

February 23, 2006

Mr. James E. Wells, Jr.
Director, Natural Resources
and Environment
U.S. Government Accountability Office
441 G Street NW
Washington, D.C. 20548

Dear Mr. Wells:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter by e-mail dated February 7, 2006, requesting NRC review and comment on your unclassified, draft report, "Nuclear Power Plants: Efforts Made to Upgrade Security, but the Nuclear Regulatory Commission's Design Basis Threat Process Should Be Improved" (GAO-06-388). I appreciate your providing the NRC the opportunity to review this draft report and the willingness of you and your staff to maintain a continuing dialogue with the NRC. I also appreciate the time and effort that you and your staff have invested in reviewing this important topic and the care that you have taken to ensure that your report is accurate and constructive. I understand that the U.S. Government Accountability Office (GAO) plans to make a number of changes to enhance the report's accuracy, clarity, and context. Given NRC's current understanding of the report's contents, I am providing additional clarifying comments for your consideration on two areas of the report. Please note that these comments are the same as those I provided to you on January 24, 2006, on the classified version of this report, which the NRC previously reviewed.

First, GAO's draft report suggests that having detailed criteria for use during design basis threat (DBT) decision-making regarding radiological sabotage at nuclear power plants would increase transparency and reduce a potential for the appearance of arbitrariness. The Commission rejects any implication of arbitrariness. The Commission has been guided by the Atomic Energy Act and its regulations and the broad policy considerations that have been found pertinent during deliberations on the DBT. The Commission has a long history of experience in this area, having first established a DBT for nuclear power plants in the late 1970s. While additional delineation of relevant considerations might be useful in some circumstances, reasoned judgment within this and other areas of the Commission's statutory decision-making authority does not require, and in fact could be unduly restricted, by detailed prescriptive criteria. Moreover, consistent with governing statutes, the Commission utilized an appropriate decision-making process by providing for a majority Commission position on well-documented staff papers in order for actions to proceed, and documenting individual Commissioner views and proposed modifications for consideration by other Commissioners. With regard to the revised DBT, the report does not reflect the NRC's view that the basis for the Commission's policy decisions and direction to the NRC staff are sufficiently articulated in the Commission voting record and related staff requirements memoranda on the revised DBT. A more comprehensive discussion of the Commission's deliberative decision-making process in the report would provide important perspective, and the members of the NRC staff are available to work with you on a more comprehensive description.

Second, the NRC believes that the report should provide a better description of the context for NRC's actions regarding the opportunity for industry input and the appearance of industry influence on the development of the revised DBT in 2003. The process used for developing the revised DBT and obtaining stakeholder input was driven, in large part, by the post-9/11 threat environment and the need to enhance security at nuclear power plants. The agency made a deliberate decision to develop the revised DBT, while simultaneously (in lieu of sequentially) seeking input from stakeholders (including the nuclear industry). This was a departure from our typical approach, not unlike other government actions taken after 9/11, and was intended to advance public health and safety and the common defense and security in an expedited manner. As noted in my letter of January 24, 2006, the NRC has since returned to its normal sequential approach of first developing proposed DBT revisions, and then seeking comments on the proposed revisions from stakeholders. The NRC requests that your report fully explain this issue.

In addition, the NRC and GAO staffs have discussed potential issues related to the draft report that need to be addressed. Also, NRC staff believes that the current version of the draft report contains Safeguards Information and this information should be removed prior to the document being made public. It is my understanding these issues will be appropriately resolved.

Should you have any questions about these comments, please contact either Mr. William Dean at (301) 415-1703, or Ms. Melinda Malloy, at (301) 415-1785, of my staff.

Sincerely,

/RA/

Luis A. Reyes
Executive Director
for Operations

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