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January 28, 2000

DOCKET NUMBER
PETITION RULE PRM 73-10
(64FR49410)

Ms. Annette L. Vietti-Cook
Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

ATTENTION: Rulemakings and Adjudication Staff

REFERENCE: Request for Comments on "State of Nevada; Petition for Rulemaking" Docket No. PRM-73-10, Modification of the regulations governing safeguards for shipments of spent nuclear fuel against sabotage and terrorism, 64 Fed. Reg. 49410 (September 13, 1999)

Dear Ms. Vietti-Cook:

The Nuclear Energy Institute (NEI),¹ is submitting the following comments on the State of Nevada's Petition for Rulemaking (Docket No. PRM-73-10), that seeks amendment of the regulations governing safeguards for shipments of spent nuclear fuel against sabotage and terrorism. The basis of the petition is a perceived change in the nature of terrorist threats of radiological sabotage and fears of increased vulnerability of shipping casks to high-energy explosive devices. The petitioner contends that a national repository or an interim storage facility for spent nuclear fuel or high-level waste will become a prime target for symbolic terrorist attacks. To address these perceived concerns, the petition seeks, among other things, broader definition of terms used in 10 CFR Part 73, increased use of armed escorts for waste shipments, more stringent advance route approval requirements and use of dedicated trains for rail shipments.

¹ NEI is the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include all utilities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, materials licensees, and other organizations and individuals involved in the nuclear energy industry.

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NEI agrees that NRC policies and regulations should be maintained to address changing circumstances or conditions. NEI concurs that the NRC should complete its comprehensive assessment of credible threats of sabotage and terrorism against transportation infrastructure early within 2000. The balance of the Petitioner's claims are, however, highly suppositional and lacking in substantiating detail. NEI does not, therefore, support modification of 10 CFR 73 as requested by the Petitioner. In the balance of this letter specific claims of the Petitioner are examined and commented upon.

The protection of nuclear material from sabotage and terrorism requires licensees to provide an adequate level of protection against attacks or acts of sabotage up to what is defined as "enemies of the United States" (enemies of the state) and, in the event of an attack, to maintain the integrity of the nuclear material. Nevada's petition recommends modifications to the regulations, which would create ambiguity if adopted.

The Petitioner seeks to broaden the definition of "*radiological sabotage*" to include planned, but not necessarily executed, terrorist acts or attacks that do not result in release of radioactive materials. To require a licensee to protect against hypothetical attacks or those over which it has absolutely no knowledge or control constitutes an unreasonable burden. The Petitioner's request that the definition include acts "*...that are intended to cause economic damage or social disruption...*" so as to "*...calm local fears and anxieties...the collective psychological trauma... and protect against economic losses resulting from public perceptions of risk and stigma effects...*" goes far beyond the NRC's mandate. The NRC must ensure that no unreasonable radiological risks are posed to public health and safety from transportation of radioactive materials. The current definition of "*radiological sabotage*" in 10 CFR 73.1 is comprehensive and adequate for transportation purposes.

The Petitioner does not substantiate its argument that a significant change in the nature of terrorist threats has occurred. The assertion that shipping casks should be evaluated against "*...future military weapons...*" is both an unreasonable and untenable demand. While asserting that terrorists prefer to attack sites having a high symbolic value such as government facilities or population centers the Petitioner then contends that stolen "*...military attack vehicles or military aircraft armed with bombs, missiles or other powerful weapons...*" would be directed against a remotely-sited, well-secured repository or interim storage facility. Attacking such a repository or storage facility would hardly appear to constitute a "highly symbolic" target like the World Trade Center or the Murrah Federal Building in Oklahoma City.

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NEI is particularly concerned at the Petitioner's inference that the police, armed forces and investigative services of the United States are incapable of protecting against terrorist threats. The Petitioner seeks to place the entire responsibility of monitoring for terrorists and protecting against potential attacks on the licensee who is making the shipment. This is an unreasonable expectation for NRC licensees to establish an intelligence network and to commit significant resources to identify, monitor and protect against enemies of the state. The Petitioner fails to understand that protection of the public from terrorist attacks, and specifically from enemies of the state, regardless of the target, is the responsibility of the United States government. This responsibility is not articulated in Part 73, but it is clearly identified in 10 CFR 50.13 wherein nuclear power plant licensees are not required to protect against attacks and destructive acts committed by enemies of the United States.

The Petitioner fails to convincingly argue that increasing the armed escort requirements will materially reduce the radiological risks to public health and safety of a shipment. The safety benefits of having an extra-armed guard accompanying a shipment through population centers have not been quantified. Nor has the petitioner quantified the benefit of real-time aircraft surveillance of rail routes as a deterrent to a dedicated terrorist.

In summary, we encourage the NRC to complete in a timely fashion its comprehensive assessment of the threats of sabotage and terrorism against transportation infrastructure. However, we do not support the State of Nevada's recommendation for modifications to NRC regulations that would require licensees to defend against enemies of the state and that would create regulatory ambiguity with respect to radiological sabotage. In responding to the Petitioner, we believe the NRC should clearly state that protecting against hypothetical attacks and actions by enemies of the United States does not fall within the control of a licensee.

We would be pleased to discuss these comments and to respond to any questions the NRC may have.

Sincerely,

A handwritten signature in black ink, appearing to read 'Felix M. Killar, Jr.', written in a cursive style.

Felix M. Killar, Jr.