

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

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| WESTINGHOUSE ELECTRIC COMPANY LLC |) | EA-07-154 |
| AND ALL OTHER PERSONS |) | Docket No.: 52-006 |
| WHO SEEK OR OBTAIN ACCESS TO |) | |
| SAFEGUARDS INFORMATION |) | |
| DESCRIBED HEREIN |) | |

**ORDER IMPOSING SAFEGUARDS INFORMATION
PROTECTION REQUIREMENTS AND FINGERPRINTING
AND CRIMINAL HISTORY RECORDS CHECK REQUIREMENTS
FOR ACCESS TO SAFEGUARDS INFORMATION
(EFFECTIVE IMMEDIATELY)**

I

Westinghouse Electric Company, LLC (WEC), holds certificates for the AP600 and AP1000 reactor designs issued by the U.S. Nuclear Regulatory Commission (NRC) in accordance with the Atomic Energy Act (AEA) of 1954, as amended.

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 this

order are hereby designated as Safeguards Information (SGI),¹ in accordance with Section 147 of the AEA. In addition, in a letter dated May 17, 2007, 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 this 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.

On August 8, 2005, the Energy Policy Act of 2005 (EPAcT) was enacted. Section 652 of the EPAcT amended Section 149 of the AEA to require fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records check of any person who is to be permitted to have access to SGI. The NRC's implementation of this requirement cannot await the completion of the SGI rulemaking, which is underway, because the EPAcT fingerprinting and criminal history records check requirements for access to SGI were immediately effective upon enactment of the EPAcT. Therefore, in accordance with Section 149 of the AEA, as amended by the EPAcT, the Commission is imposing additional requirements for access to SGI, as set forth by this Order, so that Westinghouse can obtain and grant access to SGI. This Order also requires compliance with the safeguards protection measures set forth in 10 CFR 73.21 and imposes requirements for access to and protection of SGI by any person,² whether or not they

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.

² Person means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, government agency other than the Commission or the Department of Energy, except that the Department of Energy shall be considered a person with respect to those facilities of the Department of Energy specified in Section 202 of the Energy Reorganization Act of 1974 (88 Stat. 1244), any State or any political subdivision of, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.

are a licensee, applicant, or certificate holder of the Commission or an Agreement State.

In order to implement this 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. 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 in accordance with this Order. 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 a WEC wishes to have a new or additional reviewing official, the NRC must approve that individual before they can act in the capacity of a reviewing official.

Certain categories of individuals are relieved by rule from the fingerprinting requirements pursuant to 10 CFR 73.59. Those individuals include: 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 representatives of the International Atomic Energy Agency or certain foreign government organizations. In addition, individuals who have had a favorably-decided

U.S. Government criminal history check within the last five (5) years, or individuals who have active Federal security clearances (provided in either case that they make available the appropriate documentation), have already been subjected to fingerprinting and criminal history checks, thus, have satisfied the EAct fingerprinting requirement.

II

The Commission has broad statutory authority to protect and prohibit the unauthorized disclosure of SGI. Section 147 of the AEA grants the Commission explicit authority to issue such Orders, as necessary, to prohibit the unauthorized disclosure of SGI. Furthermore, as discussed above, Section 652 of the EAct amended Section 149 of the AEA to require fingerprinting and an FBI identification and a criminal history records check of each individual who seeks access to SGI. In addition, no person may have access to SGI unless the person has an established need-to-know.

To provide assurance that WEC is implementing appropriate measures to a consistent level of protection to prohibit unauthorized disclosure of SGI, and to comply with the fingerprinting and criminal history check requirements for access to SGI, WEC shall implement the requirements for the protection of SGI as set forth in 10 CFR 73.21 and of this Order. 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.

III

Accordingly, pursuant to Sections 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 and

10 CFR 73, IT IS HEREBY ORDERED, **EFFECTIVE IMMEDIATELY**, THAT WEC AND ALL OTHER PERSONS WHO SEEK OR OBTAIN ACCESS TO SAFEGUARDS INFORMATION AS DESCRIBED HEREIN SHALL COMPLY WITH THE REQUIREMENTS SET FORTH IN 10 CFR 73.21 AND THIS ORDER.

- A. 1. No person may have access to SGI unless that person has a need-to-know the SGI, has been fingerprinted and undergone an FBI identification and criminal history records check, and satisfies all other applicable requirements for access to SGI. Fingerprinting and the FBI identification and criminal history records check are not required, however, for any person who is relieved from the requirement by 10 CFR 73.59 or who has had a favorably-decided U. S. Government criminal history check within the last five (5) years, or who has an active federal security clearance, provided in the latter two (2) cases that the appropriate documentation is made available to WEC's NRC-approved reviewing official.
2. No person may have access to any SGI if the NRC, when making an SGI access determination for a nominated reviewing official, has determined, based on fingerprinting and an FBI identification and criminal history records check, that the person nominated may not have access to SGI.
- B. No person may provide SGI to any other person except in accordance with Condition III.A. above. Prior to providing SGI to any person, a copy of this Order shall be provided to that person.

C. WEC shall comply with the following requirements:

1. WEC shall, within **twenty (20) days** of the date of this Order, establish and maintain a fingerprinting program that meets the requirements of 10 CFR 73.21 and the Attachment to this Order.

2. WEC shall, within **twenty (20) days** of the date of this Order, submit the fingerprints of one (1) individual who: a) WEC nominates as the “reviewing official” for determining access to SGI by other individuals; and b) has an established need-to-know the information. The NRC will determine whether this individual (or any subsequent reviewing official) may have access to SGI and, therefore, will be permitted to serve as WEC’s reviewing official.³ WEC may, at the same time or later, submit the fingerprints of other individuals to whom WEC seeks to grant access to SGI. Fingerprints shall be submitted and reviewed in accordance with the procedures described in the Attachment to this Order.

3. WEC may allow any individual who currently has access to SGI to continue to have access to previously-designated SGI without being fingerprinted, pending a decision by the NRC-approved reviewing official (based on fingerprinting and an FBI criminal history records check) that the individual may continue to have access to SGI. WEC shall make determinations on continued access to SGI within **ninety (90) days** of the date of this Order, in part on the results of the fingerprinting and criminal history check, for

³ The NRC’s determination of this individual’s access to SGI in accordance with the process described in Enclosure 3 [available through NRC’s Agencywide Documents Access and Management System (ADAMS)] to the transmittal letter of this Order is an administrative determination that is outside the scope of this Order.

those individuals who were previously granted access to SGI before the issuance of this Order.

4. WEC shall, in writing, within **twenty (20) days** of the date of this Order, notify the Commission: (1) if it is unable to comply with any of the requirements described in the Order, including the Attachment; or (2) if compliance with any of the requirements is unnecessary in its specific circumstances. The notification shall provide WEC's justification for seeking relief from, or variation of, any specific requirement.

WEC's responses to C.1., C.2., C.3, and C.4, above shall be submitted to the Director, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555. In addition, WEC responses shall be marked as "Security-Related Information - Withhold Under 10 CFR 2.390."

The Director, Office of New Reactors, may, in writing, relax or rescind any of the above conditions upon demonstration of good cause by WEC.

IV

In accordance with 10 CFR 2.202, WEC must, and any other person adversely affected by this Order may, submit an answer to this Order and may request a hearing with regard to this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to 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 New Reactors, 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 by which WEC or other entities adversely affected rely, 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 New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, and to WEC, if the answer or hearing request is by an entity other than WEC. 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 an entity other than WEC requests a hearing, that entity shall set forth, with particularity, the manner in which their 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 WEC, or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any 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), WEC may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to 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 HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

Dated this 8th day of June 2007

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

R. W. Borchardt, Director
Office of New Reactors

Attachment:

Requirements for Fingerprinting and
Criminal History Checks of Individuals
When A Reviewing Official
is Determining Access to Safeguards
Information