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July 8, 1999

The Honorable Greta Joy Dicus
Chairman
Nuclear Regulatory Commission
Washington, DC 20555

Dear Chairman Dicus:

I am again greatly concerned about the future of the Nuclear Regulatory Commission (NRC) counter-terrorism program currently called Operational Safeguards Response Evaluations and Regional Assists (OSRE). This program physically tests nuclear plant security in force-on-force drills and other exercises. In a May 3, 1999 response to my letters of November 11, 1998 and February 23, 1999, former NRC Chairman Shirley Ann Jackson said that proposed changes to the OSRE program are intended "to increase the effectiveness and efficiency of the nuclear power industry's counter-terrorism capability." While the Commission has voted to modify and continue the testing of nuclear plant security, I understand that NRC senior staff have suspended the tests for an indefinite period that could last years. Unfortunately, terrorists may not wait. It is therefore critical that physical testing of nuclear plant security continue without interruption in order to protect against the serious threat of nuclear sabotage and terrorism.

Last year NRC senior staff tried to cancel the OSRE program, citing concerns about the annual cost of three employee salaries and $90,000 in contracts. Following NRC staff dissent, media coverage, and my letter, the program was temporarily reinstated, and the current cycle of drills is still scheduled to be finished next spring. The physical testing, modified as set forth in a January 22, 1999 staff memo, SECY-99-024, is then to become part of the security cornerstone of the new baseline inspections at nuclear plants. Indeed, as other regular inspections are likely to be curtailed, the testing will form the core of NRC oversight of plant security. A June 29, 1999 Staff Requirements Memo from Commission Secretary Annette Vietti-Cook confirms SECY-99-024 with some additions and requests a rulemaking plan.

However, at the same time NRC staff decided to "suspend" the physical testing component of the baseline inspections until the rulemaking is complete. Typically, I am told, rulemaking takes two to four years. Thus the regular inspections will be reduced, and the force-on-force drills will end, with nothing to take their place for years. In addition, the pilot baseline inspections to be conducted this year will not test this key inspection component. This is not an effective and efficient program; it looks more like a stealth cancellation.

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A July 1, 1999 email from Richard Rosano, Chief of the NRC Reactor Safeguards Section, to NRC security personnel suggests that the drills were suspended because of concerns about the NRC's authority to conduct the tests and because of opposition by the nuclear industry and the Nuclear Energy Institute (NEI). The email states:

> As Bill Kane pointed out, if the agency had the authority to require drills (per Atch. 3), we would not have asked the Commission to let us write a rule requiring them, as we did in the SPA Task Force recommendations (SECY 99-024). We were confident that the Commission would approve the recommendation allowing us to write a rule requiring force-on-force drills, which they did on June 29 in SRM 99-024, so rather than face (and possibly lose) a battle about authority, it seemed prudent to suspend that portion of Atch. 3 that dealt specifically with force-on-force drills. By "suspending" and not "deleting" the requirement, we kept it in the forefront and allowed us to easily re-establish it when the requirement is written and published. Bill Kane approved of this approach, and it was discussed in the meeting with NEI yesterday.
>
> This gives us a win in this area. The licensees have vigorously argued that there is no requirement (yet, since they acknowledged that the Commission was likely to approve one) to conduct drills. But they also know that a rule is coming and that, then, the inspection procedure will include this.

The doubt about the NRC's authority to require drills appears directly to contradict a statement in Chairman Jackson's May 3, 1999 letter in response to my question about the Commission's authority:

> The Commission has the legal authority to conduct OSRE visits. In 10 CFR 73.55(a), the licensees are required to establish a physical protection system "designed to protect against the design basis threat of radiological sabotage." This requirement is both inspectable and enforceable, and the NRC has the legal authority to conduct evaluations, including tests with meaningful results, to ensure the licensees' ability to comply with that requirement.

The licensee opposition to the testing confirms the fears I expressed in the February 23, 1999 letter that, given the 47% of plants that have been unable to prevent serious simulated sabotage in the OSRE's, nuclear utilities that are unwilling or unable to secure their plants adequately may not thoroughly test their own programs.

The June 29, 1999 Commission memo addresses important questions regarding the frequency of tests, the modification of plant security plans, the adequacy of the design basis threats, and the comprehensiveness of NRC inspections. However, neither the January 22, 1999 staff memo nor the June 29, 1999 Commission memo address some crucial issues. Perhaps most important is the role of the expertise of NRC headquarters staff and contractors. Without the contractors' security expertise in choosing targets, conducting the drills, and evaluating results, faulty tests may give licensees a false sense of security. In addition, NRC staff presentations have suggested that plants would be required only to be able to prevent a radioactive release exceeding 10 CFR 100 limits, not to prevent any "radiological sabotage" as required in 10 CFR 73.55(a). The memos again do not mention this issue.

I would like to request your assistance in answering a few questions about the Commission decisions on security and the staff suspension of the security testing:

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 visits"? If so, why is the testing suspended until the rulemaking is complete?

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 plant security programs? Would the pilot inspections better test the new inspection program if they included all baseline inspection elements?

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?

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.

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?

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?

I am pleased, as described in the May 3, 1999 letter, that the Commission is trying to find ways to continue security cooperation with the FBI as well as security assistance to facilities in the former Soviet Union. The terrorist threat to nuclear plants is real. The NRC needs to ensure through rigorous testing that U.S. nuclear power plants are prepared to deal with this terrorist threat.

Thank you for your continued attention to this issue.

Sincerely,

Edward J. Markey

Edward J. Markey
Member of Congress