

November 30, 2001

The Honorable Tom Ridge
Assistant to the President/Director
Office of Homeland Security
The White House
Washington, D.C. 20502

Dear Governor Ridge:

Since September 11th, the Nuclear Regulatory Commission (NRC) has been focusing on the security of the nuclear facilities we regulate. We and our licensees have worked around the clock to ensure adequate security at those facilities, and we have launched a top-to-bottom review of our security requirements. I am writing to present the NRC's views on three currently pending issues and to request your assistance with them.

1. NRC Security Legislation: Since long before September 11, the NRC has urged Congress to enact security legislation that would increase the capabilities of existing security forces at nuclear facilities to respond to a terrorist attack. Current private security forces at NRC-licensed facilities operate in accordance with comprehensive standards established by the NRC and are well-trained, well paid, and experienced. The existing security arrangements provide a strong foundation on which to build. But there are certain aspects of the current security regime that could be strengthened by some relatively simple legislative changes.

NRC's proposals now before Congress would (1) authorize guards at NRC-regulated facilities to carry and use firearms to protect property of significance to the common defense and security (this provision is aimed at giving guards some protection from State criminal prosecution for actions taken during the performance of their official duties); (2) make it a Federal crime to bring unauthorized weapons and explosives into NRC licensed facilities; (3) make Federal prohibitions on sabotage applicable to the operation and construction of certain nuclear facilities (such as nuclear reactors, enrichment, and fuel fabrication facilities) and (4) confer upon guards at NRC-designated facilities the authority to possess and use weapons that are comparable to those available to the Department of Energy guard forces (some State laws currently preclude private guard forces at NRC regulated facilities from utilizing a wide range of weapons). The legislative package, which is enclosed, has been cleared by the Department of Justice and by OMB.

We would very much appreciate the White House's assistance in getting these proposals enacted.

2. Federalization: Legislation has recently been introduced by Senators Reid, Clinton, Jeffords, and Lieberman which would require the NRC to establish and maintain the security force at all sensitive nuclear facilities. The NRC strongly opposes enactment of the federalization legislation and urges the pursuit of our more measured legislative approach instead.

Creation of a Federal guard force would not result in a higher degree of guard force effectiveness than can be achieved by the use of private guards. Moreover, the presence of a Federal force at private nuclear facilities would create the potential for serious conflicts between operational activities under the licensee's control and security activities that would be under NRC control. In fact, separate lines of authority could lead to confusion and a diminution of safety.

The establishment of a Federal security force for nuclear facilities also isolates the strategy for the security of nuclear facilities from the security strategy for all other types of sensitive infrastructure. The Commission believes that the allocation of the Nation's defensive resources should be considered in accordance with relative risk, and, as a result, the separation of nuclear facilities from all other types of sensitive infrastructure will fragment the analysis inappropriately. Resources are finite, and disproportionate protection at one kind of facility may increase the risks at other kinds of facilities.

Moreover, the proposed legislation would have substantial budget impacts -- we estimate that the costs might exceed \$1 billion per year. Presumably the NRC would be required to hire at least the number of guards currently present at nuclear facilities -- that is, more than 7,200 new Federal workers, which is more than twice the number of staff now employed by the NRC. Such a change would bring about a fundamental shift in the responsibility and mission of the NRC, diverting the agency from being an independent regulator of nuclear safety and security to being principally a provider of nuclear security.

In short, the fundamental difficulties in this legislation argue against its adoption. Your office's assistance in opposing this proposal would be very welcome.

3. Deputization: Another proposal which is being considered, possibly as a stopgap until our legislation is adopted, is for the United States Marshals Service to deputize the private guard forces now in place so that they, after proper training and qualification, would be Deputy U.S. Marshals with Federal law enforcement authority. Although this proposal does not have all the problems associated with federalizing the guards as NRC employees, it does have some of the same disadvantages. For example, both federalization and deputization would raise Federal government liability concerns that are not an issue with private security forces.

Deputization would also require federal supervision of deputized private security personnel. It is our understanding that the U.S. Marshals Service is not currently in a position to undertake such supervision. If direct, active, on-site supervision by the NRC is required, it would require the establishment of a new and potentially large organizational component within NRC, at considerable expense (either taxpayer or licensee, or both). Moreover, the on-site supervision of guards by NRC raises the same type of command and control concerns mentioned above regarding federalizing the guard forces, as well as issues relating to the ability of the NRC to supervise and discipline people who are employed by private companies.

Deputizing the private guard force in our view is not an attractive option even as a stopgap action until our legislation is in place. Establishing the program and completing the necessary training would likely take substantial time and effort, even assuming its high priority and expedited treatment. Moreover, we believe that the prompt enactment of our legislative

-3-

proposals would obviate the need even to consider deputization. Accordingly, we again urge our legislative package as a far preferable approach.

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I would be happy to discuss these issues or any other aspects of the security of nuclear facilities with you. We would appreciate your assistance on these matters.

Sincerely,

/RA/

Richard A. Meserve

Enclosure: Legislative proposals

cc: Vice President Dick Cheney
Admiral Charles S. Abbott (Ret.)

SECTION . CARRYING OF FIREARMS BY LICENSEE EMPLOYEES

Section 161 k. of the Atomic Energy Act of 1954 (42 U.S.C. 2201(k)) is amended to read as follows:

"Sec. 161. GENERAL PROVISIONS.

"In the performance of its functions the Commission is authorized to --

* * * *

"k. (1) authorize such of its members, officers, and employees as it deems necessary in the interest of the common defense and security to carry firearms while in the discharge of their official duties. The Commission may also authorize--

"(A) such of those employees of its contractors and subcontractors (at any tier) engaged in the protection of property under the jurisdiction of the United States located at facilities owned by or contracted to the United States or being transported to or from such facilities as it deems necessary in the interests of the common defense and security; and

"(B) such of those employees of persons licensed or certified by the Commission (including employees of contractors of licensees or certificate holders) engaged in the protection of (i) facilities owned or operated by a Commission licensee or certificate holder that are designated by the Commission, or (ii) property of significance to the common defense and security located at facilities owned or operated by a Commission licensee or certificate holder or being transported to or from such facilities;

to carry firearms while in the discharge of their official duties. A person authorized to carry firearms under this subsection may, while in the performance of, and in connection with, official duties, make arrests without warrant for any offense against the United

States committed in that person's presence or for any felony cognizable under the laws of the United States if that person has reasonable grounds to believe that the individual to be arrested has committed or is committing such felony. An employee of a contractor or subcontractor or of a Commission licensee or certificate holder (or a contractor of a licensee or certificate holder) authorized to carry firearms under this subsection may make such arrests only when the individual to be arrested is within, or in direct flight from, the area of such offense. A person granted authority to make arrests by this subsection may exercise that authority only in the enforcement of (A) laws regarding the property of the United States in the custody of the Department of Energy, the Nuclear Regulatory Commission, or a contractor of the Department of Energy or Nuclear Regulatory Commission or a licensee or certificate holder of the Commission, or (B) laws applicable to facilities owned or operated by a Commission licensee or certificate holder that are designated by the Commission pursuant to this subsection, and property of significance to the common defense and security that is in the custody of a licensee or certificate holder or a contractor of a licensee or certificate holder of the Commission, or (C) any provision of this chapter that may subject an offender to a fine, imprisonment, or both. The arrest authority conferred by this subsection is in addition to any arrest authority under other laws; The Secretary and the Commission, with the approval of the Attorney General, shall issue guidelines to implement this subsection;

“(2) authorize employees of persons licensed or certified by the Nuclear Regulatory Commission (including employees of contractors of licensees or certificate holders) who are trained and qualified as guards and whose duty is the protection of facilities designated under paragraph (1)(B)(i) or property described under paragraph (1)(B)(ii) to carry and use, where necessary to the discharge of their official duties, such weapons,

devices, or ammunition as the Commission may require. Such employees shall have the power to carry and use such weapons while in the discharge of their official duties, regardless whether such employees have been designated as Federal, State, or local law enforcement officers. Such employees shall have such law enforcement powers as are provided to them under this section and section 161 i of this Act. The Nuclear Regulatory Commission shall issue guidelines, with the concurrence of the Attorney General, to implement this paragraph. The authority conferred by this paragraph with respect to employees of persons licensed or certified by the Nuclear Regulatory Commission (including employees of contractors of licensees or certificate holders) who are trained and qualified as guards and whose duty is the protection of facilities designated under paragraph (1)(B)(i) or property described under paragraph (1)(B)(ii) shall not be implemented until such guidelines have become effective;"

SECTION . UNAUTHORIZED INTRODUCTION OF DANGEROUS WEAPONS

Section 229 a. of the Atomic Energy Act of 1954 (42 U.S.C. 2278a(a)) is amended by adding after "custody of the Commission" the words "or subject to its licensing authority or to certification by the Commission under this Act or any other Act".

SECTION . SABOTAGE OF NUCLEAR FACILITIES OR FUEL

Section 236 a. of the Atomic Energy Act of 1954 (42 U.S.C. 2284(a)) is amended to read as follows:

"a. Any person who intentionally and willfully destroys or causes physical damage to--

"(1) any production facility or utilization facility licensed under this Act;

"(2) any nuclear waste storage, treatment or disposal facility licensed under this Act;

"(3) any nuclear fuel for a utilization facility licensed under this Act, or any spent nuclear fuel from such a facility;

"(4) any uranium enrichment or nuclear fuel fabrication facility licensed or certified by the Nuclear Regulatory Commission; or

"(5) any production, utilization, waste storage, waste treatment, waste disposal, uranium enrichment or nuclear fuel fabrication facility subject to licensing or certification under this Act during its construction where the destruction or damage caused or attempted to be caused could affect public health and safety during the operation of the facility;

or attempts or conspires to do such an act, shall be fined not more than \$10,000 or imprisoned for not more than 20 years, or both, and, if death results to any person, shall be imprisoned for any term of years or for life."