

December 12, 2001

The Honorable Dianne Feinstein, Chairman
Subcommittee on Technology, Terrorism,
And Government Information
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Madam Chairman:

It was a pleasure meeting with you and members of the Subcommittee to discuss security of nuclear power plants. You asked about NRC proposed legislation to improve the effectiveness of NRC licensees' guard forces.

Following the tragic events of September 11, many members of Congress have asked the Nuclear Regulatory Commission how they can help to improve the security at nuclear power plants. The Commission has requested that the Congress enact the Commission's proposed security legislation. Three of our proposals have been pending before Congress for at least 12 years and the Commission has repeatedly sent these proposals to Congress at two-year intervals. The Senate in the last Congress twice passed these three proposals, and the House Committee on Energy and Commerce favorably reported the proposals in the last Congress, but they did not come before the full House for a vote. This year three NRC security proposals have been introduced in the Senate (S. 1586) and the House Committee on Energy and Commerce has again reported them out of Committee as part of H.R. 3016, but again there has been no House floor action.

The three proposals that have long been 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; and (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). These proposals are overdue for enactment in our view.

We also are asking for legislation that would confer upon guards at NRC designated facilities the authority to possess or use weapons that are comparable to those available to the Department of Energy guard forces to protect against the Design Basis Threat. Some State laws currently preclude private guard forces at NRC regulated facilities from utilizing a wide range of weapons. The current language addresses all comments made by the Department of Justice. The Office of Management and Budget has no objection to the transmission of this legislative language from standpoint of the President's program.

The Commission has for many years been making a concerted effort to enhance security at nuclear facilities. Since the events of September 11, we have renewed our efforts

with even greater urgency. In light of the national concern about security at nuclear power plants, we urge that Congress enact these provisions into law before it adjourns for the year.

We are enclosing our proposals for your consideration. Please do not hesitate to contact me if you have any questions. The Commission is prepared to work with the Congress on these important national security issues.

Sincerely,

/RA/

Richard A. Meserve

Enclosure: NRC proposals

cc: Senator Jon Kyl

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."