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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Ms. Vietti-Cook, Secretary
Rulemakings and Adjudications Staff
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Subject: **"Protection of Safeguards Information: Proposed Rule" (RIN3150 - AH57)**
70 Federal Register 7196 (February 11, 2005)

References: "Issuance of Order Imposing Requirements for Protecting Certain Safeguards Information," from Jack R. Strosnider (NRC) to Harold B. Ray (SCE), dated November 5, 2004

Dear Ms. Vietti-Cook,

In the subject Federal Register notice, the Nuclear Regulatory Commission (NRC) solicited comments on the proposed rule that would amend the regulations for protection of Safeguards Information from inadvertent releases and unauthorized disclosure that might compromise the security of nuclear facilities and materials.

Southern California Edison (SCE) supports the NRC's efforts to ensure the security of nuclear materials and facilities. Unfortunately, the proposed rule adds to the confusion of classifications and the lack of consistency between regulatory agencies on what information requires protection, what are appropriate protective measures, and which regulatory agency has jurisdiction. A second broad concern is the extensive new requirements for marking and handling that are being imposed not only on future documents but also on historical documents held by licensees and their vendors and contractors. There does not appear to be any justification or commensurate benefit to the addition of the new classification of Safeguards Information – Modified Handling or to the requirements for marking and handling that cannot be satisfied and will, as a minimum, require significant resources. Additional detailed comments are provided in the enclosure.

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SECY-02

SCE supports comments made by the Nuclear Energy Institute (NEI) in its letter dated March 28, 2005. We appreciate the opportunity to provide input on this rule. If you have any questions, please feel free to contact me.

Sincerely,

cc: B. S. Mallett, Regional Administrator, NRC Region IV
B. M. Pham, NRC Project Manager, San Onofre Units 2 and 3
J. C. Shepherd, NRC Project Manager, San Onofre Unit 1
C. C. Osterholtz, NRC Senior Resident Inspector, San Onofre Units 2 and 3

Southern California Edison's Comments on
"Protection of Safeguards Information"
Proposed Rule 70 FR 7196 RIN 3150-AH57

The NRC requested specific comment on differing requirements for access to Safeguards Information (SGI) and Safeguards Information – Modified Handling (SGI-M). As currently proposed, the rule would require nuclear power reactor licensees to demonstrate "that an individual is trustworthy and reliable" by performing Federal Bureau of Investigation checks, including fingerprinting, on an individual before granting them access to SGI. Non-power reactor licensees are only required to perform a comprehensive background check (or other means approved by the Commission) in order to assert that an individual is "trustworthy and reliable" and can therefore be granted access to SGI. For those individuals being granted access to SGI-M, a comprehensive background check is required regardless of whether the applicant/licensee is a nuclear power reactor. As a minimum, the NRC needs to include a definition of a "comprehensive background check" or provide explicit guidance on what qualifies as "other means approved by the Commission," such as a direct link to 10 CFR 26.10 or 10 CFR 73.56 if appropriate. Ultimately, differing requirements based solely on whether the licensee is a nuclear power plant is not justified. There does not appear to be any benefit to imposing different access authorization requirements for nuclear power reactors compared to other licensees.

The following comments refer to proposed changes to both 10 CFR 73.22 and 73.23:

- On page 7197 of the Federal Register Notice, third column, Section III, "Purpose of Rulemaking," the NRC states, in part, "Expand the types of security information covered by the definition of SGI in § 73.21 to include access authorization for background screening...." There is no associated requirement that can be found in either § 73.22 or § 73.23 for background screening information to be protected as SGI.

- Paragraphs (a)(1) should to be amended to narrow the scope of documents to those that contain sufficient detail on the licensee's actual strategies or procedures that, if inadvertently disclosed, could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of material or a facility. As currently written, the language could be interpreted to encompass general information, including all engineering or safety analyses, procedures, and drawings that have previously been available to the public and therefore beyond the control of the licensee or that do not contain any security-related information. Similarly, it is unnecessary to classify documents as SGI or SGI-M unless the information is specific to the facility and its protective strategy, or if the protective features can be readily observed by an unauthorized individual from outside the Protected Area. Below are suggestions for rewording of certain sections to clarify the scope:
    - "(a)(1)(iii) As installed details of ~~A~~alarm system layouts~~,~~ ~~showing the~~ location, and electrical design that, if disclosed, could facilitate gaining unauthorized access to special nuclear material, nuclear facilities, or Safeguards Information~~of intrusion detection devices, alarm assessment equipment, alarm system wiring, emergency power sources, and duress alarms~~."
    - "(a)(1)(iv) Written physical security protective strategy orders and procedures for members of the security organization, duress codes, and patrol ~~schedules~~ routes."

- o "(a)(1)(v) ~~On-site and off-site communications systems in regard to their use for security purposes~~ Site-specific design features or evaluations of site-specific plant radio and telephone communication systems revealing vulnerabilities or limitations in operating capability."
- o "(a)(1)(ix) All portions of the composite facility guard qualification and training program that addresses the licensee's protective strategy~~plan disclosing features of the physical security system or response procedures~~." Given that most training and qualification plans do not include detailed information, SCE also recommends that these plans be decontrolled by the NRC.
- o "(a)(1)(x) ~~Information concerning onsite or offsite response forces, including size, identity, armament, and arrival times of such forces committed to respond to safeguards or security emergencies~~Response plans to specific threats detailing size, disposition, response times, and armament of responding forces."

The NRC should also define what is meant by "significant adverse effect."

- Classification of emergency planning procedures and scenarios [paragraphs 73.22(a)(1)(xii), 73.22(a)(2)(viii), 73.23(a)(1)(x), and 73.23(a)(2)(v)] as SGI or SGI-M will hamper effective implementation and coordination of efforts with affected entities, like carriers, that are considered non-governmental individuals. More specifically, broad interpretation of these requirements would require State and local governmental entities who are not in law enforcement but are involved in emergency planning to be verified as "trustworthy and reliable" by the licensee in order for the licensee to comply with 10 CFR 50 Appendix E IV.B.

- The proposed 73.22(a)(1)(xiii) requires "Information required by the Commission pursuant to 10 CFR 73.55(c)(8) and (9)" to be protected as SGI without explicitly identifying what must be protected as SGI. There is no apparent reason to protect this information as SGI and the requirement should be deleted.

- 10 CFR 73.22(a)(2) and 73.23(a)(2) cover transportation related information that is under the Department of Transportation's regulations in 49 CFR 15 "Protection of Sensitive Security Information (SSI)." If implemented in its current form, these regulations will require licensees to handle, as a minimum, transportation security plan – risk assessments as both SSI and SGI or SGI-M, duplicative requirements that add no discernible benefit. Furthermore, classification of certain transportation related information as SGI will be unworkable. For example, under 73.22(a)(2)(iv) and 73,23(a)(2)(ii), licensees are required to classify the location of safe havens as SGI or SGI-M. At the same time, that information must be shared with the carrier, particularly the driver of the vehicle, to meet the DOT requirements for ensuring the security of the shipment. All of the regulatory agencies should reach consensus on what information should be protected, reduce the number of classifications, and develop a single cohesive nationwide set of information security protection standards that includes a clear definition of each classification.

- Notwithstanding the previous comment, if the NRC imposes duplicative requirements for protection of transportation security-related information in addition to the DOT's regulations, replace "transportation physical security plan" with "transportation security plan" to be consistent with DOT regulations or provide a definition of "transportation physical security plan".

- The statement "The individuals described in (b)(1)(ii) through (vi) of this section are deemed to be trustworthy and reliable by virtue of their occupational status" in combination with the requirement in paragraph (b)(2) to determine trustworthiness and reliability "...for non-governmental individuals in (b)(1)(i) and (vii)" appears to require licensees to perform a FBI criminal history check for NRC personnel. If this is not the intent of the regulations, then paragraph (b)(2) of both subparts should be modified to state: "The individuals described in paragraph (b)(1)(i) through (vi)..."

- New requirements for preparation and marking of documents [paragraph (d) to both subparts] are onerous, particularly in light of the expanded list of documents in paragraphs (a)(1) and (a)(2) of both subparts. Industry discussions with the NRC on order EA-04-190 led us to believe that controlling SGI-M documents under our existing SGI program was acceptable. However, the proposed changes in paragraph (d) appear to contradict that position and expand the marking and handling requirements to apply to both SGI and SGI-M documents. There does not appear to be any justification for the additional marking requirements in paragraph (d) given the effectiveness of the current program. In any case, the expanded types of documents that must be handled as SGI or SGI-M and the addition of marking requirements will require additional effort and time to implement. The proposed rule should allow a reasonable period (at least a year) for the licensee to effectively implement the requirements. Furthermore, the marking requirements should only be applied to documents generated after the effective date of the final rule and should not be applied retroactively [(d)(4)].

- Paragraph (d)(3) should be modified to provide flexibility on portion marking of correspondence to and from the NRC as follows: "Portion marking of documents or other information is allowed ~~required~~ for correspondence to and from the NRC." This will allow licensees to designate entire documents as SGI without having to mark each paragraph if appropriate.

- As previously stated, marking requirements should not be applied retroactively - paragraph (d)(4) should be deleted or, as a minimum, it should be clearly stated that this is not a licensee's responsibility.

In addition to the above comments, information protection measures employed by Federal law enforcement agencies should be included in 10 CFR 73.21(a)(2) as meeting the general performance criteria. It also appears that the §76.115 and §76.117 should refer to §73.21 and §73.23, not §73.22.