

Georgia Power Company  
40 Inverness Center Parkway  
Post Office Box 1295  
Birmingham, Alabama 35201  
Telephone 205 877-7122

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PROPOSED RULE PR 25 & 95  
(61 FR 40555)

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USNRC



C. K. McCoy  
Vice President, Nuclear  
Vogtle Project

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Docket Nos. 50-424  
50-425

LCV-0866

The Secretary of the Commission  
U. S. Nuclear Regulatory Commission  
Washington, D. C. 20555-0001

ATTN.: Docketing and Service Branch

Comments on proposed rule  
"Access to and Protection of Classified Information"  
(61 Federal Register 40555 dated August 5, 1996)

Dear Sir:

Georgia Power Company has reviewed the proposed rulemaking "Access to and Protection of Classified Information," which would revise 10 CFR Parts 25 and 95, and was published in the Federal Register on August 5, 1996. Georgia Power Company supports the policy behind the proposed rulemaking and the NRC's effort to reduce or eliminate duplicative oversight of private facilities which have classified interests from more than one governmental agency. However, Georgia Power Company is concerned that a number of the provisions proposed by the NRC are unclear and may be difficult to apply. Accordingly, Georgia Power Company provides the attached comments which identify these concerns and provide general suggestions for the final rule.

Should you have any questions, please advise.

Respectfully submitted,

C.K. McCoy  
C. K. McCoy

CKM/JMG

Attachment

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PDR PR  
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DS10

cc: Georgia Power Company  
Mr. J. B. Beasley  
Mr. M. Sheibani  
NORMS

U. S. Nuclear Regulatory Commission  
Mr. S. D. Ebnetter, Regional Administrator  
Mr. L. L. Wheeler, Licensing Project Manager-Vogtle, NRR  
Mr. C. R. Ogle, Senior Resident Inspector - Vogtle

**Comments on the Proposed Rule:**  
**"Access to and Protection of Classified Information"**  
**61 FR 40555 (Aug. 5, 1996)**

The Commission has proposed amendments to the provisions of 10 CFR Parts 25 and 95 regarding security of classified information. According to the preamble to the proposed rule, the amendments would permit another "Cognizant Security Agency" (e.g., DOE, DoD, or CIA) to assume some or all of the security oversight functions at a facility licensed by the Commission or for employees of NRC licensees. Georgia Power Company (Georgia Power) supports the policy behind the Commission's proposal. Eliminating the need for an NRC licensee to seek security clearances from both the Commission and DOE, for example, is appropriate. Georgia Power agrees that the Commission should pursue this end in keeping with the National Industrial Security Program.

However, Georgia Power is concerned that a number of the provisions contained in the proposed rule are unclear, may be difficult to apply, or would create conflicts with other Commission regulations. Specifically, (i) the proposed rule does not provide a procedure for the designation of the "Cognizant Security Agency (CSA)"; (ii) the proposed rule does not address the Commission's role in ensuring compliance with the rules of other CSAs; (iii) the proposed rule does not reconcile restricted data requirements in Parts 50 and 54 of the Commission's regulations with the proposed changes to 10 CFR Parts 25 and 95, and (iv) the proposal does not clearly define when a facility clearance from the Commission is required. The following comments address each of these concerns.

**Cognizant Security Agency**

The proposed changes to Part 25 would allow licensees to request access authorizations for employees from "the facility CSA" instead of from the Commission. According to the proposed rule, CSA stands for "Cognizant Security Agency" and is defined as DoD, DOE, CIA and the Commission. However, the proposed rule does not explain which of these agencies is the appropriate CSA in a given situation or for a given facility, or who makes that determination. Conceivably, more than one of the agencies could be the CSA.

The final rule should include a more precise definition of CSA or a procedure for designating a CSA in a given situation. For instance, the CSA definition could be modified to indicate that it is the agency which exercises primary authority and control over the classified information to which access is initially sought. In this way, conflicts between two or more agencies asserting jurisdiction as CSA can be avoided.

10 CFR 95 also includes references to the CSA. For the reasons outlined above, the proposed changes to Part 95 should also include a more precise definition of "Cognizant Security Agency" in the final rule.

**Continued Obligations to the Commission**

The proposed rule does not establish whether and how the Commission will be notified regarding access authorizations requested from another agency. Does an NRC licensee have an obligation to notify the Commission if it applies to another CSA for an access authorization?

If the Commission intends to require such notification from its licensees, then the final rule should clarify the scope of that requirement. Further, in keeping with the efficiency goals of the rule, any such required notification should be very simple. For example, the Commission should make clear that its licensee's may apply to another CSA without permission from the Commission.

**Conflicting Responsibilities Under Other Commission Regulations**

10 CFR 50.37 prohibits commercial nuclear reactor licensees from permitting an employee access to Restricted Data until the Civil Service Commission has reported to the Commission on the fitness of the individual employee to receive such information. The proposed rule does not amend this section of 10 CFR and does not otherwise link the requirements of Part 25 to this section.

The proposed rule should be clarified in order to reflect whether compliance with the new Part 25 will satisfy 10 CFR 50.37. The interface of the proposed rule with 10 CFR 54.17(g), which concerns license renewals, should be clarified in similar fashion in the final rule.

**Licensee Activities at Other Facilities**

As revised by the proposed rule, it is unclear whether 10 CFR 95.15 requires an NRC licensee to obtain a facility clearance from the Commission in order for employees of that licensee to "use" or "handle" classified information which is located at a completely different facility, including facilities subject to the oversight of another agency. For example, does 10 CFR 95.15 require a facility clearance from the Commission in order for employees of an NRC licensed facility to use or handle classified information which is maintained at a DOE facility? Conversely, does 10 CFR 95.15 require the NRC to clear the non-NRC licensed facility? Although it does not appear to be the Commission's intent to require a facility clearance in either situation, an affirmative statement in this regard would assist in the implementation of the rule. The Commission should clarify whether facility approvals are required under Part 95 in such a situation.

**Conclusion**

Georgia Power believes the proposed rule will, subject to the comments above, improve the Commission's regulations regarding security matters. Incorporating these comments into the final rule will help to clarify the responsibilities of the regulated community and will result in more efficient protection for classified information.