June 8, 2007

EA-07-154

Mr. W. Edward Cummins
AP600 and AP1000 Projects
Westinghouse Electric Company
P.O. Box 355
Pittsburgh, PA 15230-0355

SUBJECT: ISSUANCE OF ORDER IMPOSING SAFEGUARDS INFORMATION PROTECTION REQUIREMENTS AND FINGERPRINTING AND CRIMINAL HISTORY RECORDS CHECK REQUIREMENTS FOR ACCESS TO SAFEGUARDS INFORMATION

Dear Mr. Cummins:

The Commission has decided to require, through rulemaking, that nuclear power plant designers perform a rigorous assessment of design features that could provide additional inherent protection to avoid or mitigate the effects of an aircraft impact, while reducing or eliminating the need for operator actions, where practicable. In anticipation of this requirement, and to assist designers in completing this assessment, the Commission has decided to provide the beyond design basis, large commercial aircraft characteristics specified by the Commission to plant designers who have the need to know and who meet the NRC's requirements for the disclosure of such information. The specified aircraft characteristics that are the subject of the enclosed Order (Enclosure 1) are designated by the Order as Safeguards Information (SGI),[1] in accordance with Section 147 of the AEA. In addition, in a letter dated May 17, 2007, Westinghouse Electric Company (WEC) requested authorization to have independent control of SGI. To implement the Commission's decision to provide this SGI to WEC, and in response to WEC's May 17 letter, the NRC is issuing the enclosed Order to WEC to impose requirements for the protection of SGI, as well as for the fingerprinting of all persons who have or seek access to this SGI.

Before WEC grants an individual access to SGI, WEC must submit the fingerprints of the individual to the NRC for an FBI criminal history records check. The results of the FBI criminal history records check will be provided to WEC and that information must be considered by WEC when making a determination of whether an individual, who has a need-to-know SGI, may be given access to SGI (see Attachment to the Order and Enclosure 2 to this letter).

Certain categories of individuals are excepted by rule from the fingerprinting requirement [10 CFR 73.59], including Federal, State, and local law enforcement personnel; Agreement State inspectors who conduct security inspections on behalf of the NRC; members of Congress; certain employees of members of Congress or Congressional Committees who have undergone fingerprinting for a prior U.S. government criminal history check; and

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[1] Safeguards Information is a form of sensitive, unclassified, security-related information that the Commission has the authority to designate and protect under Section 147 of the AEA.

representatives of the International Atomic Energy Agency or certain foreign government organizations. In addition, the NRC has determined that individuals who have active federal security clearances, or who have had a favorably-decided U.S. Government criminal history check within the last five (5) years, have already been subjected to fingerprinting and criminal history checks and, thus, have satisfied the EPAct fingerprinting requirement.

In order to implement the enclosed Order, WEC must nominate an individual who will review the results of the FBI criminal history records check to make SGI access determinations. This individual, referred to as the "reviewing official," must be someone who seeks access to SGI. Based on the results of the FBI criminal history records check, the NRC staff will determine whether this individual may have access to SGI. If the NRC determines that the individual may not be granted access to SGI, the enclosed Order prohibits that individual from obtaining access to any SGI. The NRC process that will govern this determination, and the rights of the individual nominated to be the "reviewing official," are described in Enclosure 3. Once the NRC approves a reviewing official, that reviewing official, and only that reviewing official, can make SGI access determinations for other individuals who have been identified by WEC as having a need to know SGI, and who have been fingerprinted and have had a criminal history records check. The reviewing official can only make SGI access determinations for other individuals, but cannot approve other individuals to act as reviewing officials. Only the NRC can approve a reviewing official; therefore, if WEC wishes to have a new or additional reviewing official, the NRC must approve that individual before they can act in that capacity.

In the event that the individual nominated as the WEC's initial reviewing official is not approved by the NRC to have access to SGI, the individual may appeal this decision by following the procedures in Enclosure 3. WEC may then nominate a different individual to be the reviewing official. If WEC decides to withdraw the nomination of an individual as a reviewing official after submitting fingerprints to the FBI through the NRC, the NRC will still complete the review process for determining access to SGI.

WEC is required to submit fingerprints in accordance with the enclosed Order. The current processing fee is $27.00 per submission and payment must accompany the request. Details regarding fingerprint submittals and payment of fees are found in the Attachment to the Order. If the person you nominate as reviewing official already has a national security clearance, please submit that person's name along with documentation that supports the claim. NRC staff will verify that the nominated individual has the necessary clearance to be able to be approved as reviewing official.

The enclosed Order is effective immediately. These requirements will remain in effect until the Commission determines otherwise.

The enclosed Order requires that WEC respond to the Order within twenty (20) days of the date of the Order, and implement the requirements of the Order before providing access to SGI to any individual. Please contact Anissa Coates at (301) 415-1897, or via email to ARC3@nrc.gov, to facilitate resolution of any issues or questions related to compliance with the requirements of the enclosed Order.

WEC's responses to the Order (not fingerprint cards) must be submitted to the Director, Office of New Reactors, and should be addressed to the attention of Anissa Coates, Mail Stop O-17F3. The following mailing addresses should be used:

For normal postal delivery, mail to:

Director, Office of New Reactors
U. S. Nuclear Regulatory Commission
Washington, D.C., 20555-0001
Attn: Anissa Coates, Mail Stop O-17F3

For delivery services requiring a street address, mail to:

Director, Office of New Reactors
U. S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, MD 20852-2738
Attn: Anissa Coates, Mail Stop O-17F3

Please include the docket number listed below in all your correspondence to the NRC. In addition, WEC responses shall be marked as "Security-Related Information - Withhold Under 10 CFR 2.390." The enclosed Order has been forwarded to the Office of the *Federal Register* for publication.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and its enclosures will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC Web site at http://www.nrc.gov/reading-rm/adams.html (the Public Electronic Reading Room).

Sincerely,

/RA/

R. W. Borchardt, Director
Office of New Reactors

Docket Nos.: 52-003 and 52-006

Enclosures:
1. Order Imposing Fingerprinting and Criminal History Check Requirements for Access to Safeguards Information
2. Guidance for Licensee's Evaluation of Access to Safeguards Information With the Inclusion of Criminal History (Fingerprint) Checks
3. Process to Challenge NRC Denials or Revocations of Access to Safeguards Information

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and its enclosures will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC Web site at http://www.nrc.gov/reading-rm/adams.html (the Public Electronic Reading Room).

Sincerely,

/RA/

R. W. Borchardt, Director
Office of New Reactors

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OFFICE	NRO/DNRL/NGIF	BC:NRO/DNRL/NGIF	D:OE	ADM/DFS/PSB	NSIR/DSO/DDSP/IS	D:NRO/DNRL	DD:NRO	OGC	D:NRO
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