

April 1, 2007

The Honorable Barbara Boxer  
Chairman, Committee on Environment  
and Public Works  
United States Senate  
Washington, D.C. 20510

Dear Madam Chairman:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter of January 26, 2007, regarding your views about the final rulemaking to amend Title 10 of the *Code of Federal Regulations* (CFR), Part 73.1, the Design Basis Threat (DBT) rule. As you know, on January 29, 2007, the Commission approved the final rule, which is one part of a broader, multifaceted effort to enhance nuclear power plant security. This effort has been ongoing since the September 11, 2001 terrorist attacks and will continue through additional physical security rulemakings.

In your letter, you raised several specific concerns. First, as you correctly point out, Section 651 of the Energy Policy Act (EPAct) of 2005 directed the NRC to commence the DBT rulemaking and to "consider...but not be limited to" 12 factors set forth in the Act, including "the events of September 11, 2001," and "air-based threats." In the final rule package, which was published in the *Federal Register* on March 19, 2007, the Commission specifically addresses how it carefully considered each of the 12 factors, whether that factor is included in the final DBT, and the rationale for its inclusion or exclusion. Although the EPAct does not mandate inclusion of any of the 12 factors as an element of the DBT, the Commission specifically incorporated many elements of the 12 factors into the DBT, including the potential for suicide attacks, water-based attacks, cyber attacks, and the use of multiple coordinated adversary groups.

Secondly, with respect to threats from commercial aircraft, the Commission recognizes the importance of addressing these threats. The Commission determined during the course of this rulemaking that defending against such threats is beyond the legal and practical capabilities of private security forces. As explained in the final rule, the Commission has chosen a two-track approach in addressing the airborne threat issue. First, the Commission determined that active protection against the airborne threat requires reliance on other Federal agencies, such as the Federal Aviation Administration, Transportation Security Administration, and U.S. Northern Command and North American Aerospace Defense, to employ layered security to defend against aircraft hijacking threats. Secondly, the Commission has required its licensees to enhance their capabilities to mitigate the effects of large fires and explosions from any type of initiating event, including an aircraft crash.

I, along with senior NRC managers, were happy to brief your staff in early February on these issues. We provided a briefing on both the final DBT rule approved by the Commission and the NRC studies conducted after September 11, 2001, regarding an aircraft crash at a nuclear power plant.

The NRC has taken significant steps to increase security at the Nation's nuclear power plants and similar steps are being taken to incorporate these lessons into the licensing of the next generation of reactor designs. The NRC is committed to ensuring the continued protection of the public health and safety, the environment, and the secure use and management of radioactive materials. If you have further questions or would like further briefings, please contact me.

Sincerely,

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Dale E. Klein