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United States Senate

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The Honorable Stephen G. Burns
Chairman
Nuclear Regulatory Commission
Rockville, MDD 20852

Dear Chairman Burns:

I write to express my firm opposition to industry-proposed changes to the Nuclear Regulatory Commission's (NRC) force-on-force (FOF) program, which would replace FOF inspections conducted by the Commission with exercises conducted by licensees. This change would violate Section 170D of the 2005 Energy Policy Act, which I authored, and which expressly mandates NRC-conducted FOF exercises as an essential part of its security evaluation protocol at nuclear power plants. Commission-conducted evaluations play an essential role in assuring the security of licensed nuclear reactors in the event they are attacked by terrorists, including attacks aided by insiders. Any effort to cede this responsibility to licensees would be both illegal and irresponsible.

The nuclear industry's proposal to eliminate NRC-run FOF inspections would violate both the letter and spirit of the law. It would also reduce the likelihood that security gaps are discovered and reported to the Commission in a timely manner. The threat to nuclear reactors is not theoretical. In November 2015, Belgian police discovered that ISIS terrorists linked to the Paris attacks had acquired surveillance footage of a high-ranking Belgian nuclear official.¹ And in 2012, two employees at a Belgian nuclear plant quit to fight with violent jihadists groups in Syria.² Furthermore, according to the official report of the 9/11 Commission, Mohamed Atta, one of the ringleaders of the attacks, originally scouted the Indian Point nuclear power plant near New York City as a potential target.³

These incidents indicate the need to ensure that nuclear plants in the United States are protected against security threats. Unfortunately, gaps remain. Most recently, for example, an NRC investigation revealed that a firearm at the Seabrook Nuclear Power Plant in Seabrook,

¹ Milan Schreuer and Alissa J. Rubin, "Video Found in Belgium of Nuclear Official May Point to Bigger Plot," *New York Times*, February 18, 2016, <http://www.nytimes.com/2016/02/19/world/europe/belgium-nuclear-official-video-paris-attacks.html>

² Alissa J. Rubin and Milan Schreuer, "Belgium Fears Nuclear Plants are Vulnerable," *New York Times*, March 25, 2016, <http://www.nytimes.com/2016/03/26/world/europe/belgium-fears-nuclear-plants-are-vulnerable.html>

³ *The 9/11 Commission Report*, p. 245. <https://9-11commission.gov/report/911Report.pdf>

New Hampshire had been deliberately rendered inoperable by a NextEra employee, in violation of NRC rules that all firearms must be in working condition.

I have previously written to the Commission to warn of the dangers of ceding the Commission's responsibility to assure the security of nuclear reactors to the nuclear industry. In 1999, after I successfully thwarted efforts by NRC staff to eliminate the NRC's counter-terrorism program for nuclear power plants, I wrote to then-Chairman Jackson to express my concern that staff were still trying to replace force-on-force drills run by NRC with licensee-run exercises.⁴ The following year, I expressed similar concerns in letters to the FBI and the National Security Council.⁵ In the months following the terrorist attacks of September 11, 2001, I wrote repeatedly to NRC to express concern about its security measures at nuclear facilities, including its planned FOF exercises. And in August 2004, I wrote to then-Chairman Diaz to oppose industry's use of the same security contractors responsible for defending nuclear power plants to conduct FOF drills on those plants.⁶

These blatant conflicts of interest and lax security procedures by the nuclear industry resulted in the enactment of my provision in the Energy Policy Act of 2005 that requires NRC-run force-on-force exercises. This provision states: "Not less often than once every 3 years, the Commission shall conduct security evaluations at each licensed facility," and that "[these] security evaluations shall include force-on-force exercises."⁷ Furthermore, the law states that "the Commission shall mitigate any potential conflict of interest that could influence the results of a force-on-force exercise."⁸

In contrast to these clear statutory requirements, the nuclear industry has suggested that compliance "could be achieved by NRC evaluating the current annual licensee-conducted FOF exercises...in lieu of a stand-alone inspection."⁹ This assertion is erroneous. A plain reading of the Energy Policy Act clearly indicates that the Commission — not licensees — must conduct FOF exercises.

NRC Commissioners have historically supported the view that allowing licensees to inspect themselves would violate the law and undermine public confidence in security. As then-Commissioner Ostendorff made clear, "I am also opposed to industry's suggestion that the NRC observe licensee-conducted force-on-force exercises...NRC-conducted force-on-force exercises have an important role in the public confidence in physical security programs and are mandated by legislation."¹⁰ And in your own comments, you note that "the language requiring FOF

⁴ Letter from Rep. Edward J. Markey to Chairman Shirley Ann Jackson, February 23, 1999.

⁵ Letter from Rep. Edward J. Markey to Director Louis J. Freeh, February 7, 2000.

⁶ Letter from Rep. Edward J. Markey to Chairman Nils J. Diaz, August 23, 2004

⁷ PL-109-58, Sec. 170D.

⁸ Ibid.

⁹ Nuclear Energy Institute, Response to "SRM COMGEA/COMWCO-14-0001," February 11, 2014, <http://www.nei.org/CorporateSite/media/filefolder/Federal-State-Local-Policy/Correspondence/NEI-Response-to-SRM-COMGEA-COMWCO.pdf>

¹⁰ Commissioner Ostendorff's Comments on SECY-16-0073: "Options and Recommendations for the Force-on-Force Inspection Program in Response to SRM SECY 14-0088," <http://www.nrc.gov/docs/ML1618/ML16182A516.pdf>

exercises in Section 170D of the Atomic Energy Act of 1954, as amended, arguably creates challenges for implementation” of a proposal to allow licensee-run exercises.¹¹

A robust FOF program is both a legal requirement and a security imperative. I urge you to take all necessary steps to strengthen NRC’s program, including by preserving NRC-conducted FOF inspections, opposing any reductions in the frequency of these inspections, and closely monitoring licensees to ensure their compliance with requirements for remediating any security gaps these exercises uncover. Only a strong, independent program run by NRC will ensure that terrorists or other saboteurs are never able to exploit vulnerabilities in our nuclear infrastructure to harm Americans.

Sincerely,



Edward J. Markey
United States Senator

¹¹ Chairman Burns’s Comments on SECY-16-0073. October 5, 2016.