

September 12, 2007

Mr. W. Edward Cummins
AP600 and AP1000 Projects
Westinghouse Electric Company
P.O. Box 355
Pittsburgh, PA 15230-0355

Mr. Robert E. Brown
Senior Vice President, Regulatory Affairs
GE-Hitachi Nuclear Energy Americas LLC
3901 Castle Hayne Road, MC A-45
Wilmington, NC 28401

Mr. Keith Paulson
Mitsubishi Nuclear Energy Systems, Inc.
310 Oxford Drive, Suite 310
Monroeville, PA 15146

Mr. Ronnie L. Gardner, Manager
Site Operations and Regulatory Affairs
AREVA NP
3315 Old Forrest Road
P.O. Box 10935
Lynchburg, VA 24506-0935

SUBJECT: ISSUANCE OF ORDER IMPOSING SAFEGUARDS INFORMATION
PROTECTION REQUIREMENTS AND FINGERPRINTING AND CRIMINAL
HISTORY RECORDS CHECK REQUIREMENTS FOR ACCESS TO
SAFEGUARDS INFORMATION

Dear Messrs. Cummins, Paulson, Brown, and Gardner:

The Commission has decided to require, through rulemaking, that nuclear power plant designers perform a rigorous assessment of design features that could provide additional inherent protection to avoid or mitigate the effects of a large, commercial aircraft impact, while reducing or eliminating the need for operator actions, where practicable. In anticipation of this requirement, and to assist designers in completing this assessment, the Commission has decided to provide the detailed aircraft impact characteristics that should be used as reasonable inputs for reactor vendors and architect/engineers who have a need to know and who meet the U.S. Nuclear Regulatory Commission's (NRC's) requirements for the disclosure of such information to use in studies of the inherent capabilities of their designs. The NRC derived these characteristics from agency analyses performed on operating reactors to support, in part, the development of a broadly effective set of mitigation strategies to combat fires and explosions from a spectrum of hypothetical aircraft impacts. Although these detailed characteristics were not selected as a basis for designing new reactors, the staff is suggesting them as a starting point for aircraft impact assessments. As proposed by the Commission, the Commission would specify in a Safeguards Information guidance document the detailed aircraft impact characteristics that should be used in a required assessment of the new reactor designs. The agency will finalize the form and values of those characteristics when finalizing the associated rulemaking. In addition, the staff recognizes that no national or international consensus has been reached on the selection of appropriate characteristics for such analyses. Therefore, the information should be considered preliminary and subject to authorized stakeholder comment. The Order in Enclosure 1 designates the detailed aircraft characteristics

as Safeguards Information (SGI),¹ in accordance with Section 147 of the Atomic Energy Act (AEA) of 1954, as amended.

The NRC is issuing the enclosed Order to Westinghouse Electric Company (WEC), General Electric - Hitachi Nuclear Energy (GEH), Mitsubishi Nuclear Energy Systems, Inc., and AREVA NP to impose requirements for the protection of SGI, as well as for the fingerprinting of all persons who have or seek access to this SGI. In addition, the Order contains restrictions on the locations where this SGI may be stored and for the sharing of this SGI with individuals for whom fingerprinting and a Federal Bureau of Investigation (FBI) criminal history records check is not reasonably expected to yield sufficient criminal history information to form the basis of an informed decision on granting access to SGI. Examples of such individuals include foreign nationals, U.S. citizens living abroad, or individuals under the age of 18.

This Order supercedes EA-07-154, issued to WEC on June 8, 2007, and EA-07-159, issued to GEH, formerly General Electric Company (GE), on June 15, 2007. Except for the restrictions on storage and access by certain individuals discussed above, this Order is identical to the orders previously issued to WEC and GEH. Therefore, since both vendors have already fully complied with those orders, WEC and GEH shall only respond to the enclosed Order with an answer consenting to the Order pursuant to Section IV.

Before your respective company grants an individual access to SGI, your respective company must submit the fingerprints of the individual to the NRC for an FBI criminal history records check. The results of the FBI criminal history records check will be provided to your respective company and your respective company must consider that information when making a determination of whether an individual, who has a need to know SGI, may be given access to SGI (see the attachment to the Order and Enclosure 2 to this letter).

Certain categories of individuals are excepted by rule from the fingerprinting requirement, as given in Title 10, Section 73.59, "Relief from Fingerprinting and Criminal History Records Check for Designated Categories of Individuals," of the *Code of Federal Regulations* (10 CFR 73.59), including Federal, State, and local law enforcement personnel; Agreement State inspectors who conduct security inspections on behalf of the NRC; members of Congress; certain employees of members of Congress or congressional committees who have undergone fingerprinting for a prior U.S. Government criminal history check; and representatives of the International Atomic Energy Agency or certain foreign government organizations. In addition, the NRC has determined that individuals who have active Federal security clearances, or who have had a favorably decided U.S. Government criminal history records check within the last 5 years, have already been subjected to fingerprinting and criminal history records checks and, thus, have satisfied the fingerprinting requirement under the Energy Policy Act of 2005.

To implement the enclosed Order, your respective company must nominate an individual who will review the results of the FBI criminal history records check to make SGI access determinations. This individual, referred to as the "reviewing official," must be someone who seeks access to SGI. Based on the results of the FBI criminal history records check, the NRC staff will determine whether this individual may have access to SGI. If the NRC determines that

¹ SGI is a form of sensitive, unclassified, security-related information that the Commission has the authority to designate and protect under Section 147 of the AEA.

the individual may not be granted access to SGI, the enclosed Order prohibits that individual from obtaining access to any SGI. Enclosure 3 describes the NRC process that will govern this determination, and the rights of the individual nominated to be the reviewing official. Once the NRC approves a reviewing official, that reviewing official, and only that reviewing official, can make SGI access determinations for other individuals who have been identified by your respective company as having a need to know SGI, and who have been fingerprinted and have had a criminal history records check. The reviewing official can only make SGI access determinations for other individuals, but cannot approve other individuals to act as reviewing officials. Only the NRC can approve a reviewing official; therefore, if your respective company wishes to have a new or additional reviewing official, the NRC must approve that individual before he or she can act in that capacity.

In the event that the NRC does not approve access to SGI for the individual nominated as your respective company's initial reviewing official, the individual may appeal this decision by following the procedures in Enclosure 3. Your respective company may then nominate a different individual to be the reviewing official. If your respective company decides to withdraw the nomination of an individual as a reviewing official after submitting fingerprints to the FBI through the NRC, the NRC will still complete the review process for determining access to SGI.

Your respective company is required to submit fingerprints in accordance with the enclosed Order. The current processing fee is \$27.00 per submission, and payment must accompany the request. On October 1, 2007, the processing fee will be increased to \$36.00. The attachment to the Order provides details regarding fingerprint submittals and payment of fees are found in the Attachment to the Order. If the person your respective company nominates as reviewing official already has a national security clearance, please submit that person's name along with documentation that supports the claim. NRC staff will verify that the nominated individual has the necessary clearance to be able to receive approval as reviewing official. If your company has had a reviewing official or reviewing officials previously approved by the NRC, provide a copy or a reference to the approval letter in your response.

The enclosed Order is effective immediately. These requirements will remain in effect until the Commission determines otherwise. This Order supercedes EA-07-154, issued to WEC on June 8, 2007, and EA-07-159, issued to GEH, formerly GE, on June 15, 2007.

The enclosed Order requires that your respective company respond to the Order within 20 days of the date of the Order, and implement the requirements of the Order before providing access to SGI to any individual. Please contact Ms. Anissa Coates at (301) 415-1897, or via e-mail to ARC3@nrc.gov, to facilitate resolution of any issues or questions related to compliance with the requirements of the enclosed Order.

Your respective company's responses to the Order (not fingerprint cards) must be submitted to the Director, Office of New Reactors, and should be addressed to the attention of Ms. Anissa Coates, Mail Stop T-6F15. The mailing addresses given below should be used:

For normal postal delivery, mail to the following address:

Director, Office of New Reactors
U.S. Nuclear Regulatory Commission
Washington, DC, 20555-0001
Attn: Anissa Coates, Mail Stop T-6F15

For delivery services requiring a street address, mail to the following address:

Director, Office of New Reactors
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, MD 20852-2738
Attn: Anissa Coates, Mail Stop T-6F15

Please include the docket or project number for your design(s) listed below in all your correspondence to the NRC. In addition, your respective company's responses shall be marked as "Security-Related Information - Withhold Under 10 CFR 2.390." The enclosed Order has been forwarded to the Office of the Federal Register for publication.

In accordance with 10 CFR 2.390, "Public Inspection, Exemptions, Requests for Withholding," of the NRC's "Rules of Practice," a copy of this letter and its enclosures will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records component of the NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html> (the Public Electronic Reading Room).

Sincerely,

/RA/

R. W. Borchardt, Director
Office of New Reactors

Docket Nos. 52-001, 52-003, 52-006, 52-010 and Project Nos. 0733 and 0751.

Enclosures:

1. Order Imposing Safeguards Information Protection Requirements and Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information
2. Guidance for Licensee's Evaluation of Access to Safeguards Information with the Inclusion of Criminal History (Fingerprint) Checks
3. Process to Challenge NRC Denials or Revocations of Access to Safeguards Information

For delivery services requiring a street address, mail to:

Director, Office of New Reactors
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, MD 20852-2738
Attn: Anissa Coates, Mail Stop T-6F15

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Sincerely,

/RA/

R. W. Borchardt, Director
Office of New Reactors

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DATE	08/30/2007	08/31/2007	09/05/2007	09/12/2007	09/06/2007	08/13/2007	09/12/2007	09/12/2007	09/12/2007

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