UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
DAIRYLAND POWER COOPERATIVE	)	Docket No. 72-46
LA CROSSE BOILING WATER REACTOR	)	EA-09-118
INDEPENDENT SPENT FUEL STORAGE	)	
INSTALLATION	)	
S4601 STATE HIGHWAY 35	)	
GENOA, WI 54632-8894	)	

ORDER FOR IMPLEMENTATION OF ADDITIONAL SECURITY MEASURES AND FINGERPRINTING FOR UNESCORTED ACCESS TO LA CROSSE BOILING WATER REACTOR INDEPENDENT SPENT FUEL STORAGE INSTALLATION (EFFECTIVE IMMEDIATELY)

I

The U.S. Nuclear Regulatory Commission (NRC or the Commission), has issued a general license to Dairyland Power Cooperative (DPC) authorizing the operation of an Independent Spent Fuel Storage Installation (ISFSI), in accordance with the Atomic Energy Act of 1954, as amended, and Title 10 of the *Code of Federal Regulations* (10 CFR) Part 72. This Order is being issued to DPC because it has identified near-term plans to store spent fuel in an ISFSI under the general license provisions of 10 CFR Part 72. The Commission's regulations at 10 CFR 72.212(b)(5), 10 CFR 50.54(p)(1), and 10 CFR 73.55(c)(5) require licensees to maintain safeguards contingency plan procedures to respond to threats of radiological sabotage and to

WARNING: Violation of Section 147 of the Atomic Energy Act, "Safeguards Information," is subject to Civil and Criminal Penalties.

Document transmitted herewith contains sensitive unclassified information. When separated from Attachment 1, this document is DECONTROLLED.

Enclosure 1

protect the spent fuel against the threat of radiological sabotage, in accordance with 10 CFR Part 73, Appendix C. Specific physical security requirements are contained in 10 CFR 73.51 or 73.55, as applicable.

Inasmuch as an insider has an opportunity equal to, or greater than, any other person, to commit radiological sabotage, the Commission has determined these measures to be prudent. Comparable Orders have been issued to all licensees that currently store spent fuel or have identified near-term plans to store spent fuel in an ISFSI.

II

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, using large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees, to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. On October 16, 2002, the Commission issued Orders to the licensees of operating ISFSIs, to place the actions taken in response to the Advisories into the established regulatory framework and to implement additional security enhancements that emerged from NRC's ongoing comprehensive review. The Commission has also communicated with other Federal, State, and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has conducted a comprehensive review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain additional security measures (ASMs) are required to address the current threat environment, in a consistent manner throughout the nuclear ISFSI community. Therefore, the Commission is imposing requirements, as set forth in Attachments 1 and 2 of this Order, on

all licensees of these facilities. These requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the public health and safety, the environment, and common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect until the Commission determines otherwise.

The Commission recognizes that licensees may have already initiated many of the measures set forth in Attachments 1 and 2 to this Order, in response to previously issued advisories, or on their own. It also recognizes that some measures may not be possible nor necessary at some sites, or may need to be tailored to accommodate the specific circumstances existing at DPC's facility, to achieve the intended objectives and avoid any unforeseen effect on the safe storage of spent fuel.

Although the ASMs implemented by licensees in response to the Safeguards and Threat Advisories have been sufficient to provide reasonable assurance of adequate protection of public health and safety, the Commission concludes that these actions must be embodied in a legally binding order further because the current threat environment continues to persist. Therefore, it is appropriate to require through this Order, certain ASMs, consistent with the established regulatory framework.

To provide assurance that licensees are implementing prudent measures to achieve a consistent level of protection to address the current threat environment, licenses issued pursuant to 10 CFR 72.210 shall be modified to include the requirements identified in Attachments 1 and 2 of this Order. In addition, pursuant to 10 CFR 2.202, I find that, in light of the common defense and security circumstances described above, the public health, safety, and interest require that this Order be effective immediately.

III

Accordingly, pursuant to Sections 53, 103, 104, 147, 149, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Parts 50, 72, and 73, IT IS HEREBY ORDERED, **EFFECTIVE IMMEDIATELY**, THAT YOUR GENERAL LICENSE IS MODIFIED AS FOLLOWS:

A. DPC shall comply with the requirements described in Attachments 1 and 2 to this Order, except to the extent that a more stringent requirement is set forth in the La Crosse Boiling Water Reactor's physical security plan. DPC shall immediately start implementation of the requirements in Attachments 1 and 2 to the Order and shall complete implementation **no later than 180 days from the date of this Order**, with the exception of ASM B.4 of Attachment 1 ["Additional Security Measures (ASMs) for Physical Protection of Dry Independent Spent Fuel Storage Installations (ISFSIs)"], which shall be implemented **no later than 365 days from the date of this Order**. In any event, DPC shall complete implementation of all ASMs before the first day that spent fuel is initially placed in the ISFSI.

B. 1. DPC shall, 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 Attachments 1 and 2; (2) if compliance with any of the requirements is unnecessary, in its specific circumstances; or (3) if implementation of any of the requirements would cause DPC to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide DPC's justification for seeking relief from, or variation of, any specific requirement.

2. If DPC considers that implementation of any of the requirements described in Attachments 1 and 2 to this Order would adversely impact the safe storage of spent fuel, DPC must notify the Commission, within **twenty (20) days** of the date of this Order, of the adverse safety impact, the basis for its determination that the

requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the requirements set forth in Attachment 1 and 2 that are in question, or a schedule for modifying the facility, to address the adverse safety condition. If neither approach is appropriate, DPC must supplement its response, to Condition B.1 of this Order, to identify the condition as a requirement with which it cannot comply, with attendant justifications, as required under Condition B.1.

C. 1. DPC shall, within **twenty (20) days** of the date of this Order, submit to the Commission, a schedule for achieving compliance with each requirement described in Attachments 1 and 2.

2. DPC shall report to the Commission when it has achieved full compliance with the requirements described in Attachments 1 and 2.

D. All measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise.

DPC's response to Conditions B.1, B.2, C.1, and C.2, above, shall be submitted in accordance with 10 CFR 72.4. In addition, submittals and documents produced by DPC as a result of this Order, that contain Safeguards Information as defined by 10 CFR 73.22, shall be properly marked and handled, in accordance with 10 CFR 73.21 and 73.22.

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

IV

In accordance with 10 CFR 2.202, DPC must, and any other person adversely affected by this Order may, submit an answer to this Order within 20 days of the date of the Order. In addition, DPC and any other person adversely affected by this Order, may request a hearing on this Order within 20 days of the date of the Order. Where good cause is shown, consideration

will be given to extending the time to answer or request a hearing. A request for extension of time must be made, in writing, to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and include a statement of good cause for the extension.

The answer may consent to this Order. If the answer includes a request for a hearing, it shall, under oath or affirmation, specifically set forth the matters of fact and law on which DPC relies and the reasons as to why the Order should not have been issued. If a person other than DPC requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d).

All documents filed in NRC adjudicatory proceedings, including: (a) a request for hearing; (b) a petition for leave to intervene; (c) any motion or other document filed in the proceeding before the submission of a request for hearing or petition to intervene; and (d) 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 NRC promulgated in August 2007, 72 Fed. Reg. 49139 (August 28, 2007) and codified in pertinent part at 10 CFR Part 2, Subpart B. 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 associated with E-Filing, at least five (5) days prior to the filing deadline the requestor must contact the Office of the Secretary by e-mail, at hearingdocket@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 NRC proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding [even in instances when the requestor (or its

counsel or representative) already holds an NRC-issued digital ID certificate]. Each 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 also available on NRC's public website at http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.

Once a requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, he/she can then submit a request for a hearing through EIE. 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 document through EIE. To be timely, electronic filings 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 document on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for, and receive digital ID certificates before hearing requests are filed, so that they may obtain access to the documents 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 technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397-4209 or, locally (301) 415-4737.

Participants who believe that they have good cause for not submitting documents electronically must file motions, in accordance with 10 CFR 2.302(g), with their initial paper

filings 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.

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 works.

If a hearing is requested by DPC 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), DPC may, in addition to requesting 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 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 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.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Marc L. Dapas, Acting Director
Office of Nuclear Material Safety
and Safeguards

Dated this 3 day of June 2009.

Attachments:

1. "Additional Security Measures (ASMs) for Physical Protection of Dry Independent Spent Fuel Storage Installations (ISFSIs)"
   (This attachment contains Safeguards Information.)
2. "Additional Security Measures for Access Authorization and Fingerprinting at Independent Spent Fuel Storage Installations"