



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

May 3, 1999

The Honorable Edward J. Markey
United States House of Representatives
Washington, D.C. 20515-2107

Dear Congressman Markey:

This is to follow up on my letter to you dated December 15, 1998, concerning questions raised in your November 4, 1998 letter about the U.S. Nuclear Regulatory Commission (NRC) Operational Safeguards Response Evaluation (OSRE) program, and to respond to your letter dated February 23, 1999, concerning OSRE and the preparedness of the nuclear industry to respond to a terrorist incident. My December 15 letter provided an interim response; this letter is intended to supply more detailed answers to your questions. My December 15 letter informed you that the NRC staff was reviewing the use of performance assessment in the safeguards area. That review has been completed and the staff recommendations were forwarded to the Commission on January 22, 1999, in a paper identified as SECY-99-024, "Recommendations of the Safeguards Performance Assessment Task Force," attached with the enclosed answer to Question 4.

Your February 23, 1999, letter expressed concerns about the seriousness with which the Commission treats the threat of terrorism at its licensed facilities. First, let me assure you that the Commission is committed to assuring that adequate security is provided and maintained by nuclear power plant licensees. On March 3, 1999, the Commissioners were briefed by the Federal Bureau of Investigation (FBI), and the continuation of NRC support for the Communicated Threat Credibility Assessment Team (CAT) was raised by the FBI. In recent months many difficult decisions have been made regarding the NRC budget. The elimination of NRC funding for the CAT program was one of those decisions. As you know, our budget is nearly 100% fee-recoverable from our licensees; however, I presently am exploring with the NRC staff other mechanisms for funding important counter-terrorism initiatives such as CAT. These mechanisms would include the Congress providing General Fund appropriations as part of our government response to counter-terrorism and weapons of mass destruction. It would appear that the CAT program is certainly responsive to the national initiatives in these areas.

Regarding the NRC program of assistance to Russia in the area of material protection, control and accounting (MPC&A), the NRC has provided MPC&A assistance to the nuclear regulatory agencies of Russia, Kazakhstan, and Ukraine since 1993. We have budgeted two full-time equivalents (FTEs) for NRC staff effort through FY 2000, and we have not reduced our budgeted staff resources for this support. However, our MPC&A regulatory assistance has been on hold during FY 1999 pending resolution of funding arrangements with the U.S. Department of Energy (DOE), which receives all of the appropriated funds for this program.

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The contractor support and travel costs of the NRC program for MPC&A assistance to Russia, Ukraine, and Kazakhstan was funded initially by the U.S. Department of Defense (DOD) under the Cooperative Threat Reduction Program. During 1995, the DOD notified the NRC that funding responsibilities would be transferred to the DOE beginning in FY 1996. The NRC notified the DOE in 1997 that we had sufficient DOD funding to continue activities during FY 1998, but that funding for FY 1999 and beyond would be needed from the DOE if the NRC was to continue assistance to the three former Soviet Union Republics.

By letter dated February 16, 1999, the DOE has committed to provide \$280,000 in FY 1999 for NRC support to the Russian Federation activities, but has not yet established a reimbursement agreement to transfer the funds to NRC. The DOE plans to address separate funding to support MPC&A activities in Ukraine and Kazakhstan. The NRC will continue working with the DOE to implement the FY 1999 program and to plan for support activities for FY 2000 and beyond.

You have expressed a need for the NRC to review its current design basis threat. The NRC has a formal threat assessment program that is designed to assure the continuing validity of the design basis threat statements as the foundation of NRC safeguards requirements. In meeting these responsibilities, the NRC has a long-established, active program that includes liaison activities with other Federal agencies concerned with counter-terrorism and nuclear safeguards and the daily review of all-source terrorism-related intelligence traffic. Throughout this ongoing analysis, the NRC staff focuses its daily effort on demonstrated, adversary characteristics, including weaponry, group size, tactics, explosives, and targets, and compares what has occurred to the attributes enumerated in the design basis threat statements. The NRC staff conclusion regarding the adequacy of the design basis threat statements, based on the results of interagency liaison and intelligence traffic review and assessment, is documented every six months and provided to the Commission. In accordance with this, the Commission met with representatives of the FBI on March 3, 1999, and again on March 18, 1999, to discuss the level of threat and the composition of the NRC design basis threat. In addition, senior NRC staff members met with a representative of the National Security Council on March 25, 1999 to discuss the NRC safeguards program and Operational Safeguards Response Evaluations.

You also expressed concerns about elimination of OSRE, terming it the "only counter-terrorism program for nuclear power plants." In fact, as my public statement of November 4, 1998, made clear, the OSRE program was only one element of an integrated program of security for nuclear power plants. Even if OSRE had been eliminated, security regulations remained in force, licensee security programs and organizations continued to function, the NRC inspection program still was operating, and licensee compliance verification programs continued to examine the adequacy of their security systems.

A member of the NRC Safeguards staff was quoted in your letter as saying that the Safeguards Performance Assessment Task Force recommendations were "weak and noncommittal, and will reduce the effectiveness and efficiency of the nuclear power industry's counter-terrorist capability." On May 5, 1999, the Commission will conduct a public meeting to discuss the Task Force recommendations. The Task Force intends their recommendations to increase the effectiveness and efficiency of the nuclear power industry's counter-terrorism capability, for two reasons. First, the Task Force recommendations, which currently are being considered by the Commission, call for quarterly drills and biennial exercises by the licensees, far more frequent than accomplished in the 8-year OSRE cycle. Second, the new program also would allow more

oversight by the NRC, since our inspectors, who may be accompanied by contract specialists, would have more opportunities to view licensee drills. More frequent drills by our licensees would have the added benefit of training for the security organizations at the power reactor sites. At the Commission meeting, we will review both the claim of the Task Force and the differing views of the individual NRC staff members, to determine future activities for this program.

I would like to clarify another issue raised in your letter. The NRC and its contractor never ran the drills in OSRE. That program called for a coordinated effort between the NRC and the licensee only to develop scenarios, but the licensees staffed the guard forces and the mock adversary forces to actually run the drills, while the NRC and its contractor attended only as observers.

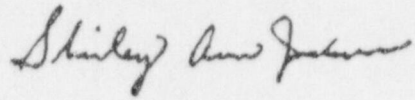
As for your request that programmatic changes be reviewed by front-line NRC inspectors and outside counter-terrorism experts, the Safeguards Performance Assessment Task Force was made up entirely of front-line regional security inspectors and Headquarters security professionals. In addition, all three members of the Headquarters OSRE team, including the individual who filed the original Differing Professional View and the subsequent Differing Professional Opinion, either directly participated in the work of the Task Force or were given an opportunity to review and comment on the recommendations of the Task Force before they were forwarded to the Commission.

We share your concern that the nuclear industry be prepared to respond to a terrorist incident. The NRC has included in every omnibus bill sent to the Congress since 1989 a proposal to amend Section 161k of the Atomic Energy Act of 1954 to provide Federal authority for guards at nuclear facilities to carry firearms. At the present time, guards who implement Federal security requirements at NRC-licensed or certified facilities do not have the same protection of Federal authority to carry firearms and to use them when necessary to prevent theft of weapons-usable material or sabotage at nuclear facilities, as do guards at Department of Energy facilities. Use of weapons by guards at these NRC-licensed or certified facilities is governed by State law, which varies from State to State with respect to allowable use of weapons. In some States, weapons may be used by guards only to protect their own lives or the lives of others, and not to prevent the theft or sabotage of nuclear material and nuclear facilities. The proposed amendment of Section 161k of the Atomic Energy Act would, in effect, shield guards at NRC-licensed or certified facilities from State criminal prosecution for actions taken during the performance of their official duties, which are authorized, necessary and proper under Federal law. Your support in this area of needed legislative authority would be appreciated.

Some of the answers provided in the enclosure are general in nature, because the matters discussed relate to sensitive classified and unclassified Safeguards Information. Should you desire more detailed, site-specific information, arrangements can be made for providing it in the proper forum.

I hope the enclosed responses adequately address your concerns. Please contact me if I can be of further assistance.

Sincerely,

A handwritten signature in cursive script, appearing to read "Shirley Ann Jackson".

Shirley Ann Jackson

Enclosures:
Questions and Answers
w/attachments

ENCLOSURES

Questions and Answers
w/attachments

Question 1. On what basis was this program [Operational Safeguards Response Evaluation, or OSRE] selected for elimination? Given the NRC's current emphasis on "risk-informed" decisions, how was the risk of a terrorist attack evaluated and compared to other nuclear safety issues?

Answer

- The decision reflected the agency's declining resources as well as the goal of reducing unnecessary burden on the licensees. In view of the existing requirements for security programs at all nuclear power reactors, the sharing of information among licensees' security organizations, the continuing security inspection program carried out by NRC's regional inspection staffs, the onsite resident inspectors, and licensees' training and qualification programs and audit processes, it was decided that the resources devoted to the remaining 11 OSREs could be redirected to other regulatory efforts.

Question 2. Did NRC Commissioners vote on the decision to eliminate this program? If so, how did each Commissioner vote? If not, who made the decision?

Answer

- The NRC Commissioners did not vote on the decision to eliminate the OSRE program. As part of the FY 1998 budgeting process, the Office of Nuclear Reactor Regulation recommended eliminating Headquarters' inspection support for routine inspection activities and efforts related to the OSRE program. The Executive Council (senior NRC management) approved the recommendation. Although the Commission voted to approve the budget based on the Executive Council decision, the elimination of the OSRE program was not highlighted specifically to the Commission as part of the budget.

Question 3. The article [in the *L.A. Times*] quotes Mr. David Orrik, the director of the program, as saying an agency team "was able to reach and simulate sabotaging enough equipment to cause a core melt." At what plants would the simulated attack have been able to cause a core meltdown or other severe effects? Please provide the Inspection Reports and any Notices of Violation ensuing from these inspections. Also please estimate what the cost in money and lives would have been if these attacks had been real.

Answer

- Mr. Orrik's title is Security Specialist. The *Los Angeles Times* article mistakenly referred to him as directing the program. The OSRE program is directed by the Chief, Reactor Safeguards Section, Office of Nuclear Reactor Regulation.
- OSRE visits were conducted at 57 sites between 1991 and 1998. During these visits, OSRE teams identified weaknesses at 27 plants; some of these weaknesses related to failures to prevent mock adversary forces from gaining access to vital equipment.
- Findings: The NRC believes its security regulations to be adequate; however, the agency developed the OSRE program to test this hypothesis. OSRE used NRC and contractor personnel who are highly skilled in technical matters and counter-terrorist measures to identify what they believed were the most vulnerable areas and equipment in each plant. The licensees' security programs were tested and, although they were adequate to protect public health and safety, some weaknesses were identified. As a result, licensees initiated corrective actions and all weaknesses were corrected.
- The simulated sabotage scenarios were terminated when the previously established targets were reached. There was no analysis of safety sequences or real-time core damage scenarios as a result of the target being reached to assess the margin of recovery before loss of core cooling. No credit is taken for operators' ability to recover from and/or mitigate the consequences of a postulated act of sabotage in the OSREs; therefore, a direct correlation with core damage should not be inferred from the findings.
- There were no Notices of Violation issued to these licensees because the site security organizations were judged to have been operating in compliance with their commitments when these findings were made. However, as previously noted, all weaknesses were corrected.
- As for estimates of cost, the potential damage to plant systems and structures that might result from acts of radiological sabotage would vary considerably from scenario to scenario and from one power reactor site to another based on system, structures, and site differences. The NRC has not made such estimates.
- As for enclosing copies of reports of OSRE visits, these reports are sensitive Safeguards Information. If you desire to discuss the reports, arrangements can be made for a closed briefing.

Question 4. The article mentions a memo from several NRC security officials and written objections to the program elimination by eleven NRC inspection officials. Please provide the memo, all written objections, and the Commission's response to these objections.

Answer

- There were two Differing Professional Views (DPVs) filed regarding the decision to cancel the OSRE program. Another memo was co-signed by nine NRC employees (including three of those who co-signed one of the DPVs) in support of the first DPV. A panel was convened to review the issues raised in the DPV and final recommendations were provided in the panel's report dated November 4, 1998. To follow up on this activity, the Director of the Office of Nuclear Reactor Regulation issued a memorandum to the staff, dated December 11, 1998, adopting the panel's recommendations and tasking the staff to carry them out, with the exception of the recommendation to terminate OSRE. A task force made up of Headquarters and regional security specialists, including some of the individuals who had filed DPVs, was formed to look into the question of performance assessment in safeguards, and the staff prepared programmatic recommendations that were forwarded to the Commission on January 22, 1999 (SECY-99-024, attached). The DPVs, the supporting memorandum, the panel report, the Director's tasking memorandum, and the task force's recommendations are attached. The Commission's formal response to these issues will be made public upon completion of its deliberations on SECY-99-024.
- On February 12, 1999, the Commission was notified of another DPO on this subject in response to SECY-99-024. A copy is attached for your information. We will follow up any additional issues raised in this DPO.

Attachments:

1. DPVs (2)
2. Supporting Memorandum
3. Panel Report
4. Director's Tasking Memorandum
5. SECY-99-024, Recommendations of the Safeguards Performance Assessment Task Force, January 22, 1999
6. DPO