

July 19, 2004

MEMORANDUM TO: Chairman Diaz
Commissioner McGaffigan
Commission Merrifield

FROM: Luis A. Reyes */RA Emerschoff Acting for/*
Executive Director for Operations

SUBJECT: STATUS OF SECURITY-RELATED RULEMAKING

The purpose of this memorandum is to inform the Commission of the staff's intent to close two longstanding security-related action items based on the large number of associated activities that the staff has completed since September 11, 2001. Additionally, the staff has received further direction from the Commission to replace some of these longstanding action items with new actions. The first of these action items originated in 1998 with a requirement to develop a staff position paper on radiological sabotage, but subsequently evolved into 10 CFR Part 73 rulemaking [refer to Work Item Tracking System (WITS) 199800188]. In part because of further Commission direction on this subject since 2001, this item will be replaced by a new action requiring the staff to prepare a comprehensive rulemaking plan to modify physical protection requirements for power reactors in 10 CFR 73.55 encompassing the current mandates. The second action item stemmed from a 2002 requirement for the staff to seek assistance from Nuclear Regulatory Commission's (NRC's) Operational Safeguards Response Evaluation contractors and Department of Energy security force personnel to aid in the development of new security training requirements [refer to WITS 200200086]. The staff completed this action during the development of the security training Order issued in April 2003.

On June 4, 2001, the staff issued SECY-01-0101 which proposed rulemaking to enhance the physical protection requirements for power reactors prescribed in 10 CFR 73.55. The rule revision was designed to implement the recommendations of the Safeguards Performance Assessment Task Force and would have factored risk insights and performance bases for many of the physical protection requirements. The staff had originally planned to issue a final rule by the end of March 2004.

The Commission was considering the proposed 10 CFR 73.55 revision when the terrorist attacks occurred in September 2001. After the attacks, the staff initiated a comprehensive review of all NRC security-related regulatory requirements to assess their adequacy given the current threat environment. As the Commission is well aware, the NRC imposed several additional security-related requirements on nuclear power plant licensees that improved guard force numbers and capabilities, training, fitness-for-duty, and access authorization. By April 2003, the staff had imposed all of these new requirements by Orders, including revision of the design basis threat (DBT) for radiological sabotage.

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Since September 2001, the Commission has directed the staff to take certain actions regarding the regulation on physical protection. Specifically:

- ! A Staff Requirements Memorandum (SRM) dated March 31, 2003, stated that “the staff should use the process of rulemaking for the completion, finalization, and revision, if needed, of further security enhancements for operating power reactors.”
- ! An April 25, 2003, SRM described the Commission’s intention to pursue additional changes to security enhancements through rulemaking, and directed the staff to conduct rulemaking to remove the detailed DBT descriptions from Part 73.
- ! A December 16, 2003, SRM approved the staff’s recommendation to codify post-September 2001 power reactor security Order requirements in the regulations for future power reactors.

The staff is currently planning the rulemaking activities needed to codify the requirements contained in the Orders. This planning is being developed and coordinated in conjunction with the ongoing FY2006 budget development process. The staff aims to develop and submit a rulemaking plan to the Commission to address 10 CFR 73.55 and Part 73 Appendix B by April 2005. This date was selected to permit the reactor security staff to maintain their current focus on reviewing the revised licensee security plans submitted in response to the April 2003 Orders.

cc: SECY
OCA
OGC
OPA
CFO