

March 18, 2003

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

Dear Congressman Markey:

I am responding on behalf of the Nuclear Regulatory Commission (NRC) to your letter of December 9, 2002, concerning recent meetings involving the NRC and the Nuclear Energy Institute (NEI). You refer to meeting notes that you acquired from a participant at meetings held on October 1, 2002, among members of the NEI Security Working Group (SWG), and on October 2, 2002, between representatives of the NEI SWG and the NRC. Both meetings pertained to security at nuclear power facilities. Answers to the questions you raised are provided in the enclosure.

Please note that the basis for your questions (i.e., the meeting notes that were provided to you) do not necessarily reflect NRC positions on the issues raised.

I hope the enclosed answers are responsive to your questions.

Sincerely,

/RA/

Richard A. Meserve

Enclosures:

1. Questions and Answers
2. List of Meetings

**Questions and Answers Relating to Representative Edward J. Markey's
Letter of December 9, 2002 on Security at Nuclear Power Facilities**

Question 1: Page 1 of the meeting notes states that "there is considerable pressure for the NRC threat [Design Basis threat or DBT, the policy that is the foundation used to determine the risk at NRC facilities and therefore the security levels needed] to be similar to, if not the same as, the DOE."

Question 1.a: Is this true? If so, who is applying this pressure?

Answer: Both NRC and DOE are charged with the protection of comparable types of nuclear material. Threat policy development and maintenance at both agencies is broadly based on information available to NRC and DOE from the Intelligence Community and law enforcement agencies regarding threats and criminal and terrorist incidents. NRC and DOE have a long-established record of coordination regarding threat policy matters to assure that similar materials (Strategic Special Nuclear Material, i.e., weapons-useable) receive a comparable level of protection. NRC and DOE signed a Memorandum of Understanding to coordinate the development of DBTs and have conducted several reviews to ensure the degree of comparability of protection. While the DOE threat statement is of interest to NRC, it is only one of several factors considered during staff assessment and Commission deliberations on the NRC DBTs.

Question 1.b: Is there some reason why the NRC threat should NOT be similar to DOE's? If so, what is it?

Answer: There are a number of reasons why the NRC and DOE threat statements are different and should remain so. First, the design basis threats (DBTs) for NRC power reactor and category I fuel cycle facility licensees are tied to regulatory requirements. Essentially these licensees must design their physical protection systems and response strategies to defend against these threats. DOE's DBTs are planning tools. Second, NRC recognizes that there are limits on the capability of private guard forces that have to be factored into the determination of DBTs. DOE, as an agency of the Federal government, faces fewer such limits, although it also employs private sector contractors or subcontractors to provide security in many instances. Third, the main focus of DOE's DBT's is on nuclear weapons and devices, as well as weapons-useable nuclear materials and weapons complex facilities. The potential consequences of a successful theft or diversion of these materials or of a successful attack on these assets exceed the consequences of similar attacks on operating reactors, the subject of the October meetings. Finally, the protection goals and strategies that DOE pursues in protecting its assets are different from those used at commercial nuclear power facilities operated by private companies in the civilian sector. This divergence in goals, strategies, capabilities, and types of assets being protected is reflected in different threat statements.

Question 1.c: Would it be possible to amend the NRC DBT to be the same as DOE's without undertaking a formal rulemaking? Why or why not?

Answer: The NRC is not preparing to do that. NRC's DBTs are generally described in Title 10, Code of Federal Regulations (CFR), Part 73. Sensitive information about the specific characteristics or detailed attributes of the DBTs, which has been shared with the licensees through appropriately protected channels, cannot be disclosed in the regulations. While it is true that the general description of the DBTs, as it exists currently in 10 CFR, can be changed only by rulemaking, the classified and Safeguards Information that makes up the specific details of the DBT applied to particular categories of licensees can be changed without rulemaking. The NRC is not proposing a DBT that is the same as DOE's DBT.

Question 2: Pages 2 and 3 of the meeting notes describes a "Delay Barrier Manual," classified at safeguards level, that NRC reportedly agreed was "developed in a laboratory type environment." The NEI SWG (Security Working Group) reportedly acknowledged that this manual will make a significant contribution on the future development of protective strategies.

Question 2.a: What exactly does this manual cover, and who participated in its development?

Answer: The "High-Security Protected and Vital Area Barrier/Equipment Penetration Manual" was developed by the NRC staff with contractor assistance. The manual details the results of field tests conducted by NRC contractors to determine the time it takes to successfully defeat or negotiate delay barriers used at nuclear power plants. Authorized industry representatives were given an opportunity to comment on the document.

Question 2.b: The meeting notes say that the NEI "SWG believes the NRC is receptive to adding, or at least acknowledging, more reality for each of the applications" and that the NEI SWG would contribute comments on this manual at a later date. Has the NEI SWG identified the specific measures that, in its opinion, would add or acknowledge "more reality" for each of the applications? If so, what are they?

Answer: The NEI SWG has not yet identified to NRC the specific measures that add or acknowledge "more reality" for each of the applications. The NRC will consider industry- or manufacturer-sponsored test results if confirmed to meet NRC standards.

Question 2.c: What are the views of the NRC staff and the Commission regarding these suggestions?

Answer: NRC is not aware of any suggestions to date.

Question 2.d: Have any Executive Branch security experts (i.e., Federal Bureau of Investigations (FBI), intelligence community, etc.) been consulted about the NEI SWG suggestions? Have any non-governmental security experts been consulted regarding the NEI SWG suggestions? If so, what are their views on them? If not, why not?

Answer: NRC is not aware of any suggestions to date.

Question 2.e: Have the NEI SWG suggestions been incorporated into any revisions or modifications of the Delay Barrier Manual?

Answer: NRC is not aware of any suggestions to date. Wording in the manual was modified in response to an NEI comment to clarify the fact that the times required to negotiate the various barriers were reasonably attainable and not the minimum times achieved by the contractors.

Question 2.f: Will any non-government individuals other than the nuclear industry have the opportunity to review the non-classified portions of this manual before it is finalized and comment on its contents? If not, why not?

Answer: As noted above, the information is sensitive Safeguards Information and cannot be disclosed to unauthorized individuals or authorized individuals who do not have a need to know.

Question 3: Page 3 of the meeting notes indicates that EPRI [Electrical Power Research Institute] and NEI have commissioned a study on whether containment, spent fuel pools and independent spent fuel storage installations can withstand aircraft impact, and that NRC has contracted with Sandia National Laboratories to undertake a parallel study expected to be completed in January 2003. The meeting notes indicate that the assumptions made by each study may be different. Please provide copies of the contracts and statements of work for both of these studies, including the amount each study costs, all of the assumptions to be made when performing the analysis (i.e., type and weight of aircraft used in each model, airspeed and slope of impact, etc.), and any progress reports or preliminary results.

Answer: The NRC is not a party to the contractual agreements between EPRI and NEI and does not have access to their contracts, statements of work, or assumptions. Portions of the contracts that the NRC has with national laboratories on this matter are classified due to the sensitive nature of the information (including the assumptions made, and parameters used, for the research) and cannot be discussed in or enclosed with this document. If receipt of the classified material is still desired, separate arrangements must be made with the NRC staff.

Approximately \$11 million was obligated in FY2002 for the development of methods, data, and models to provide the technical basis for engineering

assessments of vulnerabilities of nuclear power plants. Anticipated obligations in FY2003 of approximately \$5 million will support two pilot-plant engineering assessments of the vulnerability of nuclear power reactors to aircraft strikes, initial extension of these assessments to assessments of other acts of terrorism and the assessment of the vulnerability of spent fuel pools to explosive attacks. Approximately \$1.3 million was obligated for engineering assessments of spent fuel storage and transportation at the end of FY2002.

Although the staff has reached some preliminary conclusions, the two pilot plant assessments are scheduled to be completed in September 2003, so it would be premature to report on the staff's findings.

Question 4: Pages 3 and 4 of the meeting notes relate to the Regulatory Information Summary (RIS) notices sent to licensees when the Office of Homeland Security (OHS) escalated the threat levels. While some NRC Regions apparently required the utility operating the reactors to comply with each item in the RIS or else "they would be considered outliers and monitored further," NRC reportedly told the NEI SWG that this was a "learning experience" for them and "only intended for the utilities to 'consider' each of the paragraphs in the RIS." Is it the view of the NRC that measures called for by the RIS are mandatory or voluntary? If they are mandatory, what are the penalties when a licensee does not comply? Has any licensee ever been penalized for failure to comply with a RIS during a period of escalated threat?

Answer: A Regulatory Issue Summary (RIS) is not a requirement. It is a regulatory tool used by the NRC to provide guidance to the industry on matters relating to licensed activities. In the case of RIS 2002-12, "NRC Threat Advisory and Protective Measures System," the NRC was providing guidance to the licensees on the protective measures that would be appropriate at each of the five threat levels defined in the Department of Homeland Security's Homeland Security Advisory System, which could be quickly implemented as threat levels are raised. NRC's Orders to various classes of licensees had established most, if not all, of the actions prescribed at the Yellow or Elevated threat level in the tables accompanying the RIS. So those actions are enforceable. Licensees are not legally compelled to implement the measures described in the tables accompanying the RIS for the Orange or Red threat levels, but each time the Attorney General (now the Secretary of Homeland Security under Homeland Security Presidential Directive-5) has raised the threat level since last August, licensees have taken appropriate actions consistent with the Orange threat level. If the NRC were to see a need to make particular actions mandatory during a period of Orange or Red threat level, the NRC would issue Orders. Similarly, if the Secretary of Homeland Security at some point in the future determines that the threat level can be reduced below Yellow or Elevated, the NRC would have to issue Orders relaxing certain requirements in previously issued Orders.

Question 5: Page 4 of the meeting notes states that on October 1, the NRC staff briefed the Commissioners about the direction they wanted to proceed with “temporary access authorization, etc.” This briefing evidently related to new security-related proposals NRC intends to promulgate.

Question 5.a: Was this meeting open to the public? If not, why not? Were any representatives of the nuclear industry present? If so, who?

Answer: The October 1, 2002 meeting in which the staff briefed the Commission was a closed meeting to discuss sensitive Safeguards Information. The participants were limited to NRC staff and the Commissioners.

Question 5.b: The NRC evidently said there would be one more meeting with the nuclear industry prior to finalizing action on this matter, and that at this meeting “everything will be out on the table.” Has this final meeting taken place? Did NRC share its final proposal with the nuclear industry? Does NRC also intend to share the non-classified portions of its final proposal with public interest groups, or members of the public? If not, why not?

Answer: The NRC has held a number of public and closed meetings. Enclosure 2 lists the major meetings and provides the date, subject, and attendees. The referenced meeting occurred on October 30, 2002. At that meeting access authorization requirements, which are Safeguards Information, were discussed. NRC has not shared this information with public interest groups or members of the public because they lacked the necessary background checks and did not have a need to know.

Question 5.c: Since September 11, 2001, how many meetings, phone calls, or written correspondence has the NRC (both at the Commission level and at the HQ staff level) had with representatives of the nuclear industry related to the issues raised by NRC staff at the October 1 meeting and other nuclear reactor security matters? Please list the dates, participants and subjects of these interactions.

Answer: Members of the NRC staff have had numerous telephone calls on matters relating to security since September 11, 2001. There is no expectation that these calls be documented, so a specific accounting cannot be provided. Also, there have been many letters on the subject of security signed by Chairman Meserve, the Executive Director for Operations, and staff management since September 11, 2001. Without a more specific request for information, it would be impractical for the staff to list all of this correspondence. A list of meetings conducted by the NRC is provided in Enclosure 2. Commissioners’ individual meetings and phone calls are not tracked by subject matter. However, many licensee officials and other stakeholders, including Congressional staff, Members of Congress, members of the public, Federal agency officials and State government officials, made reference to security issues in these individual meetings throughout the period since September 11, 2001.

Question 5.d: Since September 11, 2001, how many meetings, phone calls, or written correspondence has the NRC (both at the Commission level and at the staff level) had with members of the public (including non-industry groups with expertise in nuclear security, such as the Nuclear Control Institute, Project on Government Oversight, and Union of Concerned Scientists) related to the issues raised by NRC staff at the October 1 meeting and other nuclear reactor security matters? Please list the dates, participants and subjects of these interactions.

Answer: See the response to question 5.c, above.

Question 5.e: Since September 11, 2001, how many meetings, phone calls, or written correspondence has the NRC (both at the Commission level and at the staff level) had with employees of other government agencies related to the issues raised by the NRC staff at the October 1 meeting and other nuclear reactor security matters? Please list the dates, participants and subjects of these interactions.

Answer: See the response to question 5.c, above.

Question 6: Pages 4 and 5 of the meeting notes describe an effort made by the NRC to alter its definition of Safeguards Information. Evidently, the NRC has determined that this definition must be changed and has assigned “an individual who has handled classification of national security information” to the task. This individual reportedly met with the NEI SWG. The meeting notes point out that “she had never visited a nuclear power station.”

Question 6.a: Please fully describe this effort, including the motivation for the change, the time frame and the process by which it will take place. Will the changes take place via a rulemaking process that members of the public will be able to participate in? If not, why not?

Answer: The NRC protects information at several different levels of sensitivity. “Proprietary Information” relates to the sensitive trade and/or security information (that has not otherwise been defined as Classified or Safeguards Information) at a commercial nuclear facility and is protected in accordance with 10 CFR 2.790. “Safeguards Information” relates to sensitive security information and is protected in accordance with Section 147 of the Atomic Energy Act of 1954, as amended, and 10 CFR Part 73. Classified Information relates to national security information or restricted data and is protected in accordance with various Executive Orders, the National Security Act of 1947, and the Atomic Energy Act. In addition to these categories of information, the Office of Homeland Security has been considering designating a new category of sensitive information, i.e., Sensitive Homeland Security Information (SHSI).

As part of NRC’s comprehensive safeguards and security review initiated after September 11, 2001, the staff has undertaken a study of how to redefine these categories and, at least to the extent that it involves Safeguards Information,

recommend steps to be taken to enhance information security, streamline the process, and provide improved guidance to industry and NRC staff. Section 147 of the Atomic Energy Act provides the flexibility to define Safeguards Information by rule or by Order. The NRC will make a determination in each instance as to which process to follow and will involve the public to the extent practical.

Question 6.b: Does the NRC believe the fact that the individual has never visited a nuclear power station to have any relevance to her ability to determine the appropriate classification levels for information?

Answer: The individual assigned to oversee this project has extensive technical and management experience in the protection of sensitive information and, in fact, has visited numerous NRC-licensed facilities, including a nuclear power plant. In addition, this project will require interaction with a number of stakeholders, including certain Federal agencies, and State governments, as well as commercial nuclear entities. The individual's experience in dealing with government and industry officials with responsibilities in this area will facilitate completion of the project.

Question 7: Page 5 of the meeting notes discusses an Executive Task Force formed by the nuclear industry to influence policy in the area of nuclear security. The notes describe the industry's efforts to obtain an audience with the Office of Homeland Security and "redirect the apparent nuclear focus coming from that office," to work toward "avoiding a [nuclear security] bill" and develop "appropriate amendments should one reach the Floor," to return to a more collaborative process when developing Orders, RIS, etc.," and to "have a seat at the table and be involved in discussions on the Design Basis Threat with the Commission."

Question 7.a: Does the NRC believe it would be appropriate for its staff to meet secretly with the nuclear industry to coordinate lobbying activities aimed at "redirecting" the focus of the Office of Homeland Security with respect to nuclear matters? How many meetings, if any, has the NRC staff had with the nuclear industry in which such activities were discussed? When did these meetings occur and who participated in them?

Answer: The NRC does not lobby Congress or other Federal agencies. NRC posts public notices of meetings with industry. The meeting notes refer to activities about which NRC is not familiar. NRC has provided comments to Congress on proposed nuclear security legislation related to its regulatory responsibilities. Those comments are posted on our web page and are shared with other Federal agencies.

Enclosure 2 lists the major meetings the NRC staff has held since September 11, 2001.

Question 7.b: Does the NRC believe it would be appropriate for its staff to meet secretly with the nuclear industry to avoid a nuclear security bill and to develop

“appropriate amendments” to such a bill should it reach the House or Senate Floor? How many meetings, if any, has the NRC staff had with the nuclear industry in which such activities were discussed? When did these meetings occur and who participated in them?

Answer: See the response to question 7.a, above.

Question 7.c: Does the NRC intend to develop its security regulations collaboratively with the “Executive Task Force” of the nuclear industry, as proposed in the meeting notes? How is this consistent with the Administrative Procedure Act?

Answer: The NRC will encourage comment and stakeholder input (including input from public interest groups, the general public, and the industry) on the development of any proposed regulations in accordance with the normal administrative procedures associated with rulemaking, consistent with the Administrative Procedure Act.

Question 8: Page 6 of the meeting notes indicates that industry will be involved in force-on-force tests at nuclear reactors, which reportedly will resume in early 2003.

Question 8.a: Is it true that these exercises will resume in early 2003?

Answer: Yes. NRC resumed these exercises in February 2003.

Question 8.b: How often does the NRC plan to conduct these exercises?

Answer: Full security performance reviews, including force-on-force exercises, will be carried out at each nuclear power plant on a three-year cycle instead of the eight-year cycle that had been used prior to September 11, 2001. These reviews have commenced last summer with seven table top exercises that for the first time involved a wide array of Federal, State and local law enforcement and emergency planning officials. In coming months we are planning approximately two security exercises per month.

Question 8.c: Does the NRC intend to allow the industry to, in effect, “test and grade itself,” as proposed in the industry’s Safeguards Performance Assessment program?

Answer: The NRC intends to conduct force-on-force exercises as part of its oversight process, and will issue Safeguards reports on the exercises. The industry may conduct additional exercises, but these exercises will not substitute for those required in the NRC’s oversight program.

Question 9: Page 6 of the meeting notes states that the “vehicle threat recommendation has been at the Commission level for a considerable amount of time -- days and days.”

Question 9.a: What form does this recommendation take -- is it a rulemaking, an order, or something else?

Answer: The staff informed the Commission of the status of its review of the current threat environment related to land vehicle bombs in SECY-02-0192, dated October 28, 2002. This paper, classified Secret, provided information on the staff's initial view of this attribute and its plans to engage appropriately authorized stakeholders and complete ongoing evaluations before presenting a recommendation for Commission consideration. In addition, as part of its ongoing deliberations on threat-related topics the Commission requested additional clarifying information from the staff regarding its initial view of the vehicle bomb issue. On January 2, 2003, the staff communicated its current view of the adversary attributes, including the vehicle bomb, to authorized stakeholders, including representatives of licensees, State governments, and other Federal agencies for comment.

Question 9.b: Is it possible for the NRC to alter the current Design Basis Threat vehicle threat, which in the Federal Register notice of the final current regulations, refers to a “four-wheel drive vehicle,” to a vehicle of a size much larger than a four-wheel drive vehicle without undertaking a formal rulemaking?

Answer: Yes. The NRC did so in the February 25, 2002 Order, and would do so again by Order, if further changes are made, given the sensitive nature of this information. Eventually an adjustment to the generalized descriptions of the DBTs in 10 CFR 73.1 will be needed, and that is in our longer term plans.

Question 9.c: When did the staff refer the vehicle threat recommendation to the Commission?

Answer: To date the staff has not provided a recommendation to the Commission regarding a modification to the design basis threat with respect to vehicle size, except for the changes made by the February 25, 2002 Order. See 9.a. above

Question 9.d: When does the Commission expect to act on the staff recommendation?

Answer: As stated in the response to 9.c, above, there is no current recommendation for the Commission to act upon. The Commission authorized the staff to proceed with licensee, State, and inter-agency review of the staff views on the DBTs on January 2, 2003. The staff is evaluating comments and will submit its evaluation to the Commission shortly. The Commission's intention is to resolve the matter expeditiously.

Question 10: Page 6 of the meeting notes states that the staff's recommendation on the adversary characteristics would be referred to the Commission "this week" -- meaning early October.

Question 10.a: What form does this recommendation take -- is it a rulemaking, an order, or something else?

Answer: In SECY-02-0203, dated November 15, 2002, which is classified Secret, the staff provided the status of its initial review regarding potential revisions to adversary characteristics of the DBTs. The paper also informs the Commission of staff plans to engage licensees and request an assessment of the potential impacts of possible changes to the DBTs. On January 2, 2003, the staff communicated its current views of the adversary attributes to authorized stakeholders for comment. The staff expects to provide a final recommendation to the Commission shortly. Orders will be used to make changes in the DBTs, given the sensitive nature of the specific adversary characteristics.

Question 10.b: When did the staff refer the adversary characteristic recommendation to the Commission?

Answer: See response to 10.a, above. The staff has not yet recommended changes to the DBTs.

Question 10.c: Has the Commission acted upon this recommendation? If not, when does the Commission expect to act on the recommendation?

Answer: There is no current recommendation for the Commission to act upon. The Commission requested additional clarifying information from staff regarding its initial review as part of its reconsideration of threat characteristics. Staff is in the process of responding to this request. As noted in the response to 10.a, above, several staff actions must be completed prior to staff formulation of a recommendation for Commission consideration. The Commission intends to decide on the matter expeditiously.

Question 11: Page 6 of the meeting notes states that once the vehicle threat and adversary characteristics matters are resolved, that "more of the NRC resources will be focused on a consequence analysis to define prompt and latent fatalities associated with a potential core melt security event."

Question 11.a: Why hasn't the Commission already performed such analyses? After all, the possibility of core melts due to either safety or security events have long been anticipated. Similar analyses of core damage progression and consequences can be applied to specifically assess the impact of vehicle threats, although such analyses are not currently underway.

Answer: The NRC has performed analyses of the risks and consequences from severe accidents. From these studies, the NRC concludes that the risks and

consequences from severe accidents are generally dominated by events involving a sustained loss of cooling. Terrorist attacks involving a sustained loss of cooling would proceed, in terms of core damage progression, in much the same manner as a severe accident. Preliminary results from vulnerability studies do not reveal any phenomena that are unique to terrorist-related events. The NRC now is performing detailed analyses to confirm these initial comparisons between core damage events initiated by potential terrorist attacks and those initiated by accidental means. Based on this assessment, the NRC will develop scenario-specific consequence estimates for terrorist attacks.

Question 11.b: When will this analysis be complete?

Answer: Consequence estimates for a range of terrorist attacks are expected to be completed in September 2003.

Question 11.c: What impact will this analysis have on setting future nuclear reactor security policy?

Answer: The NRC's consequence analysis is being performed to identify key vulnerability issues and assess potential mitigation strategies. Factors being considered in this analysis include the response of structures and systems to an attack and the subsequent damage progression and radiation release. Because this analysis is not completed, it is difficult to say how policy may be affected.

Question 12: Page 6 of the meeting notes states that "there is a 'take back' paper being developed by the FBI" and that this paper will be shared with the industry.

Question 12.a: What is a "take back" paper?

Answer: "Take back," as it is used in this context, refers to efforts to regain control of a facility in the event that terrorists gain control of all or part of it. Because of the robust construction of these facilities, it would likely take significant time before core damage or offsite releases would occur even if an attack were initially successful. Regaining control of the facility during this period could prevent or minimize core damage and any offsite public health and safety consequences.

Question 12.b: Will it also be shared with members of the public or Congress? If so, please provide me with a copy.

Answer: Dissemination of the Take back paper being developed by the FBI is at the discretion of the FBI. Therefore we suggest that you contact the FBI directly to determine their plans for providing it to Congress.

Question 13: Page 7 of the meeting notes indicates that the NEI SWG believes that there is no value added to some security requirements such as patrols and re-keying

door locks “considering the apparent direction NRC is heading.” It is difficult to imagine why any responsible party would consider patrolling reactor perimeters as having no value added, and since the Commission has already admitted that foreign national reactor employees have never undergone security background checks (or even criminal background checks in many cases), it would seem obvious that re-keying locks is also a prudent measure.

Question 13.a: Does the Commission believe that these measures add no value to security? Why or why not?

Answer: The NRC staff recognizes the value of patrols of certain areas of the licensed facilities such as the owner controlled areas, protected areas and vital areas. However, the notes reflect very little context for the statement, so it is difficult to understand the author’s statement, intent, or basis. The Commission recognizes that substituting certain security measures, e.g., surveillance of the area with high resolution cameras, might provide a suitable alternative. Regarding re-keying of door locks, the NRC has a long-standing requirement that locks must be re-keyed at regular intervals, or whenever an employee has been dismissed for cause.

Question 13.b: Why would the “direction NRC is heading” mitigate the need for patrols and re-keying door locks?

Answer: The NRC staff does not know the context for the statement, nor can the staff speculate on the comment from the meeting notes provided.

Question 14: Page 7 of the meeting notes indicates that only one member of the NEI SWG has received their NRC security clearance. Please list every un-cleared individual present at security-related meetings that were not open to members of the public. What is the rationale for allowing the Commission and NRC staff to meet with un-cleared representatives of the nuclear industry while evidently barring un-cleared nuclear security experts of members of the public from meetings related to security? Are employees of the nuclear industry’s trade and lobbying association granted ad hoc security clearances to permit them to attend and participate in non-public discussions with the NRC regarding security matters?

Answer: The NRC’s policies regarding closed meetings with external stakeholders conform to Federal requirements in this area. The NRC staff closes its meetings when sensitive non-public information such as Proprietary or Safeguards Information is being discussed, and the staff would not permit individuals to attend the meetings who did not have the appropriate level of access authorization and a need to know the information being discussed.

It is important to note, however, that access to sensitive unclassified Safeguards Information, while limited in accordance with 10 CFR 73.21, does not require a national security clearance. Safeguards Information is not classified information,

but is a category of information relating to nuclear security created by Section 147 of the Atomic Energy Act and implemented by regulations in 10 CFR 73.21. Individuals who are subject to the conditions of 10 CFR 73.21, who have been investigated according to its requirements, and who have a need to know the specific Safeguards Information, may have access to that information in the meetings even though they do not have a national security clearance. The members of NEI's SWG are employees of the various nuclear reactor licensees or employees of NEI itself, have been appropriately investigated, have a need-to-know the specific Safeguards Information being discussed in the normal course of their duties, and have been authorized to have access to Safeguards Information pursuant to the requirements of 10 CFR Part 73.

In addition, the NRC has an initiative underway to obtain national security clearances for a limited number of personnel at power reactors and industry organizations with a need to know that information. The author of the notes was apparently referring to that initiative. This initiative will facilitate communication during a crisis and detailed discussions of classified vulnerability assessments.

Question 15 : Page 7 of the meeting notes states that the NRC “will continue to use Orders and not return to rulemaking. Because of that, it is extremely important that the Commission gets both sides of the story. At the same time, the [NEI] SWG needs to support the NRC’s credibility in the eyes of Congress and the public.”

Question 15.a: Has the Commission decided not to proceed with a rulemaking to update the Design Basis Threat security regulations? If so, why?

Answer: The NRC is considering all appropriate means of requiring necessary modifications to security, including Orders and rulemaking.

Question 15.b: How do you reconcile the statement that the NRC is not returning to a DBT rulemaking with your testimony to Congress on this subject indicating that the NRC was reviewing the DBT and that further revisions to the DBT would be necessary?¹

¹ See for example: “As part of the top-to-bottom review the Commission is reexamining the Design Basis Threat and will modify it, as appropriate.” A Review of Security Issues at Nuclear Power Plants, Meserve testimony, House Committee on Energy and Commerce, Subcommittee on Oversight and Investigations, December 5, 2001; “The NRC continually assesses the threat environment and regularly reviews the adequacy of the DBT in close coordination with the national intelligence and law enforcement community. In the past, the NRC has revised the requirement to meet the evolving threat. Further revision will be necessary.” A Review of Enhanced Security Requirements at NRC Licensed Facilities, Meserve testimony, House Committee on Energy and Commerce, Subcommittee on Oversight and Investigations, April 11, 2002; “Longer term revisions to the DBTs are now needed to reflect changes in the threat environment. The Commission is currently developing specific guidance to the NRC staff for revising the DBTs. Any final decision on the DBTs will be considered with appropriate stakeholders and federal and state agencies. These revisions will

Answer: The NRC staff continues to work through the process of identifying changes in the threat environment that warrant changes to the DBTs. Upon completion of NRC staff's review of the attributes, which is expected shortly, appropriate approaches, including short-term Orders and longer-term rulemaking, will be recommended to the Commission for its consideration.

Question 15.c: Will the Orders promulgated be permanent or temporary measures?

Answer: Orders can be used by the NRC to require actions not currently required by license or regulations. The NRC normally imposes permanent generic requirements by regulation, and will continue with that approach where it is feasible and appropriate with regard to changes to the security programs at licensed facilities. However, Orders are the only means available to make changes that involve Safeguards Information or classified national security information (in the case of category I fuel cycle facility licensees).

Question 15.d: The NEI apparently is concerned that the Commission get "both" sides of the story. However, if the Commission does not move forward with a public rulemaking and continues to meet primarily with the nuclear industry in secret, the Commission will not hear any side of the story except the industry's. How will you ensure that outside experts and the public have a voice in these proceedings, the outcome of which they too have an interest in?

Answer: The NRC is interested in the views of its stakeholders and has a long-standing policy of conducting public meetings to encourage diversity of views. This public meeting policy will be pursued to the extent that the need to protect Safeguards Information or other sensitive security-related information does not preclude public discourse. In such cases, the NRC seeks the views of cleared Federal and State stakeholders in addition to those of cleared industry personnel. Even if NRC does not conduct a public meeting specifically on this subject, outside experts and the public are welcome to send written comments to the NRC.

Question 16: Pages 7 and 8 discuss the costs of some of the proposed security measures. Has the NRC requested and/or received information from the nuclear industry related to the costs of added security? Has the NRC solicited information about the costs of enhanced security measures from any parties other than the nuclear industry? If so, from whom? If not, why not?

Answer: The NRC does not consider cost when establishing requirements that the agency determines to be necessary for the protection of public health and safety or the common defense and security. However, the NRC staff has solicited information from the industry regarding the cost of the new and proposed

lead to changes in the security requirements for licensed facilities and activities." Meserve testimony, Senate Committee on Environment and Public Works, June 5, 2002.

security requirements developed from the review currently being conducted. Cost may be considered in comparing two or more alternatives capable of achieving adequate protection. NRC staff and contractors, including personnel from other Federal agencies, assess cost information provided by industry.

Question 17: How does NRC consider the costs of securing nuclear reactors as it moves ahead with setting new security policy?

Answer: See the response to question 16, above. The NRC shares proposed policy initiatives with authorized stakeholders, and solicits information from them, such as the cost of and the capability to implement certain measures. These considerations are discussed with stakeholders to obtain perspectives which are taken into account prior to NRC action.

List of Meetings

<u>Date</u>	<u>Subject</u>	<u>Attendees</u>
2001		
10/1/01	Physical Protection Significance Determination Process (CLOSED)	NEI
10/1/01	(no subject listed)	Public Meeting
10/12/01	10/6/01 Audit Document (CLOSED)	NEI
10/16/01	Threat Assessment (CLOSED)	Industry ¹
10/23/01	Electronic Fingerprinting (CLOSED)	NEI
10/23/01	Access Authorization	Public Meeting
10/29/01	Research on Security Issues (CLOSED)	DOE
10/31/01	Assessment of vulnerabilities (CLOSED)	DTRA
11/15/01	Access Authorization	Public Meeting
11/15/01	Fitness for Duty	Public Meeting
11/16/01	Aircraft types and vulnerabilities (CLOSED)	FAA
12/4/01	Sustainable Response (CLOSED)	NEI
12/6/01	Fitness for Duty	Public Meeting
12/6/01	Access Authorization	Public Meeting
12/1/01	Spent Fuel (CLOSED)	NEI
12/11/01	Security at nuclear power plants (CLOSED)	NEI, Industry
2002		
1/17/02	Access Authorization	Public Meeting
1/17/02	Fitness for Duty	Public Meeting
1/18/02	Research regarding vulnerabilities (CLOSED)	NEI
1/25/02	(no subject listed)	DOE
1/30/02	Audit Results Discussion (CLOSED)	NEI
1/31/02	Use of wireless technology in nuclear plants	EPRI, Industry
2/5/02	NRC's Assumptions on aircraft impact (CLOSED)	FAA
2/6/02	Vulnerability Studies (CLOSED)	NEI
2/12/02	Security issues (CLOSED)	Office of the Vice President, OHS
2/13/02	Vulnerability insights (CLOSED)	DOT
2/19/02	Access Authorization (CLOSED)	NEI, Industry
2/20/02	Fitness for Duty	Public Meeting
2/21/02	Interim compensatory measures (CLOSED)	Industry
2/27/02	Interim compensatory measures guidance (CLOSED)	NEI
2/27/02	Phase I results of NEI aircraft impact study (CLOSED)	NEI
2/28/02	Cyber security (CLOSED)	DOE, NEI
2/28/02	Assessment of radiological sabotage issues	NAS

¹Industry includes appropriately authorized representatives of licensees.

	(CLOSED)	
3/7/02	Interim compensatory measures (CLOSED)	NEI
3/8/02	Interim compensatory measures guidance (CLOSED)	NEI (tele conf)
3/12/02	Access Authorization (CLOSED)	NEI, Industry
3/12/02	IEEE standards for security at nuclear plants	IEEE, Industry
3/13/02	NISAC Video Conference (CLOSED)	NISAC
3/13/02	Fitness for Duty	Public Meeting
3/14/02	Staff Requirements Memorandum 78 (CLOSED)	Industry
3/21/02	Vulnerabilities at nuclear power plants (CLOSED)	USMC
4/3/02	Passive protective measures for nuclear plants (CLOSED)	DTRA
4/8/02	Interim compensatory measures guidance (CLOSED)	NEI
4/8/02	Status of Operations/ Creation of NSIR / Security Topics	Public Meeting
4/9/02	Interim compensatory measures guidance (CLOSED)	NEI
4/9/02	Enhancements to Site Security (CLOSED)	Licensees
4/9/02	Passive protective measures for nuclear plants (CLOSED)	SAIC
4/12/02	Passive protective measures for nuclear plants (CLOSED)	SAIC
4/16/02	Access Authorization (CLOSED)	NEI, Industry
4/16/02	Access Authorization	Public Meeting
4/17/02	Fitness for Duty	Public Meeting
4/19/02	Decommissioning reactor interim compensatory measures (CLOSED)	Industry
4/22/02	Expanded Table-tops (CLOSED)	NEI (tele conf)
4/23/02	Passive protective measures for nuclear plants (CLOSED)	DTRA, SAIC, OHS
4/30/02	Reactor interim compensatory guidance (CLOSED)	NEI
4/30/02	Power reactor cyber assessments (CLOSED)	NEI,DOE, licensees
5/02	Severe spent fuel pool accidents	Public Meeting
5/3/02	No-fly zones for nuclear power plants (CLOSED)	FAA, DOE
5/6/02	Site-specific interim compensatory measures question (CLOSED)	Exelon (tele conf)
5/7/02	Table-top development (CLOSED)	Industry
5/7/02	Access Authorization (CLOSED)	NEI, Industry
5/8/02	Fitness for Duty	Public Meeting
5/16/02	Guidance Feedback (CLOSED)	NEI
5/21/02	Nuclear power plant layouts (CLOSED)	DTRA
5/24/02	Site-specific interim compensatory measures implementation question (CLOSED)	Nine Mile & Fitzpatrick (tele conf)
5/29/02	Expanded table-tops (CLOSED)	Industry
5/30/02	Power reactor interim compensatory	NEI

	measures on cyber security (CLOSED)	
5/31/02	Flight simulator tests (CLOSED)	SAIC, DTRA
6/5/02	Threat advisory system	Public Meeting
6/6/02	Review of 5/31/02 flight simulator test results (CLOSED)	SAIC
6/10/02	GAO Audit (CLOSED)	GAO
6/12/02	Cyber assessments (CLOSED)	DOE
6/13/02	Expanded table-tops (CLOSED)	NEI
6/19/02	Site-specific interim compensatory measures question (CLOSED)	Exelon
6/25/02	Access Authorization (CLOSED)	NEI, Industry
6/26/02	Fitness for Duty	Public Meeting
6/26/02	Buoys and markers (CLOSED)	Ginna (tele conf)
6/28/02	Homeland Security Advisory System (CLOSED)	Industry, State & local governments
7/3/02	GAO audit (CLOSED)	GAO
7/8/02	Joint Discussion of Activities (CLOSED)	FAA
7/9/02	Vehicle barrier systems (CLOSED)	NEI
7/11/02	GAO audit (CLOSED)	GAO
7/12/02	Expanded table-tops (CLOSED)	Industry
7/16/02	Site-specific interim compensatory measures question (CLOSED)	Exelon (tele conf)
7/17/02	Site-specific interim compensatory measures (CLOSED)	Duke (tele conf)
7/17/02	Support request (CLOSED)	U.S. Coast Guard
7/17-19/02	Access Authorization & Fitness for Duty Workshop (CLOSED)	NEI, Industry
7/18/02	GAO audit (CLOSED)	GAO
7/25/02	Cyber assessment (CLOSED)	PNNL (video conf)
7/29 - 31/02	Cyber security	Public Meeting
8/1/02	(no subject listed)	Greenpeace tele conf
8/7/02	Design Basis Threat (CLOSED)	DOE
8/8/02	Tabletop drills (CLOSED)	NEI, Industry
8/14/02	Reactor interim compensatory measures (CLOSED)	NEI
8/16/02	Support request (CLOSED)	U.S. Coast Guard
8/20/02	Cyber portion of reaction interim compensatory measures temporary instruction (CLOSED)	NEI (tele conf)
8/27/02	Nuclear Security Act (S.1746)	Senate Committee
8/27/02	Information request	NIMA
8/28/02	Fitness for Duty	Public Meeting
8/29/02	Expanded table-tops (CLOSED)	Industry
9/13/02	Access Authorization (CLOSED)	NEI, Industry
9/23-24/02	Workshop on critical infrastructure	ASCE
9/24/02	Barrier book (CLOSED)	NEI
9/24/02	Review of OSRE reports (CLOSED)	GAO
9/26/02	Interim compensatory measures (CLOSED)	Panoramic

9/02	Attacks on spent fuel structures (CLOSED)	Irradiators Army COE
10/2/02	International Programs (CLOSED)	DOE
10/2/02	Lessons learned from tabletop drills (CLOSED)	NEI, Industry
10/3/02	Response to 6/17/02 orders (CLOSED)	USEC
10/9/02	Aviation Security (CLOSED)	DOE, TSA
10/9/02	Access authorization (CLOSED)	FBI/WMD
10/10/02	Comparability of Category II Transportation (CLOSED)	DOE
10/10/02	GAO audit (CLOSED)	GAO
10/15/02	Site-specific interim compensatory measures (CLOSED)	SONGS (tele conf)
10/17/02	Access Authorization (CLOSED)	NEI, Industry
10/22/02	Active protective measures against aircraft threats (CLOSED)	DOE, SNL, FAA
10/30/02	Access Authorization (CLOSED)	NEI, Industry
11/02	Infrastructure vulnerabilities (CLOSED)	FBI
11/18/02	Federal agency jurisdiction with respect to interim compensatory measures (CLOSED)	DOT
11/18/02	MILES use (CLOSED)	DOE
11/20/02	Site-specific interim compensatory measures (CLOSED)	SONGS
11/20/02	Transportation worker credentialing (CLOSED)	TSA
11/22/02	Nuclear smuggling (CLOSED)	U.S. Customs
11/25/02	Aviation Security (CLOSED)	FAA
11/26/02	Comparability of Security Requirements (CLOSED)	DOE
12/02	Spent fuel storage issues	State of Vermont
12/3/02	Expanded Table-tops (CLOSED)	Industry
12/3/02	Potential consequences of aircraft attacks (CLOSED)	NORAD
12/6/02	Cyber security (CLOSED)	FERC
12/9/02	Jurisdictional issues in spent fuel shipments from research and test reactors (CLOSED)	DOE
12/10/02	Site-specific interim compensatory measures (CLOSED)	SONGS
12/17/02	Jurisdictional issues in spent fuel shipments from research and test reactors (CLOSED)	DOE
12/17/02	NRC's technical database support for Customs (CLOSED)	U.S. Customs
12/17/02	MILES use (CLOSED)	DOE
12/18/02	Spent nuclear fuel transportation interim compensatory measures (CLOSED)	NEI, industry DOE, DOT
12/19/02	NEI/EPRI aircraft impact study (CLOSED)	NEI, EPRI, OHS
12/19/02	Force-on-Force and inspections of interim	NEI, Industry

12/19/02	compensatory measures (CLOSED) Issues with transportation of spent nuclear fuel (CLOSED)	DOE, MIT
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2003

1/6/03	Federal Response Plan Reconciliation (CLOSED)	OHS
1/7/03	Nuclear Facility Flyovers (CLOSED)	DOT/TSA
1/8/03	Resumption of Force-on-Force Exercises (CLOSED)	NEI, Industry
1/9/03	NRC's analysis of aircraft threats on nuclear power plants (CLOSED)	NRC, NEI
1/9/03	Revision of the design basis threat (CLOSED)	NEI
1/10/03	Revision of the design basis threat (CLOSED)	Cat. I licensees
1/13/03	Nuclear Facility Flyovers (CLOSED)	DOT/TSA
1/14/03	Security Issues (meeting with Commissioners)	NEI, Industry

Projected

1/22/03	Jurisdictional issues on research and test reactor spent fuel shipments (CLOSED)	DOE
1/23/03	Security force fatigue (CLOSED)	NEI, Industry, stakeholders
1/24/03	Security force training and qualification	NEI, Industry, stakeholders
1/30/03	Category III interim compensatory measures (CLOSED)	Cat. III licensees