlessly constrains the Commission's important procedural flexibility under the Atomic Energy Act for imposing new design basis threat (DBT) requirements that it may find to be appropriate. Moreover, the details of the revised DBT (e.g., the size of the truck bomb) can not be discussed in an open rulemaking. The NRC has already commenced a review of its design basis threat and has ordered interim compensatory measures to enhance security at the facilities while the design basis threat is being reevaluated; Congress in the Defense Authorization Act for Fiscal Year 2002 also directed the Defense Department to prepare a report for the Congress on the Department's role in protecting critical infrastructure; and, as noted in our discussion of section 11, OHS is managing an interagency review of the full range of homeland security risks.

Section 14 requires that the NRC, before signing an indemnification agreement for a new reactor, "consult" with the Assistant to the President for Homeland Security on whether the proposed location and design of the facility would ensure adequate protection of public health and safety in the event of a terrorist attack on the facility. We believe that this section is

unnecessary in light of the agency's extensive interactions with OHS and other governmental agencies and offices on matters of security.

SECTION . CARRYING OF FIREARMS BY LICENSEE EMPLOYEES

Section 161 k. of the Atomic Energy Act of 1954 (42 U.S.C. 2201(k)) is amended to read as follows:

"Sec. 161. GENERAL PROVISIONS.

"In the performance of its functions the Commission is authorized to --

* * * *

"k. (1) authorize such of its members, officers, and employees as it deems necessary in the interest of the common defense and security to carry firearms while in the discharge of their official duties. The Commission may also authorize--

"(A) such of those employees of its contractors and subcontractors (at any tier) engaged in the protection of property under the jurisdiction of the United States located at facilities owned by or contracted to the United States or being transported to or from such facilities as it deems necessary in the interests of the common defense and security; and

"(B) such of those employees of persons licensed or certified by the Commission (including employees of contractors of licensees or certificate holders) engaged in the protection of (i) facilities owned or operated by a Commission licensee or certificate holder that are designated by the Commission, or (ii) property of significance to the common defense and security located at facilities owned or operated by a Commission licensee or certificate holder or being transported to or from such facilities;

to carry firearms while in the discharge of their official duties. A person authorized to carry firearms under this subsection may, while in the performance of, and in connection with, official duties, make arrests without warrant for any offense against the United

States committed in that person's presence or for any felony cognizable under the laws of the United States if that person has reasonable grounds to believe that the individual to be arrested has committed or is committing such felony. An employee of a contractor or subcontractor or of a Commission licensee or certificate holder (or a contractor of a licensee or certificate holder) authorized to carry firearms under this subsection may make such arrests only when the individual to be arrested is within, or in direct flight from, the area of such offense. A person granted authority to make arrests by this subsection may exercise that authority only in the enforcement of (A) laws regarding the property of the United States in the custody of the Department of Energy, the Nuclear Regulatory Commission, or a contractor of the Department of Energy or Nuclear Regulatory Commission or a licensee or certificate holder of the Commission, or (B) laws applicable to facilities owned or operated by a Commission licensee or certificate holder that are designated by the Commission pursuant to this subsection, and property of significance to the common defense and security that is in the custody of a licensee or certificate holder or a contractor of a licensee or certificate holder of the Commission, or (C) any provision of this chapter that may subject an offender to a fine, imprisonment, or both. The arrest authority conferred by this subsection is in addition to any arrest authority under other laws; The Secretary and the Commission, with the approval of the Attorney General, shall issue guidelines to implement this subsection;

"(2) authorize employees of persons licensed or certified by the Nuclear Regulatory Commission (including employees of contractors of licensees or certificate holders) who are trained and qualified as guards and whose duty is the protection of facilities designated under paragraph (1)(B)(i) or property described under paragraph (1)(B)(ii) to carry and use, where necessary to the discharge of their official duties, such weapons,

devices, or ammunition as the Commission may require. Such employees shall have the power to carry and use such weapons while in the discharge of their official duties, regardless whether such employees have been designated as Federal, State, or local law enforcement officers. Such employees shall have such law enforcement powers as are provided to them under this section and section 161 i of this Act. The Nuclear Regulatory Commission shall issue guidelines, with the concurrence of the Attorney General, to implement this paragraph. The authority conferred by this paragraph with respect to employees of persons licensed or certified by the Nuclear Regulatory Commission (including employees of contractors of licensees or certificate holders) who are trained and qualified as guards and whose duty is the protection of facilities designated under paragraph (1)(B)(i) or property described under paragraph (1)(B)(ii) shall not be implemented until such guidelines have become effective;"

SECTION . UNAUTHORIZED INTRODUCTION OF DANGEROUS WEAPONS

Section 229 a. of the Atomic Energy Act of 1954 (42 U.S.C. 2278a(a)) is amended by adding after "custody of the Commission" the words "or subject to its licensing authority or to certification by the Commission under this Act or any other Act".

SECTION . SABOTAGE OF NUCLEAR FACILITIES OR FUEL

Section 236 a. of the Atomic Energy Act of 1954 (42 U.S.C. 2284(a)) is amended to read as follows:

"a. Any person who intentionally and willfully destroys o. causes physical damage to--

"(1) any production facility or utilization facility licensed under this Act;

"(2) any nuclear waste storage, treatment or disposal facility licensed under this Act;

"(3) any nuclear fuel for a utilization facility licensed under this Act, or any spent nuclear fuel from such a facility;

"(4) any uranium enrichment or nuclear fuel fabrication facility licensed or certified by the Nuclear Regulatory Commission; or

"(5) any production, utilization, waste storage, waste treatment, waste disposal, uranium enrichment or nuclear fuel fabrication facility subject to licensing or certification under this Act during its construction where the destruction or damage caused or attempted to be caused could affect pubiic health and safety during the operation of the facility;

or attempts or conspires to do such an act, shall be fined not more than $10,000 or imprisoned for not more than 20 years, or both, and, if death results to any person, shall be imprisoned for any term of years or for life."