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April 10, 2006

The Honorable Nils Diaz  
Chairman  
Nuclear Regulatory Commission  
Washington, D.C.

Dear Mr. Chairman:

I am writing you in response to a March 31, 2006 press release issued by the Commission, reporting that the NRC has sent an Augmented Inspection Team (AIT) down to Florida Power & Light's Turkey Point Unit 3 nuclear power plant to find out the cause of certain "equipment damage" at the reactor.

A Florida Power and Light spokesperson has been quoted in the press as stating that the equipment damage in question was a 1/8<sup>th</sup> inch hole was drilled into a stainless steel pipe connected to the "pressurizer," a tank responsible for ensuring the water used to cool the reactor does not turn to steam. The FP&L spokesman further reported that, "Being that it was a drilled hole, obviously it was done intentionally..." "But we don't know if it was human error, somebody just drilling in the wrong place, or if it was a deliberate act."

Press reports also indicate that the Federal Bureau of Investigation is now participating in the investigation into the hole, and that a \$100,000 reward has been offered for information that might lead authorities to the identify of the person or persons that drilled the hole.

These reports of NRC and FBI investigations into security problems at Turkey Point come six weeks after the NRC sent another Augmented Inspection Team down to Turkey Point to "review security issues at the Turkey Point nuclear power plant." At that time, the NRC issued a February 16, 2006 press release stating:

"An AIT is formed to review the circumstances surrounding more significant issues at NRC- licensed facilities. The NRC team inspection includes specialists from the agency's Region II office in Atlanta and from its headquarters in Rockville, Md. The team is expected to spend about one week at the site before returning to the regional office where the information they have gathered will be analyzed and evaluated.

"In addition to the AIT, the NRC is issuing a Confirmatory Action Letter to FP&L to confirm that the company has taken or plans to take appropriate corrective actions and has initiated its own investigation of the issues.

"This inspection team will comprehensively assess the Turkey Point security issues to ensure that the security program is being effectively implemented," said NRC Region II Administrator William Travers.

"Details of NRC inspections of security at the nation's nuclear power plants are not publicly available. The NRC has determined that certain security information should not be made public if it could reasonably be useful to an adversary."

The fact that the NRC has been forced to send two Augmented Inspection Teams to Turkey Point in a matter of weeks, and that the FBI is now participating into an investigation into what could possibly be an act of sabotage at the plant, raises some very serious questions regarding the nature and adequacy of security at Turkey Point. In order to better understand the facts and circumstances surrounding this matter, I hereby request your assistance and cooperation in responding to the following questions:

1. The NRC's February 16, 2006 press release notes that "An AIT is formed to review the circumstances surrounding more significant issues at NRC- licensed facilities." What were the circumstances surrounding the more significant issues at Turkey Point that prompted the NRC to send the first Augmented Inspection Team to Turkey Point in February?
2. The NRC's February 16, 2006 press release further notes that "the NRC is issuing a Confirmatory Action Letter to FP&L to confirm that the company has taken or plans to take appropriate corrective actions and has initiated its own investigation of the issues." Please provide a copy of the referenced letter, as well as any response by FP&L to the Confirmatory Action Letter. In addition, if the NRC has had any subsequent correspondence with FP&L on this matter, please provide copies of such correspondence as well.
3. The NRC's February 16, 2006 press release states that "Details of NRC inspections of security at the nation's nuclear power plants are not publicly available. The NRC has determined that certain security information should not be made public if it could reasonably be useful to an adversary." While I understand the basis for not revealing the details of inspections and vulnerabilities at a nuclear power plant, the public also has a right to know if and when an NRC licensee is not performing well or not complying with NRC regulations. Why hasn't the NRC provided at least some public summary of its findings and conclusions in this matter?
4. The NRC's February 16, 2006 press release further states that, "This inspection team will comprehensively assess the Turkey Point security issues to ensure that the security program is being effectively implemented." Please provide me with a copy of any report, memoranda, or other document setting forth the NRC Augmented Inspection Team's "comprehensive assessment" of security issues at Turkey Point.
5. What steps has the Commission taken to ensure that the license is "effectively implementing" any findings or recommendations made by the Augmented Inspection Team?

6. Does the NRC have any indications that the events and circumstances that gave rise to the need to send a second Augmented Inspection Team to Turkey Point may be related to some of the same security concerns that led to the decision to send the first Team to the facility back in February?
7. The NRC's March 31, 2006 press release states that the Augmented Inspection Team was expected to spend about one week at the site before returning to the regional office where the information they have gathered will be analyzed and evaluated. Please provide me with a copy of the aforementioned analysis and evaluation when it is completed.
8. The NRC release further states that the inspection team will review the company's own investigation as well as independently assess the extent of the equipment issues and the company's response. Please provide me with a copy of the referenced company investigation, as well as any independent assessment of the issues by the NRC, as well as the company's response?
9. Is the NRC at all concerned that these two incidents may reflect a breakdown or weakness in the security culture at FP&L? If not, why not? If so, what steps is the NRC taking to remedy this situation?
10. The NRC website describing its Reactor Oversight Process (ROP) states that, "Although the NRC is actively overseeing the physical protection cornerstone, the Commission has decided that the related inspection and assessment information will not be publically (sic) available to ensure that potentially useful information is not provided to a possible adversary." As a result, under the color-coded matrix adopted by the NRC in its ROP, the only item that shows up as "white" to the public is "Heat Removal System Unavailability." The NRC website reports that, "Physical protection information is not publicly available and the associated performance indicators and inspection findings are not integrated into the Action Matrix Summary." Is the Commission at all concerned that the failure to provide any public reporting whatsoever on licensee compliance with physical protection requirements does a disservice to the public by providing a misleading picture of licensee compliance with NRC regulatory requirements?
11. Doesn't the public have a right to know if a licensee is failing to ensure that the safeguards program is functioning to protect against the design basis threat of radiological sabotage from either external or internal sources, and that licensees are maintaining adequate protection against threats through an effective security program that relies on a defense in depth approach? For example, why couldn't the NRC at least include whether green, yellow, white, red inspection findings or performance indicators have been made for a particular plant – even if the details of the inspections and assessments that give rise to a less than fully satisfactory evaluation are not released for security reasons?
12. Within the last year, the NRC has apparently exercised "enforcement discretion" not to take action against FP&L for having failed to comply with NRC safety rules on several occasions, and has also found "non-cited violations" of NRC rules. These include:
  - A February 6, 2006 enforcement discretion letter allowing FP&L not to comply with certain NRC fire protection requirements;

- An October 27, 2005 letter noting a “non-cited violation” due to FP&L’s “failure to maintain the required number of channels of pressurizer level” instrumentation due to “heat damage to instrument cables located near reactor coolant system piping in the containment building.”
- A July 27, 2005 letter noting 3 non-cited violations, as follows: 1) “the licensee failed to notify control room personnel when a reflash fire was suspected in the Unit 4 main transformer;” 2) “the licensee failed to follow procedures for identifying and resolving high unidentified reactor coolant system leakage;” and, 3) “licensee failed to enter a condition adverse to quality in the corrective action program in that on multiple occasions a plant responder was not available to respond to an event by virtue of being locked out of the plant protected area.”
- A April 26, 2005 letter reporting a “non-cited violation” for the licensee’s “failure to include adequate instructions in procedures which resulted in two manual reactor trips due to rod drop events.”
- A January 28, 2005 letter reporting on 3 “non-cited violations,” specifically: 1) “that one of the four required High Head Safety Injection (HHSI) pumps was inoperable for greater than 30 days, and the unit was not shut down, as required; 2) “failure to perform the pre-placement inspection of the Unit 3 containment construction opening prior to concrete placement...”; 3) “failure to correct deficiencies identified during examination of the Unit 3 reactor containment building moisture barrier; failure to conduct augmented inspections; failure to expand the sample size; and, failure to perform re-examination of areas of degradation during the next inspection period...”

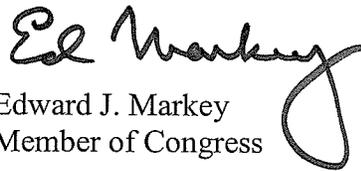
Is the NRC at all concerned that the overall number of “non-cited violations” and NRC exercises of “enforcement discretion” to not take action against other violations at Turkey Point may have contributing to a lax safety and security culture at FP&L?

13. How many “non-cited violations” has the NRC issued for Turkey Point over the last 5 years?
14. How many exercises of “enforcement discretion” has the NRC issued for Turkey Point during this same period?
15. During this same period, has the NRC issued any “non-cited violations” for violations of physical security or safeguards regulations, directives, or guidances, or exercised “enforcement discretion” for such violations, that have not been publicly reported? If so, how many NCV’s have been issued and how many enforcement discretion actions have been exercised?
16. The Government Accountability Office (GAO) has previously criticized the NRC’s oversight of nuclear power plant security. For example, a September 2003 GAO report, entitled “Nuclear Regulatory Commission: Oversight of Nuclear Power Plants Needs to be Strengthened,” found three aspects of the NRC’s oversight of nuclear security issues to be flawed. One of the flaws that GAO identified in this report was that “NRC inspectors often used a process that minimized the significance of security problems found in annual inspections by

- classifying them as “non-cited violations” if the problem had not been identified frequently in the past or if the problem had no direct, immediate, adverse consequences at the time it was identified.” GAO warned that “by making extensive use of non-cited violations for serious problems, the NRC may overstate the level of security at a power plant and reduce the likelihood that needed improvements are made.” Is the NRC concerned that that its use of “non-cited violations” at the Turkey Point facility may have overstated the level of security or safety at the plant, and contributed to the current problems at the facility?
17. If the hole had not been discovered in a timely fashion, and the Turkey Point reactor had been restarted, what does the NRC project to be the worst case consequences? Could these consequences include a possible loss of coolant accident?

Thank you for your assistance and cooperation in responding to this request. If you have any questions, please contact Mr. Jeff Duncan or Dr. Michal Freedhoff of my staff at 202-225-2836.

Sincerely,

  
Edward J. Markey  
Member of Congress