

NUCLEAR REGULATORY COMMISSION

NOTICE

APPLICATIONS AND AMENDMENTS TO FACILITY OPERATING LICENSES
INVOLVING PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATIONS
AND CONTAINING SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION
OR SAFEGUARDS INFORMATION
AND ORDER IMPOSING PROCEDURES FOR ACCESS TO SENSITIVE UNCLASSIFIED
NON-SAFEGUARDS INFORMATION OR SAFEGUARDS INFORMATION

NRC-2009-0051

I. Background

Pursuant to section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This notice includes notices of amendments containing sensitive unclassified non-safeguards information (SUNSI) or safeguards information (SGI).

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO
FACILITY OPERATING LICENSES, PROPOSED NO SIGNIFICANT HAZARDS
CONSIDERATION DETERMINATION, AND OPPORTUNITY FOR A HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the *Federal Register* a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking, Directives and Editing Branch, TWB-05-B01M, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this *Federal Register* notice. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, or at <http://www.nrc.gov/reading-rm/doc-collections/cfr/part002/part002-0309.html>. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm.html>. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons

why intervention should be permitted with particular reference to the following general requirements: 1) the name, address, and telephone number of the requestor or petitioner; 2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; 3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and 4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide

when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 28, 2007 (72 FR 49139). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the petitioner/requestor must contact the Office of the Secretary by e-mail at hearing.docket@nrc.gov, or by calling (301) 415-1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace

Forms Viewer™ is free and is available at <http://www.nrc.gov/site-help/e-submittals/install-viewer.html>. Information about applying for a digital ID certificate is available on NRC's public website at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>.

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public website at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the "Contact Us" link located on the NRC website at <http://www.nrc.gov/site-help/e-submittals.html> or by calling the NRC Meta-System Help Desk, which is available between 8:00 a.m. and 8:00 p.m., Eastern Time, Monday through Friday. The Meta-System Help Desk can be contacted by telephone at 1-866-672-7640 or by e-mail at MSHD.Resource@nrc.gov.

Participants who believe that they have a good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings

must be submitted by: (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville, Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)-(viii).

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at http://ehd.nrc.gov/ehd_proceeding/home.asp, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to this amendment action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. If you do not

have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397-4209, (301) 415-4737 or by email to pdr.resource@nrc.gov.

FirstEnergy Nuclear Operating Company, et al., Docket No. 50-412, Beaver Valley Power Station, Unit No. 2 (BVPS-2), Beaver County, Pennsylvania

Date of amendment request: October 10, 2008

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information. The proposed amendment would modify Technical Specifications (TSs) to allow an additional method of repair for steam generator (SG) tubes, involving the use of Westinghouse leak limiting Alloy 800 sleeves, and as well as, clarify an existing reporting requirement concerning SG tube inspections.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No. The leak limiting Alloy 800 sleeves are designed using the applicable American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code and, therefore, meet the design objectives of the original SG tubing. The applied stresses and fatigue usage for the sleeves are bounded by the limits established in the ASME Code. Mechanical testing has shown that the structural strength of sleeves under normal, upset, emergency, and faulted conditions provides margin to the acceptance limits.

These acceptance limits bound the most limiting (three times normal operating pressure differential) burst margin recommended by NRC Regulatory Guide 1.121, "Bases for Plugging Degraded PWR Steam Generator Tubes." Burst testing of sleeve/tube assemblies has confirmed the analytical results and demonstrated that no unacceptable levels of primary to secondary leakage are expected during any plant condition.

The leak limiting Alloy 800 sleeve depth-based structural limit is determined using NRC guidance and the pressure stress equation of ASME Code, Section III with additional margin added to account for the configuration of long axial cracks. Calculations show that a depth-based limit of 45 percent

through-wall degradation is acceptable. However, the proposed amendment provides additional margin by requiring an Alloy 800 sleeved tube to be plugged on detection of any flaw in the sleeve or in the pressure boundary portion of the original tube wall in the sleeve to tube joint. Degradation of the original tube adjacent to the nickel band of an Alloy 800 sleeve, regardless of depth, would not prevent the sleeve from satisfying design requirements. Thus, flaw detection capabilities within the original tube adjacent to the sleeve nickel band are not necessary in order to justify continued operation of the sleeved tube.

Evaluation of repaired SG tube testing and analysis indicates no detrimental effects on the leak limiting Alloy 800 sleeve or sleeved tube assembly from reactor system flow, primary or secondary coolant chemistries, thermal conditions or transients, or pressure conditions as may be experienced at BVPS-2. Corrosion testing and historical performance of sleeve/tube assemblies indicates no evidence of sleeve or tube corrosion considered detrimental under anticipated service conditions.

Implementation of the proposed change has no significant effect on either the configuration of the plant or the manner in which it is operated. The consequences of a hypothetical failure of the leak limiting Alloy 800 sleeve/tube assembly are bounded by the current SG tube rupture (SGTR) analysis described in the BVPS-2 Updated Final Safety Analysis Report because the total number of plugged SG tubes (including equivalency associated with installed sleeves) is required to be consistent with accident analysis assumptions. A main steam line break or feedwater line break would not cause a SGTR since the sleeves are analyzed for a maximum accident differential pressure greater than that predicted in the BVPS-2 safety analysis. The sleeve/tube assembly leakage during plant operation would be minimal and is well within the allowable TS leakage limits and accident analysis assumptions, neither of which would be changed to compensate for the proposed repair method.

Proposed changes to TS 5.6.6.2.4 only affect a reporting requirement and do not affect plant design, operation or maintenance. They are intended as clarifications that would reinforce the original intent of the reporting requirement.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No. The leak limiting Alloy 800 sleeves are designed using the applicable ASME Code as guidance, and therefore meet the objectives of the original SG tubing. As a result, the functions of the SG will not be significantly affected by the installation of the proposed sleeve. Therefore, the only credible failure mode for the sleeve and/or tube is to rupture, which has already been evaluated. The continued integrity of the installed sleeve/tube assembly is periodically verified as required by the TSs and a sleeved tube will be plugged on detection of a flaw in the sleeve or in the pressure boundary portion of the original tube wall in the sleeve to tube joint.

Proposed changes to TS 5.6.6.2.4 only affect a reporting requirement and do not affect plant design, operation or maintenance. They are editorial in nature and are intended as clarifications that would reinforce the original intent of the reporting requirement.

Implementation of the proposed change has no significant effect on either the configuration of the plant or the manner in which it is operated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No. The repair of degraded SG tubes with leak limiting Alloy 800 sleeves restores the structural integrity of the degraded tube under normal operating and postulated accident conditions. The reduction in reactor coolant system flow due to the addition of Alloy 800 sleeves is not significant because the cumulative effect of all repaired (sleeved) and plugged tubes will continue to allow reactor coolant flow to be greater than the flow limit established in the TS limiting condition of operation 3.4.1. The design safety factors utilized for the sleeves are consistent with the safety factors in the ASME Boiler and Pressure Vessel Code used in the original SG design. Tubes with sleeves would also be subject to the same safety factors as the original tubes which are described in the performance criteria for SG tube integrity in the existing TSs. These performance criteria are not being changed to compensate for the proposed repair method. The sleeve and portions of the installed sleeve/tube assembly that represent the reactor coolant pressure boundary will be monitored and a sleeved tube will be plugged on detection of a flaw in the sleeve or in the pressure boundary portion of the original tube wall in the leak limiting sleeve/tube assembly. Use of the previously identified design criteria and design verification testing ensures that the margin of safety is not significantly different from the original SG tubes.

Proposed changes to TS 5.6.6.2.4 only affect a reporting requirement and do not affect plant design, operation or maintenance. They are editorial in nature and are intended as clarifications that would reinforce the original intent of the reporting requirement.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The Nuclear Regulatory Commission (NRC) staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David W. Jenkins, FirstEnergy Nuclear Operating Company, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Branch Chief: Mark G. Kowal

**Order Imposing Procedures for Access to Sensitive Unclassified
Non-Safeguards Information (SUNSI) and Safeguards Information (SGI)
for Contention Preparation**

FirstEnergy Nuclear Operating Company, et al., Docket No. 50-412, Beaver Valley Power
Station, Unit No. 2 (BVPS-2), Beaver County, Pennsylvania

1. This order contains instructions regarding how potential parties to the proceedings listed above may request access to documents containing sensitive unclassified information (SUNSI and SGI).

2. Within ten (10) days after publication of this notice of opportunity for hearing, any potential party as defined in 10 CFR 2.4 who believes access to SUNSI or SGI is necessary for a response to the notice may request access to SUNSI or SGI. A “potential party” is any person who intends or may intend to participate as a party by demonstrating standing and the filing of an admissible contention under 10 CFR § 2.309. Requests submitted later than ten (10) days will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

3. The requester shall submit a letter requesting permission to access SUNSI and/or SGI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555-0001. The expedited delivery or courier mail

address for both offices is U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, MD 20852. The e-mail address for the Office of the Secretary and the Office of the General Counsel are hearing.docket@nrc.gov and ogcmailcenter.resource@nrc.gov, respectively.¹ The request must include the following information:

- a. A description of the [licensing / enforcement] action with a citation to this *Federal Register* [notice of hearing / notice of opportunity for hearing];
- b. The name and address of the potential party and a description of the potential party's particularized interest that could be harmed [by the action identified in (a) / if the enforcement action is not sustained];
- c. If the request is for SUNSI, the identity of the individual requesting access to SUNSI and the requester's need for the information in order to meaningfully participate in this adjudicatory proceeding, particularly why publicly available versions of the application would not be sufficient to provide the basis and specificity for a proffered contention;
- d. If the request is for SGI, the identity of the individual requesting access to SGI and the identity of any expert, consultant or assistant who will aid the requester in evaluating the SGI, and information that shows:
 - (i) Why the information is indispensable to meaningful participation in this licensing proceeding; and
 - (ii) The technical competence (demonstrable knowledge, skill, experience, training or education) of the requester to understand and use (or

¹ See footnote 6. While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's "E-Filing Rule," the initial request to access SUNSI and/or SGI under these procedures should be submitted as described in this paragraph.

evaluate) the requested information to provide the basis and specificity for a proffered contention. The technical competence of a potential party or its counsel may be shown by reliance on a qualified expert, consultant or assistant who demonstrates technical competence as well as trustworthiness and reliability, and who agrees to sign a non-disclosure affidavit and be bound by the terms of a protective order; and

- e. If the request is for SGI, Form SF-85, "Questionnaire for Non-Sensitive Positions," Form FD-258 (fingerprint card), and a credit check release form completed by the individual who seeks access to SGI and each individual who will aid the requester in evaluating the SGI. For security reasons, Form SF-85 can only be submitted electronically, through a restricted-access database. To obtain online access to the form, the requester should contact the NRC's Office of Administration at 301-492-3524.² The other completed forms must be signed in original ink, accompanied by a check or money order payable in the amount of \$191.00 to the U.S. Nuclear Regulatory Commission for each individual, and mailed to the:

Office of Administration
Security Processing Unit
Mail Stop T-6E46
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0012

These forms will be used to initiate the background check, which includes fingerprinting as part of a criminal history records check. Note: copies of these forms do not need to be included with the request letter to the Office of the

² The requester will be asked to provide his or her full name, social security number, date and place of birth, telephone number, and email address. After providing this information, the requester usually should be able to obtain access to the online form within one business day.

Secretary, but the request letter should state that the forms and fees have been submitted as described above.

4. To avoid delays in processing requests for access to SGI, all forms should be reviewed for completeness and accuracy (including legibility) before submitting them to the NRC. Incomplete packages will be returned to the sender and will not be processed.
5. Based on an evaluation of the information submitted under items 2 and 3.a through 3.d, above, the NRC staff will determine within ten days of receipt of the written access request whether (1) there is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding, and (2) there is a legitimate need for access to SUNSI or need to know the SGI requested. For SGI, the need to know determination is made based on whether the information requested is necessary (*i.e.*, indispensable) for the proposed recipient to proffer and litigate a specific contention in this NRC proceeding³ and whether the proposed recipient has the technical competence (demonstrable knowledge, skill, training, education, or experience) to evaluate and use the specific SGI requested in this proceeding.
6. If standing and need to know SGI are shown, the NRC staff will further determine based upon completion of the background check whether the proposed recipient is trustworthy and reliable. The NRC staff will conduct (as necessary) an inspection to confirm that the recipient's information protection systems are sufficient to protect SGI from inadvertent

³ Broad SGI requests under these procedures are thus highly unlikely to meet the standard for need to know; furthermore, staff redaction of information from requested documents before their release may be appropriate to comport with this requirement. These procedures do not authorize unrestricted disclosure or less scrutiny of a requester's need to know than ordinarily would be applied in connection with an already-admitted contention.

release or disclosure. Recipients may opt to view SGI at the NRC's facility rather than establish their own SGI protection program to meet SGI protection requirements.

7. A request for access to SUNSI or SGI will be granted if:
- a. The request has demonstrated that there is a reasonable basis to believe that a potential party is likely to establish standing to intervene or to otherwise participate as a party in this proceeding;
 - b. The proposed recipient of the information has demonstrated a need for SUNSI or a need to know for SGI, and that the proposed recipient of SGI is trustworthy and reliable;
 - c. The proposed recipient of the information has executed a Non-Disclosure Agreement or Affidavit and agrees to be bound by the terms of a Protective Order setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI and/or SGI; and
 - d. The presiding officer has issued a protective order concerning the information or documents requested.⁴ Any protective order issued shall provide that the petitioner must file SUNSI or SGI contentions 25 days after receipt of (or access to) that information. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for

⁴ If a presiding officer has not yet been designated, the Chief Administrative Judge will issue such orders, or will appoint a presiding officer to do so.

hearing), the petitioner may file its SUNSI or SGI contentions by that later deadline.

8. If the request for access to SUNSI or SGI is granted, the terms and conditions for access to sensitive unclassified information will be set forth in a draft protective order and affidavit of non-disclosure appended to a joint motion by the NRC staff, any other affected parties to this proceeding,⁵ and the petitioner(s). If the diligent efforts by the relevant parties or petitioner(s) fail to result in an agreement on the terms and conditions for a draft protective order or non-disclosure affidavit, the relevant parties to the proceeding or the petitioner(s) should notify the presiding officer within ten (10) days, describing the obstacles to the agreement.

9. If the request for access to SUNSI is denied by the NRC staff or a request for access to SGI is denied by NRC staff either after a determination on standing and need to know or, later, after a determination on trustworthiness and reliability, the NRC staff shall briefly state the reasons for the denial. Before the Office of Administration makes an adverse determination regarding access, the proposed recipient must be provided an opportunity to correct or explain information. The requester may challenge the NRC staff's adverse determination with respect to access to SUNSI or with respect to standing or need to know for SGI by filing a challenge within ten (10) days of receipt of that determination with (a) the presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to

⁵ Parties/persons other than the requester and the NRC staff will be notified by the NRC staff of a favorable access determination (and may participate in the development of such a motion and protective order) if it concerns SUNSI and if the party/person's interest independent of the proceeding would be harmed by the release of the information (e.g., as with proprietary information).

10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer. In the same manner, an SGI requester may challenge an adverse determination on trustworthiness and reliability by filing a challenge within fifteen (15) days of receipt of that determination.

In the same manner, a party other than the requester may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed within ten (10) days of the notification by the NRC staff of its grant of such a request.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.⁶

10. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI and/or SGI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those [intervenors / petitioners] who have standing and who have propounded contentions meeting the specificity and basis requirements in

⁶ As of October 15, 2007, the NRC's final "E-Filing Rule" became effective. See Use of Electronic Submissions in Agency Hearings (72 FR 49139; Aug. 28, 2007). Requesters should note that the filing requirements of that rule apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI/SGI requests submitted to the NRC staff under these procedures.

10 CFR Part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

Dated at Rockville, Maryland, this 10th day of February 2009.

FOR THE NUCLEAR REGULATORY COMMISSION.

/RA/

Annette L. Vietti-Cook,
Secretary of the Commission.

**Attachment 1 - General Target Schedule for Processing and Resolving
Requests for Access to Sensitive Unclassified Non-Safeguards Information (SUNSI)
and Safeguards Information (SGI) in This Proceeding**

<u>Day</u>	<u>Event/Activity</u>
0	Publication of [<i>Federal Register notice / other notice of proposed action and opportunity for hearing</i>], including order with instructions for access requests.
10	Deadline for submitting requests for access to SUNSI and/or SGI with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding; demonstrating that access should be granted (e.g., showing technical competence for access to SGI); and, for SGI, including application fee for fingerprint/background check.
60	Deadline for submitting petition for intervention containing: (i) demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI and/or SGI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	NRC staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows (1) need for SUNSI or (2) need to know for SGI. (For SUNSI, NRC staff also informs any party to the proceeding whose interest independent of the

proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents). If NRC staff makes the finding of need to know for SGI and likelihood of standing, NRC staff begins background check (including fingerprinting for a criminal history records check), information processing (preparation of redactions or review of redacted documents), and readiness inspections.

25 If NRC staff finds no “need,” “need to know,” or likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff’s denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds “need” for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff’s grant of access.

30 Deadline for NRC staff reply to motions to reverse NRC staff determination(s).

40 (Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.

- 190 (Receipt +180) If NRC staff finds standing, need to know for SGI, and trustworthiness and reliability, deadline for NRC staff to file motion for Protective Order and draft Non-disclosure Affidavit (or to make a determination that the proposed recipient of SGI is not trustworthy or reliable). Note: Before the Office of Administration makes an adverse determination regarding access, the proposed recipient must be provided an opportunity to correct or explain information.
- 205 Deadline for petitioner to seek reversal of a final adverse NRC staff determination either before the presiding officer or another designated officer.
- A If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
- A + 3 Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI and/or SGI consistent with decision issuing the protective order.
- A + 28 Deadline for submission of contentions whose development depends upon access to SUNSI and/or SGI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or

opportunity for hearing), the petitioner may file its SUNSI or SGI contentions by that later deadline.

A + 53 (Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI and/or SGI.

A + 60 (Answer receipt +7) Petitioner/Intervenor reply to answers

B Decision on contention admission.