

STATEMENT OF

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COMMITTEE ON ARMED SERVICES

U.S. SENATE

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Mr. Chairman and Members of the Committee: thank you for inviting me to testify on the Department of Energy's efforts to deal with the interdependence and complexity of protective force personnel issues, contracting requirements, and security needs at our national security facilities. Specifically, we must fairly address the reasonable concerns of protective force personnel for clear and attainable career paths to retirement, yet also balance those desires with the Department's need to maintain forces capable of securing our facilities in a cost effective manner. The Department has been pursuing ways to address these overlapping needs for many years.

BACKGROUND

As early as 2003 my office recognized a number of concerns associated with the Department's contractor protective force model. Some concerns were expressed by protective force members and their unions, and others by the Department's security and line managers. Personnel concerns included issues such as the lack of a career path that protective force personnel could reasonably be assured of until retirement, nominally at age 65, as well as the lack of alternative positions available to personnel who, due to job-related injuries, other disabilities, or advancing age, could no longer meet the physical standards required for armed positions. Management's concerns with the contractor force model included the very real potential for protective force strikes at the expiration of collective bargaining agreements and the inefficiencies associated with a lack of standardization among protective forces' weapons, equipment, and training.

The opportunity to consider and, hopefully, act on these issues was one factor in our efforts to have then Secretary Abraham include protective force upgrades prominently in his May 2004 comprehensive package of security initiatives. The protective force element of the security

initiative was referred to at the time as the “elite force” initiative and recognized the need to respond to revised perceptions of the post 9-11 threat environment by transitioning some protective force elements toward a more combat-capable status that included mobile response and increased offensive combat capabilities.

In response to the Deputy Secretary’s June 2004 direction to develop options to implement the elite force initiative – direction which specifically included examining possible federalization of protective forces – my office and the NNSA tasked a Protective Force Working Group to study the inherent issues. The Working Group issued papers in August and October 2004, and their recommendations included federalization of the protective forces. The Working Group’s federalization position was based on perceived principles associated with elevating protective forces to levels of equal status and capability with the nation’s elite military units; it was not accompanied by a cost/benefit analysis or a plan for achieving federalization. Initial analysis of the federalization issue indicated that while federalization offered potential benefits, it also posed significant difficulties.

Based largely on the results of the Working Group, in January 2005 the Department identified its chosen path forward for implementing the elite force initiative. Phase I included actions to enhance policy, tactical planning, training and readiness, physical standards, and use of security technology. The issue of federalization was deferred, to avoid creating instability during a time of already profound change affecting the protective forces, and also because the Department had concluded that the major benefits of federalization could be achieved within the contractor protective forces model so long as the contractors and the unions supported the effort to establish and maintain an elite force.

In March 2006 the Department promulgated major policy changes to implement the elite force concept, which had become known as the Tactical Response Force concept. Initial misinterpretation of these changes led to perceptions that a much larger proportion of protective force personnel would be compelled to meet the more demanding offensive combatant physical standard. This prospect caused concern among some protective force personnel and their unions; the changes were seen as exacerbating long-standing concerns regarding the ability of aging or disabled personnel to meet increased physical performance requirements, and hence to remain on the job until retirement age. Protective forces unions voiced increasing support for federalization in the belief that it would include provisions for an early retirement program as well as other benefits associated with existing federal law enforcement programs. A strike by the Pantex Guard Union in the spring of 2007 was influenced in part by a narrow interpretation of the new requirements of the proposed Tactical Response Force.

In March 2008 NNSA received the results of a study -- "Comparative Analysis of Contractor and Federal Protective Forces At Fixed Sites" -- it had commissioned to examine the contract force/federalization issue. In June 2008 NNSA received a follow on "Cost Analysis and Modeling" supplement to the initial report. The study and supplement concluded that key union assumptions about federalization -- such as 20 year retirement, automatic hiring of incumbents, and portability or grandfathering of retirement benefits -- could not occur under current law; converting contract protective forces "en masse" to federal forces would require extensive new legislation.

As the issue of federalization was examined, it became clear that federalization would be difficult and would potentially have negative consequences for many current protective force members. Federalization of the private sector contractor force would require more complex

legislation, for example, than had an earlier successful effort to give nuclear materials couriers, who were already federal employees, retirement benefits equivalent to law enforcement officers under the Civil Service Retirement System and the Federal Employees' Retirement System.

The NNSA –commissioned analyses also confirmed that many of the concerns associated with the contract force model could be addressed constructively within that model. DOE management including NNSA, decided not to pursue federalization, but rather to address identified problems within the private, contractor force model. In January 2009 the Deputy Secretary was informed of the proposed path forward – not to federalize the protective forces but to implement standardized procedures and practices at NNSA Category I facilities which would provide the major benefits of federalization while maintaining contractor protective forces.

Although the Department does not consider the federalization model the best option for meeting its security needs, it remains committed to addressing the major career path and retirement-related concerns of its contractor protective forces, as expressed through their unions and the National Council of Security Police, an umbrella organization made up of DOE protective force bargaining units. Consequently, in March 2009 the Office of Health, Safety and Security commissioned a Protective Force Career Options Initiative Study Group to examine realistic and reasonable options for improving the career opportunities and retirement prospects of protective force members while maintaining a robust and effective security posture. Response to this initiative was positive: representation on the Study Group included the National Council of Security Police (represented in the hearing today by Mike Stumbo), my office, NNSA, and other DOE headquarters program offices. In June of last year the Study Group made 29 recommendations; 14 are considered to be cost neutral and achievable under existing governance structures while the other 15 involve additional program costs and/or changes to existing

management and contractual approaches. The 2010 National Defense Authorization Act requires the Department to develop and submit to Congress by April 30, 2010, a comprehensive Department-wide plan to implement the Study Group recommendations. We intend to submit that plan on time.

In July 2009, and consistent with one of the Study Group recommendations, we created the Protective Force Career Options Committee as a standing committee tasked with continuing the work of the Study Group by assisting DOE in implementation of the Study Group's recommendations.

In January 2010 the Government Accountability Office published the results of a Congressionally mandated study of the management of DOE protective forces. The GAO study recommends that DOE respond to the 29 recommendations of the DOE Study Group by developing and executing implementation plans for those recommendations identified as low- or no-cost, and by planning and conducting research to identify the most beneficial and financially feasible options for implementing the remaining recommendations that may involve substantial costs or contractual and organizational changes. The Department has concurred with the findings and recommendations of the GAO report.

CURRENT STATUS

This brings us to the current status of our efforts to address the situation and my assessment of what we have accomplished and what remains to be accomplished. First, the Office of Health, Safety and Security remains committed to assisting the Department in providing levels of security at our facilities that are consistent with the assets in our custody and our understanding of the most current national threat environment. That commitment includes an effort to identify

and promote the necessary actions to ensure that the protective forces are treated in a manner consistent with their vital role and the heavy professional demands it imposes.

The Department has made significant progress at considerable cost in its efforts to provide its protective forces with the tactical and technical tools required to implement the Tactical Response Force concept and ensure mission success; some of those efforts remain works in progress. The Department has made significant investments in physical security upgrades such as barriers, advanced sensor systems, and hardened defensive positions; in advanced, more capable and longer range weapons systems and tactical equipment; in defensive strategies and tactical planning to field the Tactical Response Force concept to advantage; and in tactical training to improve the skills of the personnel who will comprise the Tactical Response Force. These upgrades are designed to increase the tactical effectiveness of the protective forces while decreasing their vulnerability to adversary actions.

Implementation of the Tactical Response Force concept as well as the weapons and equipment upgrades and personnel training have varied from site to site, as expected; some sites continue to adjust their implementation efforts to better align with local conditions. This remains an ongoing process with more work to be done at some sites before they will have fully integrated the old and new approaches.

The Department has made clear gains in implementing security initiatives that provide more robust asset protection and mission-related advantages to protective force personnel. The Department has not made similar progress, however, in its efforts to address the concerns of protective force members regarding their career prospects and retirement issues. The Tactical

Response Force concept includes a requirement for career progression planning for each protective force member, although many individual plans are still outstanding.

I would like to take a minute here to emphasize that our lack of progress in some areas does not reflect a lack of commitment or effort on our part, but rather reflects the complexity and difficulty of determining and maintaining the most appropriate and fair balance among issues which affect the well-being of the protective forces and the success of our mission to provide highest quality, cost effective security. The Department's efforts are and will continue to be aligned with the Study Group's 29 recommendations. The Study Group, in fact, has evolved into the Protective Force Career Options Committee, referenced earlier in this testimony.

The NNSA, in whose facilities most of the protective forces serve, began a Zero Based Security Review in July 2009. This review is developing detailed analyses of security programs and needs at each NNSA facility, and is expected to be completed by the end of 2010. It is expected to provide information and analyses directly applicable to many of the Study Group's recommendations.

In addition, DOE's National Training Center is currently conducting analyses and a curriculum development effort to support protective force career progression and career transition training. In conjunction with this effort, HSS is also working to modify an existing complex-wide job register to better accommodate the specific needs of protective force personnel.

Study Group recommendations dealing with protective force physical fitness standards, medical requirements, and the Human Reliability Program all involve requirements in the Code of Federal Regulations. To modify these requirements, the Department must go through a formal rulemaking process. The Office of Health, Safety and Security has established a task team to

oversee this process. The team is currently reviewing the physical fitness standards for proposed revision, has nearly completed a set of proposed revisions to the medical standards, and has a proposed revision of the Human Reliability Program regulation under review in the Department.

Action on a few recommendations – retirement and (financial) retirement planning, portability/mobility among contractors, disability retirement, retraining and placement outside of protective forces, and various personnel services and actions – is proving difficult. While these recommendations pertain to issues of high importance to the protective forces and their unions, these are also issues covered in the collective bargaining agreements between the private sector contractors and the unions. Although the Department can establish the overall parameters for future contracts, the Department is prohibited by Federal Acquisition Regulations from interfering with collective bargaining agreements or dictating the terms of those agreements. Since each of the respective protective forces contractors and unions negotiate agreements based on their specific interests, significant differences exist in the terms and conditions of various contracts from site to site. The extent to which unions would be amenable to negotiating contracts with common clauses is unknown, although the Department would be willing to explore ways to accommodate such an effort through the parameters it establishes in future contracts. For example, the Department should consider establishing a program—similar to the benefits currently allowed for beryllium workers under 10 CFR 850—that would provide retraining and transfer or two year save pay benefits for protective force personnel who are injured or otherwise unable to meet physical standards. HSS is currently working with line management with the goal of crafting a comprehensive, standardized approach to protective force career progression and retirement issues.

CONCLUSION

Of the 29 recommendations, the Department is making good progress on those that can be resolved within DOE. We are also moving forward on those issues which can be addressed through rulemaking, although that process is slower. The Department is still seeking workable solutions to the more difficult problems which variously involve contracting and collective bargaining. As noted above, the Department intends to present a plan to implement all 29 recommendations to Congress in April. We recognize that the protective forces are a key element in the protection of our most sensitive national security assets. Fair resolution of the most difficult protective forces personnel issues will necessarily require cooperation and compromise by all parties. The Department also believes firmly that needed changes and improvements can be made within the contract protective forces model, and that it will benefit both the Department and protective forces personnel to work together to resolve all outstanding issues in as fair and fast a process as possible. The Department is committed to finding solutions that ensure the fair and equitable treatment of each protective force member.