

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
PORTLAND GENERAL ELECTRIC COMPANY) Docket No. 72-17
TROJAN INDEPENDENT SPENT FUEL) EA-07-124
STORAGE INSTALLATION)
121 SOUTH WEST SALMON STREET)
PORTLAND, OR 97204)

**ORDER IMPOSING FINGERPRINTING
AND CRIMINAL HISTORY RECORDS CHECK
REQUIREMENTS FOR UNESCORTED ACCESS
TO CERTAIN SPENT FUEL STORAGE FACILITIES
(EFFECTIVE IMMEDIATELY)**

I

The U.S. Nuclear Regulatory Commission (NRC or the Commission) has issued a specific license, to the Portland General Electric Company (PGE), authorizing storage of spent fuel in an independent spent fuel storage installation, in accordance with the Atomic Energy Act (AEA) of 1954, as amended, and Title 10 of the *Code of Federal Regulations* (10 CFR) Part 72. On August 8, 2005, the Energy Policy Act of 2005 (EPAAct) was enacted. Section 652 of the EPAAct amended Section 149 of the AEA, to require fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records check of any individual who is permitted unescorted access to radioactive material or other property subject to regulation by the Commission, which the Commission determines to be of such significance to the public health and safety or the common defense and security, as to warrant fingerprinting and background checks. The Commission has determined that spent fuel storage facilities meet the requisite threshold warranting these additional measures. Though a rulemaking to implement the fingerprinting provisions of the EPAAct is currently underway, the NRC has decided to implement this particular requirement by Order, in part, prior to the completion of the

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rulemaking because a deliberate malevolent act by an individual with unescorted access to spent fuel storage facilities has a potential to result in significant adverse impacts to the public health and safety or the common defense and security.

Those exempted from fingerprinting requirements under 10 CFR 73.61 [72 *Federal Register* 4945 (February 2, 2007)] are also exempt from the fingerprinting requirements under this Order. In addition, individuals who have had a favorably decided U.S. Government criminal history records check within the last five (5) years, or individuals who have active federal security clearance (provided in either case that they make available the appropriate documentation), have satisfied the EAct fingerprinting requirement and need not be fingerprinted again. Also, individuals who have been fingerprinted and granted access to Safeguards Information (SGI) by the reviewing official under the previous fingerprinting order, "Order Imposing Fingerprinting and Criminal History Check Requirements for Access to Safeguards Information" (EA-06-298) do not need to be fingerprinted again.

Subsequent to the terrorist events of September 11, 2001, the NRC issued security Orders requiring certain entities to implement Interim Compensatory Measures (ICMs) and Additional Security Measures (ASMs) for certain radioactive material. The requirements imposed by these Orders and the measures licensees have developed to comply with these Orders, were designated by the NRC as SGI and were not released to the public. These Orders included a local criminal history records check to determine trustworthiness and reliability of individuals seeking unescorted access to spent fuel storage facilities. "Access" means that an individual could exercise some physical control over the material or device. In accordance with Section 149 of the AEA, as amended by the EAct, the Commission is imposing FBI criminal history records check requirements, as set forth in the Order, for all

individuals allowed unescorted access to protected areas, secure areas, and critical target areas, for certain spent fuel facility licensees. These requirements will remain in effect until the Commission determines otherwise. In addition, pursuant to 10 CFR 2.202, I find that in light of the common defense and security matters identified above, which warrant the issuance of this Order, the public health, safety, and interest require that this Order be effective immediately.

II

Accordingly, pursuant to Sections 51, 53, 63, 81, 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, Parts 72 and 73, IT IS HEREBY ORDERED, **EFFECTIVE IMMEDIATELY**, THAT YOUR SPECIFIC LICENSE IS MODIFIED AS FOLLOWS:

- A. PGE shall, within **twenty (20) days** of the date of this Order, establish and maintain a fingerprinting program that meets the requirements of the Attachment to this Order, for unescorted access to spent fuel storage facilities.

- B. PGE shall, in writing, within **twenty (20) days** from the date of this Order, notify the Commission: (1) of receipt and confirmation that compliance with the Order will be achieved, (2) if unable to comply with any of the requirements described in the Attachment, or (3) if compliance with any of the requirements are unnecessary in its specific circumstances. The notification shall provide PGE's justification for seeking relief from, or variation of, any specific requirement.

- C. In accordance with the NRC's "Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information," only an NRC-approved reviewing official shall review the results of a FBI criminal history records check. The reviewing official shall determine whether an individual may have, or continue to have, unescorted access to spent fuel storage facilities. Fingerprinting and the FBI identification and criminal history records check are not required for individuals that are exempted from fingerprinting requirements under 10 CFR 73.61 [72 Federal Register 4945 (February 2, 2007)]. In addition, individuals who have had a favorably-decided U.S. Government criminal history records check within the last five (5) years, or have an active Federal security clearance (provided in each case that the appropriate documentation is made available to PGE's reviewing official), have satisfied the EPAct fingerprinting requirement and need not be fingerprinted again.
- D. Fingerprints shall be submitted and reviewed in accordance with the procedures described in the Attachment to this Order. Individuals who have been fingerprinted and granted access to SGI by the reviewing official, under the NRC's Order No. EA-06-298 do not need to be fingerprinted again for purposes of authorizing unescorted access. No person may have access to SGI or unescorted access to any radioactive material or property subject to regulation by the NRC if the NRC has determined, in accordance with its administrative review process based on fingerprinting and an FBI identification and criminal history records check, either that the person may not have access to SGI or that the person may not have unescorted access to radioactive material or property subject to regulation by the NRC.

- E. PGE may allow any individual who currently has unescorted access to spent fuel storage facilities, in accordance with the ICM and ASM Security Orders, to continue to have unescorted access, pending a decision by the reviewing official (based on fingerprinting, an FBI criminal history records check, and a trustworthiness and reliability determination) that the individual may continue to have unescorted access to spent fuel storage facilities. PGE shall complete implementation of the requirements of the Attachment to this Order within **ninety (90) days** from the date of issuance of this Order.

PGE responses to Condition B. shall be submitted to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. In addition, licensee responses are security-related information or official use only and shall be properly marked.

The Director, Office of Nuclear Material Safety and Safeguards, may, in writing, relax or rescind any of the above conditions upon demonstration of good cause by PGE.

III

In accordance with 10 CFR 2.202, PGE must, and any other person adversely affected by this Order, may, submit an answer to this Order, and may request a hearing regarding this Order, within twenty (20) days from the date of this Order. Where good cause is shown, consideration will be given to extending the time, to either submit an answer, or 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 Nuclear Material Safety and Safeguards, 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 for which PGE, or any other person adversely affected relies and the reasons as to why the Order should not have been issued. 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 Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; to the Assistant General Counsel for Materials Litigation and Enforcement at the same address; and to PGE, if the answer or hearing request is by an individual other than PGE. Because of possible delays in delivery of mail to United States Government offices, it is requested 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 a person other than PGE requests a hearing, that person shall set forth, with particularity, the manner in which his/her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309.

If a hearing is requested by PGE or an individual whose interest is adversely affected, the Commission will issue an Order designating the time and place of a 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), PGE may, in addition to demanding a hearing, at the time the answer is filed, or sooner, move that the presiding officer 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 **twenty (20) days** from the date of this Order without further Order or proceedings.

If an extension of time for requesting a hearing has been approved, 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 A HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

Dated this 29th day of May 2007

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Michael F. Weber, Director
Office of Nuclear Material
Safety and Safeguards

Attachment:

Requirements for Fingerprinting and
Criminal History Records Checks of Individuals
When Licensee's Reviewing Official
is Determining Unescorted Access to
Spent fuel Storage Facilities