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Mr. Samuel J. Chilk
Secretary
U. S. Nuclear Regulatory Commission
Washington, DC 20555

Attention: Docketing and Services Branch

Subject: Notice of Proposed Rulemaking, "Protection Against Malevolent Use of Vehicles at Nuclear Power Plants," 58 FR 58804, November 4, 1993

These comments are submitted by Florida Power & Light Company (FPL) in response to the subject Notice of Proposed Rulemaking.

FPL emphasizes the need for a much more rigorous risk quantification in advance of any change in the regulations and urges that the design basis threat not be modified without further study. The public record does not support the degree of urgency placed on this issue by the NRC Staff nor does it justify the imposition of greater security responsibilities on licensees. For example, the NRC report of the TMI security event that occurred on February 7, 1993, concluded that the event was of minimal safety significance. Also, the World Trade Center event of February 26, 1993, was directed at a soft target (office building), not a hard target (for example, a nuclear power plant). Furthermore, there is no indication of an actual threat against the domestic commercial nuclear industry. The proposed rule would improperly impose costly requirements in private industry absent any actual increase in the design basis threat (DBT). Our specific comments follow:

a. The proposed rule is inconsistent with NRC policy regarding the responsibility of government to defend against hostile enemy acts.

   The proposed amendments to 10 CFR 73.1 and 73.55 would modify the design basis threat for radiological sabotage to include use of a land vehicle by adversaries for transporting personnel, hand carried equipment, and/or explosives. They would require each licensee: (1) to establish vehicle control measures to protect against the use of the design basis land vehicle as a means of transportation to gain unauthorized proximity to vital areas, and (2) to evaluate the effectiveness of these measures in protecting against a

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vehicle bomb.[1] This amounts to a paramilitary threat, which an industrial facility should not be expected to defend against, and opens the possibility of continual expansion of the DBT and associated costs without objective proof that there is any need for it. The federal government and its agencies do not serve the public interest, in either a safety or an economic sense, if it responds to hypothetical concerns by deferring its responsibilities to private industry. The real question is not so much what the hypothetical DBT should be, but at what point does the licensee cease to have primary responsibility because the threat has become large enough (and real enough) to be a government concern.

The Commission's well-founded and long-established policy, embodied in 10 CFR 50.13, is that responsibility for defense against hostile enemy acts belongs to the government and not to private industry. Section 50.13 explicitly states that a licensee "is not required to provide for design features or other measures for the specific purpose of protection against the effects of attacks and destructive acts, including sabotage, directed against the facility by an enemy of the United States, whether a foreign government or other person."[2] Land vehicles of the type specified in the proposed rule rise to the level of an effort by an "enemy of the United States." The use of "four-wheel drive land vehicles by adversaries for the transport of personnel, hand-carried equipment, and/or explosives"[3] is likely to involve more than a hostile act against a private corporate entity or facility. Rather, it will almost certainly be associated with action against national interests. Meeting such a threat is properly the responsibility of the government, not a licensee.

As discussed in the Statement of Consideration accompanying adoption of Section 50.13, "reactor design features to protect against the full range of the modern arsenal of weapons are simply not practicable and ... the defense and internal security capabilities of this country constitute, of necessity, the basic 'safeguards' as respects possible hostile acts."[4] Similarly, a terrorist attack at a nuclear facility or "other structure that play[s] [a] vital role within our

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[1] Protection Against Malevolent Use of Vehicles at Nuclear Power Plants, 59 Fed. Reg. 58,804 (1993) (hereinafter "proposed rule").

[2] 10 CFR 50.13 (emphasis added).

[3] Proposed rule at 50,804.

[4] Statement of Consideration, 32 Fed. Reg. 13,445 (1967).

complex industrial economy"[5] would constitute an attack against national interests. Because it would be "[in essence] directed against this [nation as a whole]",[6] the responsibility of guarding against it belongs to the government, not to the licensee. Thus, where the level of threat against a facility is unusually high, nuclear power plant protection should become the duty of the government, not a private entity.

Shortly before 10 CFR 50.13 was promulgated in the late 1960s, the Commission ruled that a licensee need not make a showing of effective protection against the possibilities of attack and sabotage by national enemies.[7] This ruling was affirmed by the United States Court of Appeals for the District of Columbia Circuit in Siegal v. AEC, which restated the basic considerations behind Section 50.13, which remain valid today:

> (1) impracticability, particularly in the case of private industry, of anticipating accurately the nature of enemy attack and of designing defenses against it,
>
> (2) the settled tradition of looking to the military to deal with this problem and the consequent sharing of its burdens by all citizens, and
>
> (3) the unavailability, through security classification and otherwise, of relevant information and the undesirability of ventilating what is available in public proceedings.[8]

The Court further stated that "[w]hile an applicant for a license should bear the burden of proving the security of his proposed facility as against his own treachery, negligence, or incapacity, [he should not be expected] to demonstrate how his plan would be invulnerable to whatever destructive forces a foreign enemy might be able to direct against it."[9]

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[5] Id.

[6] Id.

[7] Florida Power and Light Co., (Turkey Point Nuclear Generating Units 3 and 4), 4 AEC 9, 13, (1967), aff'd, Siegal v. AEC, 400 F 2d 778 (D.C. Cir. 1968).

[8] Siegal v. AEC, 400 F 2nd at 782 (D.C. Cr. 1968).

[9] Siegal v. AEC, 400 F 2nd 778, 784 (D.C. Cir. 1968).

b. Insider Threat Outside Scope of Proposed Role

The proposed rule does not specifically state that any increased vehicular and explosive threat is an outsider threat and that designs or allowed alternative defenses do not require consideration of a combined insider threat. It should be clarified that combined consideration of an outsider threat together with an insider threat is not required.

c. The NRC Staff position is too subjective.

The Staff's backfit analysis contains no objective information to support the conclusion that amending the regulations would provide a substantial increase in overall protection of the public health and safety. The DBT should not be changed until there is a more quantitative basis for doing so. The NRC staff and industry should jointly determine whether protected-area barriers need to be strengthened and, if so, devise cost-effective, practical alternatives. A variety of regulatory options is available to implement the alternatives and rulemaking may not be necessary.

d. Plant-specific backfit analyses should be performed.

The Staff's proposed rule would impose costly, prescriptive requirements absent any actual increase in the DBT. Therefore, each licensee should be given time to perform a plant-specific backfit analysis outside the context of a rulemaking. The analysis would include a probabilistic safety assessment to estimate the DBT risk and cost estimates associated with reducing that risk. A better picture of the need for rulemaking would then emerge, and action could be taken with far less uncertainty than is now the case. Industry should have the chance to participate in the research and analyses.

e. Peer reviews should be performed.

The research results, risk analyses, cost calculations, and other work products developed by the NRC Staff, licensees or other parties should be subject to peer review. Also, the Staff has introduced the concept of "margin of prudence", which appears to be an additional layer of conservatism on top of the existing margins designed into the overall security system. The industry should have the opportunity to understand the need for this added measure of conservatism.

f. Existing measures are adequate.

Contingency planning is in place in accordance with existing regulations. Plant procedures exist for a wide range of off-

normal, accident management, and damage control situations, and plant personnel are trained to use them. There is much design margin in plant structures, systems, and components (defense in depth, redundency, diversity, single failure criterion). Access authorization programs have been improved. Extensive site security systems are in place to detect and respond to challenges.

To summarize, the proposed rule is inconsistent with the Commission's well-founded policy that defense against hostile enemy acts, whether by "a foreign government or other person," is the responsibility of the government. Thus, because it requires a licensee to protect against the type of threat that amounts to an attack against the nation as a whole, the proposed rule should not be adopted.

Sincerely,

J. H. Goldberg

J. H. Goldberg
President
Nuclear Division

JHG:abk

cc: Chairman Ivan Selin
Commissioner Kenneth C. Rogers
Commissioner Forrest J. Renick
Commissioner Gail de Planque
Senator Bob Graham