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ENERGY AND COMMERCE COMMITTEE
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THE INTERNET
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Congress of the United States
House of Representatives
Washington, DC 20515–2107

2108 RAYBURN BUILDING
WASHINGTON, DC 20515–2107
(202) 225–2836

DISTRICT OFFICES:
5 HIGH STREET, SUITE 101
MEDFORD, MA 02155
(781) 396–2900

188 CONCORD STREET, SUITE 102
FRAMINGHAM, MA 01702
(508) 875–2900

December 9, 2002

The Honorable Richard A. Meserve
Chairman
Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Chairman:

I am writing regarding a recent NRC meeting on nuclear security that took place on October 2, 2002 (See Attachment A for the NRC notice for this meeting). This meeting was closed to the public because it reportedly included safeguards information, and was attended by NRC staff and the nuclear industry. I recently obtained a set of meeting notes taken by a participant in this meeting, as well as meeting notes for an earlier meeting held by the Nuclear Energy Institute Security Working Group (NEI SWG, see Attachment B for these meeting notes).

These meeting notes indicate that NRC staff appear to be working quite closely with representatives of the nuclear industry, and that representatives of the nuclear industry are being shown complete drafts of proposed security upgrades and being given the opportunity to provide input prior to their adoption. As you know, the industry has for many years resisted prudent security upgrades to increase public safety, and it has continued to take this posture post-September 11. I am concerned that if the NRC meets only with parties with a vested interest in ensuring that the security reforms are weak and inadequate, the Commission may enact a series of weak and inadequate security changes and never receive the benefit of expertise from non-industry, independent sources with experience regarding thwarting terrorist threats at nuclear power plants.

I understand that when considering issues and policies involving a discussion and evaluation of classified materials, it can be difficult to fully engage un-cleared individuals, regardless of their expertise, in every step of the process. However, I do not accept that the solution to this problem is to remove all outside input from the process completely. Based on my review of the aforementioned documents, I fear that the Commission is doing just that.

In light of the enormous public interest in assuring that nuclear reactors are safe from terrorist attack, I wish to know more about the nature and extent of the NRC staff's secret meetings and communications with the nuclear industry, and what measures the Commission intends to take to assure that it hears from expert individuals or organizations not compromised by economic pressures to cut corners on safety. In this regard, I request your assistance and cooperation in providing responses to the following questions:

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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."
   a) Is this true? If so, who is applying this pressure?
   b) Is there some reason why the NRC threat should NOT be similar to DOE's? If so, what is it?
   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?

2) Page 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 reportedly acknowledged that this manual will make a significant contribution on the future development of protective strategies.
   a) What exactly does this manual cover, and who participated in its development?
   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?
   c) What are the views of the NRC staff and the Commission regarding these suggestions?
   d) Have any Executive Branch security experts (i.e., 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?
   e) Have the NEI SWG suggestions been incorporated into any revisions or modifications of the Delay Barrier Manuel?
   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?

3) Page 3 of the meeting notes indicates that EPRI 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.

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?

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.
   a) Was this meeting open to the public? If not, why not? Were any representatives of the nuclear industry present? If so, who?
   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?
   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.
   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.
   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 NRC staff at the October 1 meeting and other nuclear reactor security matters? Please list the dates, participants and subjects of these interactions.

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."

a) Please fully describe this effort, including the motivation for the change, the timeframe 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?
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?

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."
   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

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?
c) When did the staff refer the vehicle threat recommendation to the Commission?
d) When does the Commission expect to act on the staff recommendation?

10) Page 6 of the meeting notes states that the staff's recommendations on the adversary characteristics would be referred to the Commission "this week" – meaning early October.
   a) What form does this recommendation take – is it a rulemaking, an order, or something else?
   b) When did the staff refer the adversary characteristic recommendation to the Commission?
   c) Has the Commission acted upon this recommendation? If not, when does the Commission expect to act on the recommendation?

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."
   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.
   b) When will this analysis be complete?
   c) What impact will this analysis have on setting future nuclear reactor security policy?

12) Page 6 of the meeting notes states that "there is a 'take back' paper being developed with the FBI" and that this paper will be shared with the industry.
   a) What is a "take back" paper?
   b) Will it also be shared with members of the public or Congress? If so, please provide me with a copy.

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.
   a) Does the Commission believe that these measures add no value to security? Why or why not?
   b) Why would the "direction NRC is heading" mitigate the need for patrols and re-keying door locks?

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 or 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?

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."
    a) Has the Commission decided not to proceed with a rulemaking to update the Design Basis Threat security regulations? If so, why?
    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]?
    c) Will the Orders promulgated be permanent or temporary measures?
    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?

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

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

enhanced security measures from any parties other than the nuclear industry? If so, from whom? If not, why not?

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

Thank you for your cooperation in providing responses to these questions. I request that such responses be provided no later than January 17, 2003. Should you have any questions about this request, please have your staff contact Dr. Michal Freedhoff or Mr. Jeff Duncan of my staff at 202-225-2836.

Sincerely,

Ed Markey

Edward J. Markey
Member of Congress

Enclosures

ATTACHMENT A

August 27, 2002

MEMORANDUM TO: Alan Madison, Chief
Reactor Safeguards Oversight Section
Division of Nuclear Security
Office of Nuclear Security and Incident Response

FROM: Zan-Shing Ray Hsu */RA/*
Reactor Safeguards Oversight Section
Division of Nuclear Security
Office of Nuclear Security and Incident Response

SUBJECT: **NOTICE OF CLOSED SAFEGUARDS MEETING ON October 2, 2002, NRC/INDUSTRY WORKSHOP - LESSON LEARNED FROM EXPANDED TABLE-TOP DRILLS**

THIS MEETING IS CLOSED TO PUBLIC ATTENDANCE (SAFEGUARDS INFORMATION)

DATE AND TIME: **October 2, 2002**

8:30 a.m. - 12:00 noon	**Session I:**	**Lesson Learned**
1:00 p.m. - 5:00 p.m.	**Session II:**	**Industry Forum**

LOCATION: **AUDITORIUM**
NRC Two White Flint North
11555 Rockville Pike
Rockville, MD

PARTICIPANTS:

NRC	INDUSTRY/NEI
G. Tracy	R. Beedle
A. Madison	L. Terry
V. Ordaz	L. Hendricks
R. Albert	D. Walters
D. Orrik	R. Rose
R. Hsu, et. al.	Industry Security Working Group Representatives

All meeting attendees must pre-register by the close of business on **September 30 , 2002.** Registrants will be required to provide their name, company and social security numbers. Please contact Ray Hsu of the NRC at 301-415-3212 or e-mail zsh@nrc.gov to register.

CONTACT: Ray Hsu, NSIR
(301) 415-3212 or e-mail zsh@nrc.gov

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ATTACHMENT B

NEI/NRC Meetings

October 1-2, 2002

The following are consolidated notes from both the NEI Security Working Group (SWG) meeting and a later combined meeting with the NRC.

Tabletop Drills

There will only be four more tabletops before the NRC concludes this pilot and reports their findings. Although preliminary, there are three characteristics which appeared to be either a moderate or high impact during almost each drill in which they are considered. There is considerable pressure for the NRC threat to be similar to, if not the same as, the DOE. When more adversaries are added or

multiple entries are involved there is little impact. The SWG disputed the NRC's position on the benefits of the OCA patrol. The only site with CCTV will not be participating in the tabletop drills due to scheduling problems. One plant has requested that the NRC conduct drills considering a future CCTV design, although the construction is not complete. There is quite a bit of discomfort about where the NRC seems to be steering the OCA issue. The remaining tabletop schedule includes Hatch – October 7th, Harris – 21st, Calvert Cliffs – 28th and Fermi – November 4th.

Interim Compensatory Measures (ICM)

The first inspection using the new temporary instruction (TI) was underway as these meetings were held. The preliminary report from that site indicated that they were being very aggressively challenged. There were five inspectors on site and two others arriving before the end of the week. These individuals were reviewing all documentation and timelines, verifying the protective strategy and interviewing officers asking them their responsibility, depending on the various Regulatory Information Summary (RIS) categories. In one case, the site made a procedural revision after August 31, and the inspectors were determining whether this represented a noncompliance. One issue was being raised concerning officers' collateral first aid duties.

The NRC said that they were using the TI checklist to determine if overtime (fatigue) was an issue, as portrayed in the recent POGO report. The SWG reminded the NRC that the interviews with the number of officers cited in the report were only a very small fraction of the approximate 6,000 security officers in the industry. Nevertheless, as we found throughout the discussions with the NRC, they are reacting to most of the issues identified by POGO.

Delay Barrier Manual

The SWG was reminded of the sensitivity of the material contained in the manual. The NRC said strong consideration had been given to classify this document at a higher level than Safeguards Information. The SWG acknowledged the significant contribution this manual will make on the future development of protective strategies. The NRC agreed this was developed in a laboratory type

environment. The times were reported to be the appropriate times and not the best or worst. The SWG believes the NRC is receptive to adding, or at least acknowledging, more reality for each of the applications. They agreed that times were those to breach the barrier and did not include travel time or other delays that might commonly be experienced. The SWG will contribute comments on this manual at a future date.

Aircraft Impact Analysis

The analysis by EPRI and NEI is intended to determine whether containment, the spent fuel pool and ISFSIs can withstand plausible aircraft impacts. The NRC is using Sandia National Laboratory for their parallel analysis which is expected to be complete in January, 2003. The EPRI analysis is slated to be concluded in late November. Differences in the study include the type and weight of aircraft used in each model, the airspeed and slope of impact. EPRI is using an aircraft which represent two-thirds of all U.S. regular commercial aircraft and the most frequently used wide body. EPRI is using the most "state of the art" computer models and structural properties below the median values of actual structures. No one specific site is being modeled. The NRC is also doing a consequence analysis to determine the prompt and latent fatalities associated with such a catastrophic event. The NRC has briefed the Office of Homeland Security (OHS) on their preliminary findings. The NRC plans to focus more resources in this area when their recommendations on the vehicle threat and new DBT adversary characteristics are submitted to the Commission.

Regulatory Information Summary– Levels I-IV

The response to OHS escalating the threat level varied from region to region. In comparison to other industries, nuclear was very high on the scale of those that responded. The NRC seemed pleased with the industry's response. The SWG had very strong comments about how the escalation was delivered to the utilities. Some regions required a written report by the next morning and another was told that if they did not respond to each of the items, they would be considered outliers and monitored further. The NRC acknowledged this was a learning experience for them and only intended for the utilities to "consider" each of the paragraphs in the RIS.

The plan, as conveyed a month ago, is for the NRC to advise utilities to address specific paragraphs of an appropriate level. Because of the general nature of this threat, that was not done. Several members of the SWG questioned the rationale for going to this level at all when the threat wasn't domestic. The NRC assured the group that there was domestic concern. When questioned regarding the length of time we would be expected to sustain each escalated level, up to two weeks was given for Level IV and three to six days for Level V.

Access Authorization

The NRC staff had briefed the Commission on October 1 about the direction they wanted to proceed with temporary access authorization, etc. The NRC said there would be one more meeting with the industry and "everything will be out on the table" before the ICM is finalized. The staff plans to have the final product in the Commission's hands by early November so the joint meeting will occur before the end of October.

Legislative Update

The end of this legislative session appears to be two-three weeks away. It is very difficult to enact legislation at this time in a session because most in the legislature have decided what they are going to do on most issues. Relationships "on the hill" were reported as being "the worst I've ever seen." There is still no Committee report on S-1746. S-1746 probably won't pass this year and legislation will have to be reintroduced again next year. NEI is compiling a list of things that the industry can or can not support. It was agreed that there needs to be some measure of unity within the industry on the use of weapons and the power of arrest. There seems to be uncertainty at the CNO level on whether we need to push these issues, or not.

Safeguards Information (SGI)

The SWG expressed concerns to the NRC that the categorization of SGI has

apparently changed. The NRC acknowledged that since 9/11, "all information has been bumped up a notch." They have funded the complete rewrite of 10CFR 73.21, but believe a guidance document would be better than a rule change. An individual who has handled classification of national security information has been assigned the task of developing this guidance. She shared several concerns to the group including how there were significant differences in the way parties were handling SGI, (i.e. NRC, licensee, states, etc.) The current guidance was described as being 20 years old and requiring a much needed update. A few members of the SWG discussed SGI with this individual after the meeting. She shared that the NRC was now considering generic information out in the public domain as SGI. When asked about all the generic information in France, Sweden, Japan, Russia and Korea, she said they would certainly have to consider that. She admitted that she had never visited a nuclear power station. One concern is how this "new deal" might impact the interface between safety and safeguards.

Executive Task Force

The CNOs have established a priority to get an audience with the OHS. This meeting has now been arranged. The purpose is to redirect the apparent nuclear focus coming from that office. The executives have formed a subcommittee on legislative and regulatory aspects of security. The legislative subcommittee is working toward avoiding a Bill. If one reaches the floor, they will have appropriate amendments available to respond. The regulatory subcommittee is developing a detailed White Paper on 10 CFR 50.13 relating to attacks from enemies of the state. This subcommittee will also be working toward returning to a more collaborative process when developing Orders, RIS, etc. Another goal is to have "a seat at the table" and be involved in discussions on the Design Basis Threat with the Commission.

Force-on-Force (FOF)

FOF is planned to begin in the February, 2003 timeframe. The NRC is looking at the use of MILES gear during this pilot period. The NRC is planning to make this initial purchase and have the equipment available to the licensee. There would likely be about two days of training before each FOF inspection. This effort

will follow completion of the ICM inspection report and involve industry input.

Fatigue

The NRC expressed some concern about the correlation between allegations received and the POGO report on security officer fatigue. The NRC is currently looking at rulemaking on the issue of fatigue and could include security officers. They are looking at short term solutions and have had dialogue with the Executive Director of Operations and Commission. They are looking to the ICM inspection and TI to gather additional data. They plan to understand and consider the industry's position.

NRC Going Forward

The vehicle threat recommendation has been at the Commission level for a considerable amount of time – "days and days." The staff's recommendation on the adversary characteristics will go up this week. Once these issues are resolved, 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.

There is some concern about sites that may be qualifying with other than their duty weapon (POGO). A few sites actually mention training using .22 cal ammunition. The NRC stated that those plans would have to be rewritten.

There is a "take back" paper being developed with the FBI. This will be shared with the industry.

At the Commission level, the staff is being questioned about training issues noted in the POGO report. They want to know if this situation is portrayed accurately. Although the NRC is looking at training, it is not an immediate issue.

Industry Going Forward

The SWG will begin providing more formal written comments on the NRC staff's products with copies to the Commission level, if NEI Senior Management concurs. Written comments were promised to the staff on the ICM TI and the RIS. There was discussion and agreement that several issues were already "on the train and have left the station." Some way the SWG must anticipate the next set of ICMs and present the NRC something earlier in the deliberation process.

The SWG questioned the non-value added nature of current security requirements, such as patrols and re-keying door locks, considering the apparent direction the NRC is headed. It was agreed to revisit a previous list of non-value added items which the NRC had refused to remove a few years ago.

Since the NRC seems to be under pressure to be comparable to DOE, the SWG will examine DOE training requirements.

Only one member of the SWG has been given their NRC security clearance and that was received before 9/11. Clearances will not be issued before the required foreign interest certificates are received.

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 SWG needs to support the NRC's credibility in the eyes of Congress and the public.

The SWG will turn its focus on the FOF activities which are slated to begin in February, 2003.

The SWG will also draft a letter to the Commission on the vehicle threat, adversary characteristics and insider.

A smaller group of SWG members will be examining the direction the NRC appears to be going on several issues. There is a desire to get a "bigger picture" of how all these "shoot from the hip" ICMs integrate into an overall healthy security program. Because of the emotions and politics involved, there is concern that we may be degrading security rather than improving.

The SWG has provided the Executive Task Force an estimate of the costs associated with the DBT characteristics, S-1746, access authorization, and take

back planning. The issues of training, fatigue and Safeguards Information will very likely add to those budget costs.