

March 17, 2003

Mr. David A. Christian
Senior Vice President and Chief
Nuclear Officer
5000 Dominion Boulevard
Glen Allen, VA 23060-6711

Dear Mr. Christian:

By letter dated January 16, 2003, the Virginia Electric and Power Company (VEPCO, the licensee) requested that the U.S. Nuclear Regulatory Commission (NRC) grant an exemption from the requirements of Title 10 of the *Code of Federal Regulations* (10 CFR), Section 73.57, "Requirements for criminal history checks of individuals granted unescorted access to a nuclear power facility or access to Safeguards Information by power reactor licensees." Your January 16, 2003, letter included exemption requests for Surry Power Station Units 1 and 2, North Anna Power Station Units 1 and 2, and Millstone Power Station Units 1, 2, and 3, along with the independent spent fuel storage installations (ISFSIs) at North Anna and Surry Power Stations. Specifically, the licensee requested an exemption from the requirements of Sections 73.57(d)(1) and 73.57(d)(3) to permit the use of the NRC's Criminal History Program Electronic Information Exchange System (CHP-EIE) to submit fingerprints for the access authorization process and to allow the use of NRC Form 629, "Authorization for Payment by Credit Card," for the required payment. You requested that the NRC review and approve the exemption by February 28, 2003.

The NRC staff has been working with the Commission and the industry for some time to develop a method to prevent backlogs in the processing of Federal Bureau of Investigation (FBI) criminal history checks and to implement an electronic fingerprint process at NRC. On February 8, 2002, the NRC staff was directed by the Commission to put in place a method of processing fingerprint requests within a 72-hour time period. The rapid fingerprint review process was necessary to support the planned elimination of temporary unescorted access at commercial nuclear power plants. The NRC staff moved forward on that direction and on March 7, 2002, advised the Commission that to reduce fingerprint processing backlogs, a fully electronic fingerprint submission process was the only practical means available that would satisfy the Commission's stated performance goals. The NRC staff also advised the Commission that it intended to "use the currently existing Electronic Information Exchange (EIE) for transmission of fingerprints and results between licensees and the NRC."

On May 2, 2002, the NRC staff provided the Commission a supplemental update indicating, "Submitting fingerprints electronically by use of the EIE system is in the developmental stages, but has progressed to the point of implementing a short pilot program with selected sites in the immediate future. Full production of the EIE system with licensees is scheduled for July 2002." As was indicated in the May 2, 2002, communication, the NRC staff entered into a pilot project with a select group of licensees having different legacy systems. In a letter from Vonna Ordaz, Chief of the Reactor Safeguards Policy Section, to James Davis, Director of Operations, Nuclear Energy Institute, dated August 12, 2002, Ms. Ordaz indicated that user acceptance testing of the NRC CHP-EIE had been successful, and that CHP-EIE was fully operational effective as of July 31, 2002. This letter authorized licensees to use this expedited process of

submitting fingerprints to the FBI and receiving the results of those submissions. This method afforded licensees a timely method to satisfy the requirements of 10 CFR 73.57, though the use of EIE was not mandated by the NRC. Ms. Ordaz's letter also discussed provisions for payment by check or by NRC Form 629, "Authorization for Payment by Credit Card." Currently, there are 19 licensees actively using the EIE to satisfy the requirements of 10 CFR 73.57(d)(1) and 73.57(d)(3).

On September 6, 2002, the NRC published a direct final rule (67 FR 57084) amending its regulations to clarify when and how the public might communicate with the agency through electronic media. This direct final rule, among others, amended the sections of 10 CFR 73.57 to recognize CHP-EIE and to expand the options for payment of fingerprint processing fees. On December 4, 2002, the NRC withdrew its direct final rule (67 FR 72091), due in large part to the significant adverse comments on the rule, none of which was directed toward the proposed changes to 10 CFR 73.57.

The NRC is now in the process of publishing a new direct final rule amending its requirements in 10 CFR 73.57. The direct final rule change will specify when and how information might be communicated with the agency through electronic media for 10 CFR 73.57(d)(1) and (d)(3). The NRC staff believes that the publication of the direct final rule change will address your concerns regarding the requirements in 10 CFR 73.57. The NRC staff plans to publish the direct final rule in the near future.

Based upon the NRC's endorsement of the CHP-EIE program and the expected publication in the near future of a direct final rule as discussed above, the NRC staff has concluded that an exemption to the requirements of 10 CFR 73.57(d)(1) and 73.57(d)(3) is not necessary. This decision was discussed with your staff in a conference call on February 27, 2003.

If you have any questions regarding this matter, please contact Christopher Gratton, Senior Project Manager for the Surry Power Station, at 301-415-1055.

Sincerely,

/RA/

John A. Zwolinski, Director
Division of Licensing Project Management
Office of Nuclear Reactor Regulation

Docket Nos. 50-280, 50-281, 50-338,
50-339, 50-245, 50-336, 50-423, 72-02,
and 72-16

cc: See next page

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Distribution: See next page

Incoming: ML030630403

Response: ML030650553

** No legal objection

Package: ML030650585

* See Previous Concurrence

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