

REGULATORY INFORMATION DISTRIBUTION SYSTEM (RIDS)

ACCESSION NBR: 8704220235 DOC. DATE: 87/04/15 NOTARIZED: NO DOCKET #
 FACIL: 50-000 Generic Docket 05000000
 50-261 H. B. Robinson Plant, Unit 2, Carolina Power & Light C 05000261
 50-324 Brunswick Steam Electric Plant, Unit 2, Carolina Powe 05000324
 50-325 Brunswick Steam Electric Plant, Unit 1, Carolina Powe 05000325
 50-400 Shearon Harris Nuclear Power Plant, Unit 1, Carolina 05000400

AUTH. NAME AUTHOR AFFILIATION
 CUTTER, A. B. Carolina Power & Light Co.
 RECIP. NAME RECIPIENT AFFILIATION
 Document Control Branch (Document Control Desk)

SUBJECT: Requests exemption from requirements of 10CFR73.57(b)(1) re fingerprinting of individuals not having unescorted access. Exemption would allow util to grant access to individual whose authorization process began prior to 870401.

DISTRIBUTION CODE: S003D COPIES RECEIVED: LTR 1 ENCL 1 SIZE: 6
 TITLE: Non-Proprietary Info Re Security Plans

NOTES: Application for permit renewal filed. 05000400

RECIPIENT ID CODE/NAME	COPIES LTTR ENCL	RECIPIENT ID CODE/NAME	COPIES LTTR ENCL
PD2-1 LA	1 0	PD2-1 PD	1 0
ECCLESTON, K	1 0	SYLVESTER, E	1 0
BUCKLEY, B	1 0		

INTERNAL: ACRS	1 1	AEOD/DOA	1 1
ARM/A&F/LFMB	1 0	NRR PWR-B SSPD	1 1
NRR/DRIS/SGB	1 1	<u>REG FILE</u> 01	1 1
EXTERNAL: LPDR	3 3	NRC PDR	1 1

Add: RAY BRADY - SECURITY
 w/check \$150
 # 824661

TOTAL NUMBER OF COPIES REQUIRED: LTIR 16 ENCL 10



Carolina Power & Light Company

P. O. Box 1551 • Raleigh, N. C. 27602
(919) 836-6231

APR 15 1987

SERIAL: NLS-87-080
10CFR73.57

A. B. CUTTER
Vice President
Nuclear Engineering & Licensing

United States Nuclear Regulatory Commission
ATTENTION: Document Control Desk
Washington, DC 20555

BRUNSWICK NUCLEAR PLANT, UNIT NOS. 1 & 2
DOCKET NOS. 50-325, 50-324/LICENSE NOS. DPR-71, DPR-62

H. B. ROBINSON NUCLEAR PLANT, UNIT NO. 2
DOCKET NO. 50-261/LICENSE NO. DPR-23

SHEARON HARRIS NUCLEAR POWER PLANT
DOCKET NO. 50-400/LICENSE NO. NPF-63
10CFR73.57 - REQUEST FOR EXEMPTION

Gentlemen:

Pursuant to 10CFR50.12 and 73.5, Carolina Power & Light Company (CP&L) hereby requests an exemption from the requirement in 10CFR73.57(b)(1) (and the provisions of 10CFR50 that incorporate it) that "[i]ndividuals who do not have unescorted access or access to Safeguards Information after April 1, 1987 shall be fingerprinted by the licensee, and the results of the criminal history records check shall be used prior to making a determination for granting unescorted access to the nuclear power facility or access to Safeguards Information" (emphasis added). This exemption request is limited. Carolina Power & Light Company seeks an exemption from Section 73.57(b)(1) for CP&L employees and applicants for employment with CP&L only to the extent that it requires CP&L to use the results of the criminal history records check prior to making a determination for granting unescorted access to its nuclear facilities or access to Safeguards Information, and then only in those situations in which either (a) CP&L began the access authorization review process for a given individual prior to the rule's April 1, 1987 effective date (but the individual has not been granted or denied access before April 1, 1987), or (b) CP&L has already mailed the individual's fingerprints to the NRC, but CP&L has not received the results of the criminal history check within the twenty-five working-day turnaround period projected by the Commission when it published the proposed rule. See 51 Fed. Reg. 40439, Col. 2 (1986).

Thus, under the requested exemption, CP&L would continue to fingerprint all individuals (other than temporary workers) who require unescorted access to a nuclear plant or who require access to Safeguards Information. The requested exemption would allow CP&L, if otherwise appropriate, to grant access to an individual whose access authorization review processing began prior to April 1, 1987 (but the individual has not been granted or denied access before April 1, 1987) or after twenty-five working days have passed since an individual's fingerprints were mailed to the NRC without any results from the FBI criminal history records check having yet been received. In such situations, CP&L

8704220235 870415
PDR ADOCK 05000261
F PDR

Add: Ray Brady - Security
5003 w/check
11/1
#824661

APR 15 1987

would decide whether to grant an individual access based on CP&L's extensive pre-employment background verification and screening program. As described in greater detail in the enclosure to this letter, this program involves such information as a five-year criminal history check in all counties in which the employment applicant or intra-company transfer employee lived, worked, or attended school, as well as reference checks, psychological testing, drug screening, and a financial responsibility check.

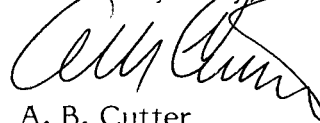
Carolina Power & Light Company seeks this exemption because of its concern that the processing of fingerprints for new employment applicants or transfer employees who do not have access authorized prior to April 1, 1987 will take longer than the projected twenty-five working days, at least during the initial months of the program during which time every licensee in the nation will be submitting fingerprint cards for all current employees who already had access authorization. Delays beyond the twenty-five working days projected for obtaining FBI criminal history checks on transfer employees and employment applicants will adversely affect the timely availability of personnel to CP&L. Employment applicants or transfer employees who need access authorization will be unable to do the job for which their skills and qualifications are needed, making personnel unavailable and impairing CP&L's ability to complete nuclear safety-related tasks in a safe, timely, and economical manner.

As explained in the enclosed justification, the requested exemption is consistent with the statutory authorization for the rule and the underlying purpose of the rule, as well as justified by several special circumstances. Accordingly, CP&L requests that you grant this exemption, if possible, by May 7, 1987.

Carolina Power & Light has evaluated this request in accordance with the provisions of 10CFR170.12 and determined that a license amendment application fee is required. A check for \$150 is enclosed in payment of this fee.

Should you have any questions regarding this request, please contact Mr. Arnold Schmich at (919) 836-8759.

Yours very truly,



A. B. Cutter

MSC/lah (5174AWS)

Enclosure

cc: Mr. B. C. Buckley (NRC)
Dr. J. N. Grace (NRC-II)
Mr. G. F. Maxwell (NRC-SHNPP)
Mr. H. Krug (NRC-RNP)
Mr. G. Requa (NRC)
Mr. W. H. Ruland (NRC-BNP)
Mr. E. Sylvester (NRC)

Brunswick, Robinson, and Harris Plants
Justification for Exemption from 10CFR Section 73.57(b)(1)

The NRC promulgated 10CFR73.57 on March 2, 1987 by publication of the final rule in the Federal Register. See 52 Fed. Reg. 6310, 6314-15 (1987); 52 Fed. Reg. 7821 (1987) (corrections). Carolina Power & Light Company seeks an exemption from Section 73.57(b)(1) for CP&L employees and applicants for employment with CP&L only to the extent that it requires CP&L to use the results of the criminal history records check prior to making a determination for granting unescorted access to its nuclear facilities or access to Safeguards Information, and then only in those situations in which either (a) CP&L began the access authorization review process for a given individual prior to the rule's April 1, 1987 effective date (but the individual has not been granted or denied access by April 1, 1987), or (b) CP&L has already mailed the individual's fingerprints to the NRC but CP&L has not received the results of the criminal history check within the twenty-five working-day turnaround period projected by the Commission when it published the proposed rule. See 51 Fed. Reg. 40439, Col. 2 (1986).

Unless the NRC grants an exemption, the requirements of Part 73 bind Part 50 licensees such as CP&L both by the terms of Part 73 and through the incorporation of Part 73 into Part 50. See, e.g., 10CFR50.54(p). The NRC may grant exemptions from Part 73 requirements under 10CFR73.5 and may grant exemptions from Part 50 requirements under 10CFR50.12. Because the relevant standard under Section 73.5 is largely subsumed within the more specific exemption standard of Section 50.12, a licensee that satisfies the standard under Section 50.12 should also satisfy the more general standard of Section 73.5. Accordingly, although CP&L seeks this exemption under both Section 73.5 and Section 50.12, for simplicity this request will refer primarily to the more specific standard of Section 50.12.

Per 10CFR50.12(a), the NRC may grant exemptions that are (1) "[a]uthorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security" and (2) present special circumstances. Section 73.5, like the old Section 50.12, adds the statement that the exemption be "otherwise in the public interest." The requirement in current Section 50.12(a)(2) that special circumstances be present expands on the public interest concept. That section identifies six categories of special circumstances; four of these categories ((ii), (iii), (v), and (vi)), each of which is discussed below, apply to this exemption request.

The requested exemption is authorized by law.

The governing statute, Section 149 of the Atomic Energy Act of 1954, as amended ("the Act"), was enacted as part of the "Omnibus Diplomatic Security and Antiterrorism Act of 1986." See P.L. 99-399, Section 606(a), 100 Stat. 876, codified at 42 U.S.C. Section 2169. Section 149 does not require a licensee to have received the results of the criminal history records check prior to granting individuals unescorted access or access to Safeguards Information. Rather, the statute simply requires the licensee "to fingerprint each individual who is permitted unescorted access to the facility or is permitted access to Safeguards Information," and to submit the fingerprints to the NRC for a criminal history records check by the FBI. Id. Additionally, the statute specifically permits the NRC to relieve licensees from the obligations imposed. See Section 149b of the Act, 42 U.S.C. Section 2169(b). Thus the requested exemption is authorized by the governing statute.

The requested exemption will not present an undue risk to the public health and safety and will not endanger life or property and is consistent with the common defense and security.

Under CP&L's present access authorization background screening program, prior to granting a new employee unescorted access to a nuclear facility or access to Safeguards Information, CP&L completes a thorough background investigation, including a criminal history check, independent of the fingerprinting program required by 10CFR73.57. Carolina Power & Light Company's screening process includes the following:

- A criminal record check in each county of every State in which the employment applicant has lived, worked, or attended school during the previous five years or back to age 18 (as permitted by Federal, State, or other applicable laws)
- Verification of employment history, including verification of military service, for the previous five years or back to age 18
- Verification of educational institutions attended
- Contacting two personal and character references provided by the applicant, as well as contacting two additional references provided by the applicant's references
- Psychological testing
- Drug screening
- Financial responsibility check

All of these steps are and will continue to be completed prior to granting any new employee unescorted access or access to Safeguards Information.

Additionally, for those individuals whose access authorization review process begins on April 1, 1987 or after, CP&L would still review the FBI criminal history records check results prior to granting an individual access under the requested exemption so long as that information was received by CP&L within the projected twenty-five working days. For these individuals, CP&L would consider granting access prior to receiving the FBI's criminal history records check information only when receipt of this FBI information is delayed beyond the twenty-five working days. For those individuals whose access authorization processing began prior to April 1, 1987 but who have not been granted or denied access prior to April 1, 1987, receipt of the FBI criminal history records check results would almost certainly occur later than twenty-five working days after CP&L began its access authorization process, because the processing of the fingerprint cards under the rule was not projected to begin until April 8, 1987. See 52 Fed. Reg. 6313, Col. 3 (1987). In all cases, CP&L would of course still review the FBI information promptly upon its receipt and, consistent with the employee's rights to challenge the information, reconsider any decision to grant access to an individual about whom any previously unknown criminal activity is revealed.

Because CP&L would already have reliable background information available, granting the requested exemption would present no undue risk to the public health and safety, to life or property, or to the common defense and security.

The requested exemption is in the public interest.

In addition to the reasons stated above, the requested exemption is in the public interest for the reasons described below in connection with the special circumstances identified in 10CFR50.12(a)(2).

Special Circumstance (ii): Application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule.

The underlying purpose of the rule is to "help assure that individuals with criminal histories impacting upon their reliability and trustworthiness are not permitted unescorted access to a nuclear power facility or access to Safeguards Information." 52 Fed. Reg. 6310 (1987). As described above, CP&L already has in effect an extensive background screening program that should uncover the great majority, if not all, of the information that the criminal history records check available under Section 73.57 will provide. Thus, because extensive and reliable background information is presently available to CP&L, strict application of Section 73.57 is not necessary to achieve the rule's underlying purpose of assuring that only individuals who are reliable and trustworthy are permitted to have unescorted access to a CP&L nuclear plant or access to Safeguards Information.

Special Circumstance (iii): Compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted.

By design, CP&L's exemption request is tailored to apply only when the hardship and costs of compliance significantly exceed those contemplated when the regulation was adopted. As discussed previously, the Commission expects the processing of the fingerprint cards--from the time the licensee mails them until the licensee receives the results of the criminal history records check--to take approximately twenty-five working days. See 51 Fed. Reg. 40439, Col. 2 (1986). Under the rule, for those individuals who do not have access authorization prior to April 1, the licensee must await the results of the fingerprint check from the FBI prior to granting access. Thus, there is an anticipated average time lag of five working weeks between the time an employment applicant or a transfer employee is fingerprinted and when that employee can begin working in the position requiring unescorted access or access to Safeguards Information. If the applicant or transfer employee is unable to begin assigned work after the anticipated five working week period has passed (due to a delay in obtaining information from the criminal history records check), the burden on the licensee necessarily exceeds that contemplated when the rule was issued. That is, the applicant or transfer employee is unable to do the work that he was sought to do, placing a significant unanticipated burden on the licensee's existing personnel resources.

Special Circumstance (v): The exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation.

This special circumstance is also satisfied, due to the conditional nature of the requested exemption. The requested exemption is temporary in that it is effective only when the Commission or the FBI or both are backlogged in processing the fingerprint cards. Under the requested exemption, in those cases where an individual's criminal history records check takes longer than the projected twenty-five working days, CP&L would be exempt from the rule's requirement that the results of the FBI fingerprint check be reviewed prior to the person's being granted access.

It should be emphasized that CP&L is and will be making good faith efforts to comply with the rule. The individuals requiring unescorted access or access to Safeguards Information (other than temporary workers) are being fingerprinted as required by the rule. CP&L seeks an exemption from the rule only to the extent that factors beyond its control, which affect the length of time needed to receive the results of the criminal history records check, make compliance with the rule's prior review requirement more burdensome than intended by the NRC and the statute. Furthermore, upon receipt of the belated information from the FBI, CP&L would fully review the results of the criminal history records checks for the individuals, including any already granted access under the requested exemption. CP&L would, consistent with the employee's rights to challenge any information, revoke the access authorization of any individuals about whom the Company obtains new information that would preclude continued access authorization. This revocation would be handled the same way as any necessary revocations of the current access authorization of the 3000-4000 present CP&L employees who have had authorization prior to April 1, 1987.

Special Circumstance (vi): There is present any other material circumstance not considered when the regulation was adopted for which it would be in the public interest to grant an exemption.

As explained under Special Circumstance (iii) above, the requested exemption is tailored to be effective only in those situations where there is a delay beyond the NRC's anticipated twenty-five working days for processing the fingerprint cards. Carolina Power & Light Company believes that (at least during the initial months of implementing the rule) it will take more time to receive the results of these fingerprint checks. Thus, CP&L anticipates the burden of delaying the employment of new applicants and the transfer of present employees will be greater than the NRC considered when adopting the regulation. Because comparably reliable background information will be available to CP&L in making its own background checks, it is in the public interest to grant the requested exemption, thereby avoiding the unnecessary costs to employment applicants, to transfer employees, and to CP&L of delaying the useful employment of these individuals beyond the five working weeks contemplated under the rule.