UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

CHAIRMAN

August 27, 1999

The Honorable Edward J. Markey
United States House of Representatives
Washington D.C. 20515-2017

Dear Congressman Markey:

Thank you for your letter of July 8, 1999, in which you expressed your concerns about the future of the U.S. Nuclear Regulatory Commission's (NRC's) Operational Safeguards Response Evaluation (OSRE) program. I want to assure you that the Commission is sensitive to your concerns and remains committed to ensuring that the public and the environment are adequately protected against possible radiological sabotage at commercial nuclear power plants. To that end, as your letter correctly noted, the Commission will complete the current OSRE program by conducting force-on-force exercises at the eight remaining OSRE sites. These remaining exercises are scheduled to be conducted by May, 2000.

As you are aware, the Commission has been striving to identify regulatory requirements and processes in which improvements in efficiency and effectiveness can be made. Although the Commission believes that the current regulatory requirements with regard to physical protection of commercial nuclear power reactors provide adequate protection of the environment and public health and safety, the staff is reviewing these regulatory requirements at this time to determine if there is a more efficient and effective way to achieve the objectives of the OSRE program.

The NRC staff has proposed an aggressive rulemaking schedule to amend Part 73 to require periodic contingency response exercises, including a demonstration component. However, at an August 11, 1999 public meeting, there was significant stakeholder comment on the need for a more comprehensive rulemaking. If the Commission agrees to broaden the rulemaking, the aggressive schedule could be delayed. The staff, with stakeholder involvement, is exploring options to continue the evaluation of licensee demonstration of contingency response capabilities in the period between the completion of the OSREs and issuance of the final rule, whenever that occurs, and will forward its recommendation on these options to the Commission in September, 1999.

Detailed responses to each of your questions are enclosed. If you have further questions regarding this issue, please contact me.

Sincerely,

Greta Joy Dicus

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Enclosure: Questions and Answers

QUESTIONS AND ANSWERS

Question 1: Does the NRC have authority to require testing of nuclear plant security without promulgation of a new rule? If not, why did the May 3, 1999, letter say, "The Commission has the legal authority to conduct OSRE [Operations Safeguards Response] visits"? If so, why is the testing suspended until the rulemaking is complete?

Answer: Under the Atomic Energy Act of 1954, as amended (AEA), NRC has ample authority to regulate the operation of nuclear power reactors to promote common defense and security and to protect health or minimize danger to life or property. NRC exercises this authority by issuing licenses, conditions to licenses, and rules/regulations and orders. If it becomes necessary to provide NRC with reasonable assurance of adequate protection of public health and safety or common defense and security, there is no dispute that NRC has the authority under the AEA to require licensees to conduct safeguards performance exercises. However, in order to impose an enforceable requirement to conduct these exercises, NRC must issue an order, license condition, or regulation. The NRC currently believes that the proper method of implementing that authority is through the use of regulations similar to the method used by the Office of Nuclear Materials Safety and Safeguards for requiring the conduct of exercises at fuel facilities (10 CFR 73.46).

At this point, there are eight nuclear power plant sites remaining in the Operational Safeguards Response Evaluation (OSRE) cycle. These remaining OSRE inspections will be conducted, including a demonstration of the licensees' ability to protect against the design basis threat. The results of these OSREs will provide feedback for refining the inspection approach to demonstration of capabilities in the baseline inspection program. In the meantime, established security program inspections will also continue.

Enclosure

Question 2: How long is the rulemaking requested in the June 29, 1999, memo likely to take? If the force-on-force drills are suspended during this time, how will the NRC ensure the effectiveness of nuclear power plant security programs? Would the pilot baseline inspections better test the new inspection program if they included all baseline inspection elements?

Answer: The rulemaking proposed by the staff and approved by the Commission is currently expected to follow this schedule:

September 17, 1999	- rulemaking plan to Commission
March 31, 2000	- proposed rulemaking to Commission
May 2000	- 60 day public comment period
December 1, 2000	- final rulemaking to Commission
May 1, 2001	- final rule published

However, at a public meeting held August 11, 1999, there was significant stakeholder comment on the need for a more comprehensive Part 73 rulemaking. If the Commission agrees to broaden the rulemaking, this aggressive schedule could be delayed.

The ongoing OSRE inspections will continue to require licensees to demonstrate the response capability of their security organizations, including force-on-force exercises, as planned. At present, the last OSRE visit is scheduled for May 2000. The staff will examine its options for a transition from the OSRE program to the rule-based program through further discussions with stakeholders and will submit its recommendation to the Commission in September 1999. This transition plan will ensure force-on-force exercises continue following May 2000 through the completion of the rulemaking, whenever that occurs.

Based on the experience gained from demonstration drills in past OSREs, the staff is confident that it will gain better insights from the remaining OSREs to support development of the baseline inspection program in the security area. It is because of the continuation of demonstration drills during OSREs that such drills during the pilot baseline inspection program were determined not to be necessary.

As for assuring the effectiveness of nuclear power plant security programs, the NRC has relied on inspections and required compliance verification programs to assure the continued effectiveness of security measures in the past. The added assurance derived from the OSRE visits has been tempered by its long cycle (8 years to visit all plants), a weakness which will be addressed by the new rulemaking.

Question 3: Who made the decision to suspend force-on-force drills as part of the baseline inspections? Was the Commission informed of this decision? Is this decision consistent with Chairman Jackson's decision to reinstate the OSRE program, as described in her December 15, 1998, letter to me, "until the staff completes the study it had already begun to assess future options in performance assessment of nuclear plant security," and is it consistent with the Commission's decision described in the June 29, 1999, memo?

Answer: NRC staff management decided that portions of the proposed pilot baseline inspection program procedure dealing with force-on-force exercises would be more thoroughly tested and refined through the ongoing OSRE program rather than a compressed pilot effort at fewer facilities.

The Commission was not informed in writing of this decision; however, the decision was based on the Commission's direction in the June 29, 1999 Staff Requirements Memorandum (SRM) to use the remaining OSREs to pilot concepts for the revised safeguards inspection and assessment program. Having reviewed the matter as a result of your letter, the Commission agrees with the staff's decision.

Question 4: How will the NRC ensure the effectiveness of force-on-force drills conducted by licensees, given that the licensees have vigorously opposed the requirement to do the drills as well as many of the security measures necessary to pass them?

Answer: The NRC intends to ensure the effectiveness of licensees' response to safeguards contingency events through the promulgation of a rule, supporting guidance, and validation through NRC inspection activities.

Question 5: Considering the important role expert contractors have played in the OSRE program and the impending retirement of NRC security personnel with relevant military experience, how will the NRC ensure sufficient expertise to conduct and evaluate effective drills?

Answer: There are currently no plans to terminate the services of the contractors who have provided support for the OSRE program. Contractor services are included as part of the proposal for the Safeguards Performance Assessment (SPA) program.

In the June 29, 1999 SRM, the Commission approved the development of necessary training of NRC inspectors, including regional staff who would be expected to lead the baseline inspection program. Several of these regional inspectors have participated in the OSRE program inspections and will be trained to carry on the force-on-force exercise program that is implemented according to the new regulation that the staff is preparing. The need for support by the contractors during the transition period following completion of the OSRE and under the new rule, once finalized, will be evaluated at a later date.

Question 6: Given the Commission's interest in the June 29, 1999, memo in "inspecting compliance for all of 10 CFR Part 73.55," will the NRC require licensees, and inspect their ability, to "protect against the design basis threat of radiological sabotage" as stated in 10 CFR 73.55(a) or solely against a "Part 100" radioactive release? Considering the possibility of operator error in a crisis, should plants be able to compensate for security problems with assumed operator actions?

Answer: Title 10, *Code of Federal Regulations* (CFR), Section 73.55(a) requires that licensees be able to "protect against the design basis threat of radiological sabotage." Radiological sabotage is defined in Section 73.2 as, "any deliberate act directed against a plant or transport . . . which could directly or indirectly endanger the public health and safety by exposure to radiation." Therefore, the licensees are required to protect against acts that could endanger the public health and safety.

Part 73 does not define the limits of exposure that are considered dangerous for the public health and safety, although limits of exposure are discussed in various other sections of Title 10 of the CFR. The staff is currently considering how to clarify expectations in Part 73 and better define the term "radiological sabotage," calling on standards also used in other areas of nuclear regulation, including Part 100. The systems and equipment necessary to prevent a radiological release, and therefore subject to protection by security measures, could be dependent on the release definition. During the remaining OSREs, the teams will review this issue as part of their input to the SPA Task Force.

An important element of the proposed rulemaking and related guidance will be how to credit operator actions during an attempt at radiological sabotage. The remaining OSREs will examine the integration of the overall actions by operations and security organizations in preventing radiological sabotage.