

NUCLEAR REGULATORY COMMISSION

[Docket No: (Redacted),

License No: (Redacted), EA (Redacted)]

In the Matter of A Power Reactor Licensee Who Transports Spent Nuclear Fuel;

Order Modifying License (Effective Immediately)

I.

The Licensee identified in Attachment 1 to this Order has been issued a specific license by the U.S. Nuclear Regulatory Commission (NRC or Commission) authorizing the possession of spent nuclear fuel and a general license authorizing the transportation of spent nuclear fuel [in a transportation package approved by the Commission] in accordance with the Atomic Energy Act of 1954, as amended, and 10 C.F.R. Parts 50 and 71. This Order is being issued to all such licensees who transport spent nuclear fuel. Commission regulations for the shipment of spent nuclear fuel at 10 C.F.R. § 73.37(a) require these licensees to maintain a physical protection system that meets the requirements contained in 10 C.F.R. § 73.37(b), (c), (d), and (e).

II.

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of

Safeguards and Threat Advisories to its licensees in order to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility or regulated activity. The Commission has also communicated with other Federal, State and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has been conducting a comprehensive review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security plan requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain additional security measures are required to be implemented by licensees as prudent, interim measures, to address the current threat environment in a consistent manner. Therefore, the Commission is imposing requirements, as set forth in Attachment 2 of this Order, on the Licensee identified in Attachment 1 of this Order.¹ These additional security requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect until the Commission determines otherwise.

The Commission recognizes that licensees may have already initiated many of the measures set forth in Attachment 2 to this Order in response to previously issued Safeguards and Threat Advisories or on their own. It is also recognized that some measures may not be possible or necessary for all shipments of spent nuclear fuel, or may need to be tailored to accommodate the licensees' specific circumstances to achieve the intended objectives and avoid any unforeseen effect on the safe transport of spent nuclear fuel.

¹ Attachments 1 and 2 contain SAFEGUARDS INFORMATION and will not be released to the public.

Although the additional security measures implemented by licensees in response to the Safeguards and Threat Advisories have been adequate to provide reasonable assurance of adequate protection of common defense and security, in light of the current threat environment, the Commission concludes that the security measures must be embodied in an Order consistent with the established regulatory framework. In order to provide assurance that licensees are implementing prudent measures to achieve a consistent level of protection to address the current threat environment, the License identified in Attachment 1 to this Order shall be modified to include the requirements identified in Attachment 2 to this Order. In addition, pursuant to 10 C.F.R. § 2.202, and in light of the common defense and security matters identified above which warrant the issuance of this Order, the Commission finds that the public health, safety, and interest require that this Order be immediately effective.

III.

Accordingly, pursuant to Sections 53, 103, 104, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 C.F.R. § 2.202 and 10 C.F.R. Parts 50 and 71, IT IS HEREBY ORDERED, **EFFECTIVE IMMEDIATELY**, THAT ALL LICENSES IDENTIFIED IN ATTACHMENT 1 TO THIS ORDER ARE MODIFIED AS FOLLOWS:

- A. The Licensee shall, notwithstanding the provisions of any Commission regulation or license to the contrary, comply with the requirements described in Attachment 2 to this Order except to the extent that a more stringent requirement is set forth in the Licensee's security plan. The Licensee shall immediately start implementation of the requirements in Attachment 2 to the Order and shall complete implementation by

January 2, 2004, unless otherwise specified in Attachment 2, or before the first shipment after December 3, 2003, whichever is earlier.

- B.
 - 1. The Licensee shall, within twenty (20) days of the date of this Order, notify the Commission, (1) if it is unable to comply with any of the requirements described in Attachment 2, (2) if compliance with any of the requirements is unnecessary in their specific circumstances, or (3) if implementation of any of the requirements would cause the Licensee to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide the Licensee's justification for seeking relief from or variation of any specific requirement.
 - 2. If the Licensee considers that implementation of any of the requirements described in Attachment 2 to this Order would adversely impact the safe transport of spent fuel, the licensee must notify the Commission, within twenty (20) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment 2 requirement in question, or a schedule for modifying the activity to address the adverse safety condition. If neither approach is appropriate, the Licensee must supplement its response to Condition B1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B1.
- C.
 - 1. The Licensee shall, within twenty (20) days of the date of this Order, submit to the Commission a schedule for achieving compliance with each requirement described in Attachment 2.

2. The Licensee shall report to the Commission when it has achieved full compliance with the requirements described in Attachment 2.
- D. Notwithstanding any provisions of the Commission's regulations to the contrary, all measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise.

Licensee responses to Conditions B1, B2, C1, and C2 above, shall be submitted to the NRC to the attention of the Director, Office of Nuclear Reactor Regulation under 10 C.F.R. § 50.4. In addition, Licensee submittals that contain Safeguards Information shall be properly marked and handled in accordance with 10 C.F.R. § 73.21.

The Director, Office of Nuclear Reactor Regulation, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

IV.

In accordance with 10 C.F.R. § 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the Licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to

the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555-0001. Copies also shall be sent to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address; to the Regional Administrator for the NRC Region appropriate for the specific facility; and to the Licensee if the answer or hearing request is by a person other than the Licensee. Because of potential disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to (301) 415-1101 or by e-mail to hearingdocket@nrc.gov, and also to the Office of the General Counsel either by means of facsimile transmission to (301) 415-3725 or by e-mail to OGCMailCenter@nrc.gov. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 C.F.R. § 2.714(d).

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 C.F.R. § 2.202(c)(2)(i), the Licensee may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty

(20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received.

AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

Dated at Rockville, Maryland, this 3rd day of December 2003.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

J. E. Dyer, Director
Office of Nuclear Reactor Regulation

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J. E. Dyer, Director
Office of Nuclear Reactor Regulation

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* See previous concurrence

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