

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

WESTINGHOUSE ELECTRIC COMPANY,)	EA-07-231
GENERAL ELECTRIC - HITACHI NUCLEAR ENERGY,)	Docket Nos.
MITSUBISHI NUCLEAR ENERGY SYSTEMS, INC.,)	52-001, 52-003,
AREVA NP, AND ALL OTHER PERSONS)	52-006, 52-010, and
WHO SEEK OR OBTAIN ACCESS TO)	Project Nos.
SAFEGUARDS INFORMATION)	0733 and 0751
DESCRIBED HEREIN		

ORDER IMPOSING SAFEGUARDS INFORMATION
PROTECTION REQUIREMENTS AND FINGERPRINTING
AND CRIMINAL HISTORY RECORDS CHECK REQUIREMENTS
FOR ACCESS TO SAFEGUARDS INFORMATION
(EFFECTIVE IMMEDIATELY)

I.

Westinghouse Electric Company, LLC (WEC), holds certificates for the AP600 and AP1000 reactor designs issued by the U.S. Nuclear Regulatory Commission (NRC) in accordance with the Atomic Energy Act of 1954, as amended (AEA). General Electric - Hitachi Nuclear Energy (GEH) holds a certificate for the ABWR reactor designed and has submitted an application for design certification for the Economic and Simplified Boiling Water Reactor design in accordance with the AEA and Title 10, Part 52, "Early Site Permits; Standard Design Certifications; and Combined Licenses for Nuclear Power Plants," of the *Code of Federal Regulations* (10 CFR Part 52), which the NRC staff is currently considering. Mitsubishi Nuclear Energy Systems, Inc. (Mitsubishi), and AREVA NP (AREVA) have both indicated to the NRC that they plan to submit applications for design certifications in the near future. WEC, GEH, Mitsubishi, and AREVA will be referred to herein as "the affected vendors."

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 the need to know and who meet the 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 detailed characteristics when completing 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 detailed aircraft characteristics that are the subject of this Order are hereby designated as Safeguards Information (SGI),¹ in accordance with Section 147 of the AEA.

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 NRC is issuing this Order to the affected vendors 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. 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 of SGI and access to SGI by certain individuals, this Order is identical to the Orders previously issued to WEC and GEH. Therefore, since both vendors have already complied with those orders, WEC and GEH need only respond to this Order with an answer consenting to the Order pursuant to Section IV.

On August 8, 2005, Congress enacted the Energy Policy Act of 2005 (EPAct). Section 652 of the EPAct amended Section 149 of the AEA to require fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records check of any person who is permitted to have access to SGI. The NRC's implementation of this requirement cannot await the completion of the SGI rulemaking, which is underway, because the EPAct fingerprinting and criminal history records check requirements for access to SGI were effective immediately upon enactment of the EPAct. Therefore, in accordance with Section 149 of the AEA, as amended by the EPAct, the Commission is imposing additional requirements for access to SGI, as set forth by this Order, so that the affected vendors can obtain and grant access to SGI. This Order also requires compliance with the safeguards protection measures set forth in 10 CFR 73.21, "Requirements for the Protection of Safeguards Information," and imposes requirements for access to and protection of SGI by any person,² whether or not they

² Person means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, government agency other than the Commission or the Department of Energy, (except that the Department of Energy shall be considered a person with respect to those facilities of the Department of Energy specified in Section 202 of the Energy Reorganization Act of 1974 (88 Stat. 1244)), any State or any political subdivision of, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.

are a licensee, applicant, or certificate holder of the Commission or an Agreement State.

To implement this Order, the affected vendors 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 the individual may not be granted access to SGI, the enclosed Order prohibits that individual from obtaining access to any SGI. 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 the affected vendors as having a need to know SGI, and who have been fingerprinted and have had a criminal history records check in accordance with this Order. 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 the affected vendors wish to have a new or additional reviewing official, the NRC must approve that individual before he or she can act in the capacity of a reviewing official.

Certain categories of individuals are relieved by rule from the fingerprinting requirements pursuant to 10 CFR 73.59, “Relief from Fingerprinting and Criminal History Records Check for Designated Categories of Individuals.” Those individuals include: 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, individuals who have had a favorably-decided

U.S. Government criminal history check within the last 5 years, or individuals who have active Federal security clearances (provided in either case that they make available the appropriate documentation), have already been subjected to fingerprinting and criminal history checks and, thus, have satisfied the EAct fingerprinting requirement.

II.

The Commission has broad statutory authority to protect and prohibit the unauthorized disclosure of SGI. Section 147 of the AEA grants the Commission explicit authority to issue such Orders, as necessary, to prohibit the unauthorized disclosure of SGI. Furthermore, as discussed above, Section 652 of the EAct amended Section 149 of the AEA to require fingerprinting and an FBI identification and a criminal history records check of each individual who seeks access to SGI. In addition, no person may have access to SGI unless the person has an established need to know.

To provide assurance that the affected vendors are continuing to implement appropriate measures to ensure a consistent level of protection to prohibit unauthorized disclosure of SGI, and to comply with the fingerprinting and criminal history records check requirements for access to SGI, the affected vendors shall implement the requirements for the protection of SGI as set forth in 10 CFR 73.21 and this Order. In addition, pursuant to 10 CFR 2.202, "Orders," I find that in light of the matters identified above, which warrant the issuance of this Order, the public health, safety, and interest require that this Order be effective immediately.

III.

Accordingly, pursuant to Sections 147, 149, 161b, 161i, 161o, 182, and 186 of the AEA of 1954 as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 73, "Physical Protection of Plants and Materials," IT IS HEREBY ORDERED, **EFFECTIVE IMMEDIATELY**, THAT THE AFFECTED VENDORS AND ALL OTHER PERSONS

WHO SEEK OR OBTAIN ACCESS TO SAFEGUARDS INFORMATION AS DESCRIBED HEREIN SHALL COMPLY WITH THE REQUIREMENTS SET FORTH IN 10 CFR 73.21 AND THIS ORDER.

- A.
 - 1. No person may have access to SGI unless that person has a need to know the SGI, has been fingerprinted and undergone an FBI identification and criminal history records check, and satisfies all other applicable requirements for access to SGI. Fingerprinting and the FBI identification and criminal history records check are not required, however, for any person who is relieved from the requirement by 10 CFR 73.59, who has had a favorably decided U.S. Government criminal history check within the last 5 years, or who has an active Federal security clearance, provided in the latter two cases that the affected vendor's NRC-approved reviewing official has documented the existence of an active clearance or the basis for relief.
 - 2. No person may have access to any SGI if the NRC, when making an SGI access determination for a nominated reviewing official, has determined, based on fingerprinting and an FBI identification and criminal history records check, that the person nominated may not have access to SGI.
 - 3. The affected vendor shall store SGI designated by this Order only in the facility or facilities specifically approved in writing by the NRC for storage of SGI designated by this Order. The affected vendor may request, in writing, NRC approval of additional facilities for the storage of the SGI designated by this Order that the NRC will consider on a case-by-case basis.
 - 4. The affected vendor may provide SGI designated by this Order to individuals (such as foreign nationals, U.S. citizens living in foreign countries, or individuals

under the age of 18) for whom fingerprinting and an 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, provided that the individual satisfies the requirements of this Order, and that the affected vendor has implemented measures, in addition to those set forth in this Order, to ensure that the individual is suitable for access to the SGI designated by this Order. Such additional measures must include, but are not limited to, equivalent criminal history records checks conducted by a local, State, or foreign governmental agency, and/or enhanced background checks including employment and credit history. The NRC must review these additional measures and approve them in writing.

- B. No person may provide SGI to any other person except in accordance with Condition III.A. above. Before providing SGI to any person, a copy of this Order shall be provided to that person.
- C. Each of the affected vendors shall comply with the following requirements:
 - 1. The affected vendor shall, within 20 days of the date of this Order, establish and maintain a fingerprinting program that meets the requirements of 10 CFR 73.21 and the attachment to this Order.
 - 2. The affected vendor shall, within 20 days of the date of this Order, submit the fingerprints of one individual whom (a) the affected vendor nominates as the “reviewing official” for determining access to SGI by other individuals and (b) has an established need to know the information. The NRC will determine whether this individual (or any subsequent reviewing official) may have access to SGI and, therefore, will be permitted to serve as the affected vendor’s reviewing

official.³ The affected vendor may, at the same time or later, submit the fingerprints of other individuals to whom the affected vendor seeks to grant access to SGI. Fingerprints shall be submitted and reviewed in accordance with the procedures described in the attachment to this Order.

3. The affected vendor may allow any individual who currently has access to SGI to continue to have access to previously-designated SGI without being fingerprinted, pending a decision by the NRC-approved reviewing official (based on fingerprinting and an FBI criminal history records check) that the individual may continue to have access to SGI. The affected vendor shall make determinations on continued access to SGI within 90 days of the date of this Order, in part, based on the results of the fingerprinting and criminal history check, for those individuals who were previously granted access to SGI before the issuance of this Order.
4. The affected vendor shall, in writing, within 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 the Order, including the attachment; or (2) if compliance with any of the requirements is unnecessary in its specific circumstances. The notification shall provide the affected vendor's justification for seeking relief from, or variation of, any specific requirement.

The affected vendors shall submit responses to C.1., C.2., C.3, and C.4 above to the Director, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555. In addition, the affected vendors shall mark their responses as "Security-Related

³ The NRC's determination of this individual's access to SGI in accordance with the process described in Enclosure 3 to the transmittal letter of this Order is an administrative determination that is outside the scope of this Order.

Information - Withhold Under 10 CFR 2.390.”

The Director, Office of New Reactors, may, in writing, relax or rescind any of the above conditions upon demonstration of good cause by the affected vendor.

IV.

In accordance with 10 CFR 2.202, the affected vendor must, and any other person adversely affected by this Order may, submit an answer to this Order and may request a hearing with regard to this Order, within 20 days of the date of this Order. Where good cause is shown, the NRC will consider 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 New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555, 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 by which the affected vendor or other entities adversely affected rely, and the reasons as to why the NRC should not have issued this Order. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies shall also be sent to the Director, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, and to the affected vendor, if the answer or hearing request is by an entity other than the affected vendor. Because of possible delays in delivery of mail to U.S. Government offices, the agency asks 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 via 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 via e-mail to OGCMailCenter@nrc.gov. If an entity other than the affected vendor requests a hearing, that entity shall set forth, with particularity, the manner in which this Order adversely affects its interest and shall address the criteria set forth in 10 CFR 2.309, "Hearing Requests, Petitions to Intervene, Requirements for Standing, and Contentions."

If the affected vendor, or a person whose interest is adversely affected, requests a hearing, 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 CFR 2.202(c)(2)(i), the affected vendor 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 grounds 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 as specified above in Section III shall be final 20 days from the date of this Order without, further order or proceedings. If the agency approves an extension of time for requesting a hearing, the provisions, as specified above 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 this 12th day of September, 2007.

FOR THE NUCLEAR REGULATORY COMMISSION,

/RA/

R. W. Borchardt, Director,
Office of New Reactors