[7590-01-P]

NUCLEAR REGULATORY COMMISSION

VIRGINIA ELECTRIC AND POWER COMPANY, NORTH ANNA POWER STATION, UNIT NOS. 1 AND 2, SURRY POWER STATION, UNIT NOS. 1 AND 2

DOCKET NOS. 50-338 AND 50-339, DOCKET NOS. 50-280 AND 50-281

[NRC-2010-0283]

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE, PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION, AND OPPORTUNITY FOR A HEARING AND ORDER IMPOSING PROCEDURES FOR DOCUMENT ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of license amendment request, opportunity to comment, opportunity to request a hearing, and Commission order.

DATES: Submit comments by **: [INSERT DATE: 30 DAYS FROM DATE OF PUBLICATION]**. A request for a hearing must be filed by **[INSERT DATE: 60 DAYS FROM DATE OF PUBLICATION]**. Any potential party as defined in 10 CFR 2.4 who believes access to Sensitive Unclassified Non-Safeguards Information is necessary to respond to this notice must request document access by **[INSERT DATE: 10 DAYS FROM DATE OF PUBLICATION]**.

ADDRESSES: Please include Docket ID **NRC-2010-0283** in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site http://www.regulations.gov. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

You may submit comments by any one of the following methods.

Federal Rulemaking Web Site: Go to http://www.regulations.gov and search for documents filed under Docket ID **NRC-2010-0283**. Address questions about NRC dockets to Carol Gallagher 301-492-3668; e-mail Carol.Gallagher@nrc.gov.

Mail comments to: Chief, Rules, Announcements and Directives Branch (RADB), Office of Administration, Mail Stop: TWB-05-B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by fax to RADB at 301-492-3446.

You can access publicly available documents related to this notice using the following methods:

NRC's Public Document Room (PDR): The public may examine, and have copied for a fee, publicly available documents at the NRC's PDR, Room O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. These documents may also be viewed electronically on the public computers located at the NRC's PDR at 11555 Rockville Pike, Rockville, Maryland 20852.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at http://www.nrc.gov/reading-rm/adams.html. From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1-800-397-4209, 301-415-4737, or by e-mail

to pdr.resource@nrc.gov. The applications for amendments, dated May 6 and February 10, 2010, are available electronically under ADAMS Accession No. ML101260517 and ML100470738.

Federal Rulemaking Web site: Public comments and supporting materials related to this notice can be found at http://www.regulations.gov by searching on Docket ID: **NRC-2010-0283**.

FOR FURTHER INFORMATION CONTACT: Karen Cotton, Project Manager, Plant Licensing Branch 2-1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301-415- 1438; fax number: 301-415-1222; e-mail: Karen.Cotton@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF-4, NPF-7, DPR-32, and DPR-37 issued to Virginia Electric and Power Company (the licensee) for operation of the North Anna Power Station, Unit Nos. 1 and 2 (NAPS), located in Louisa County, Virginia, and Surry Power Station, Unit Nos. 1 and 2 (Surry), located in Surry County, Virginia, respectively. The bracketed information is specific to NAPS.

The proposed amendments would add Optimized ZIRLO as an acceptable fuel rod cladding material and in addition, propose adding the Westinghouse topical report for Optimized ZIRLO to the analytical methods used to determine the core operating limits listed in the Technical Specifications (TSs).

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the *Code of Federal Regulations* (10 CFR), Section 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. 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 proposed Technical Specifications changes are to add Optimized ZIRLO to the allowable or approved cladding materials to be used at [NAPS and] Surry Units 1 and 2 {Surry}. The proposed change of adding a cladding material does not result in an increase to the probability or consequences of an accident previously evaluated. Technical Specification [4.2.1 for NAPS and] 5.2.1 {for Surry} addresses the fuel assembly design, and currently specifies that "Each assembly shall consist of a matrix of Zircaloy or ZIRLO fuel rods ...". The proposed change will add Optimized ZIRLO to the approved fuel rod cladding materials listed in this Technical Specification. In addition, a reference to the topical report for Optimized ZIRLO, WCAP-12610-P-A and CENPD-404-P-A, Addendum 1-A, will be included in the listing of approved methods used to determine the core operating limits for [NAPS given in TS 5.6.5 and] Surry Units 1 and 2 given in Technical Specification 6.2.C.

   Westinghouse topical report WCAP-12610-P-A and CENPD-404-P-A, Addendum 1-A, "Optimized ZIRLO," provides the details and results of material testing of Optimized ZIRLO compared to standard ZIRLO, as well as the material properties to be used in various models and methodologies when analyzing Optimized ZIRLO. As the nuclear industry pursues longer operating cycles with increased fuel discharge burnup and fuel duty, the corrosion performance requirements for the nuclear fuel cladding become more demanding. Optimized ZIRLO was developed to meet these industry needs by providing a reduced corrosion rate while maintaining the composition and physical properties, such as mechanical strength, similar to standard ZIRLO. In addition, margin to the fuel rod design criterion on fuel rod internal pressure has been impacted by increased fuel duty, use of integral fuel burnable absorbers, and corrosion/temperature feedback effects. Reducing the associated corrosion buildup reduces temperature feedback effects, providing additional margin to the fuel rod internal pressure design criterion. The fuel will continue to satisfy the pertinent design basis operating limits, so cladding integrity is maintained. There are no changes that will adversely affect the ability of existing components and systems to mitigate the consequences of any accident. Addition of

Optimized ZIRLO to the allowable cladding materials for [NAPS and] Surry Units 1 and 2 therefore does not result in an increase to the probability or consequences of an accident previously evaluated.

The NRC has allowed use of Optimized ZIRLO fuel cladding material in Westinghouse fueled reactors provided that licensees ensure compliance with the Conditions and Limitations set forth in the NRC Safety Evaluation for the topical report. Confirmation that these Conditions are satisfied is performed under 10 CFR 50.59 as part of the normal core reload process.

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

   Response: No.

   The proposed Technical Specifications change adds Optimized ZIRLO to the approved fuel rod cladding materials that may be used at [NAPS and] Surry Units 1 and 2. Optimized ZIRLO was developed to provide a reduced cladding corrosion rate while maintaining the benefits of mechanical strength and resistance to accelerated corrosion from potential abnormal chemistry conditions. The fuel rod design bases are established to satisfy the general and specific safety criteria addressed in the [NAPS UFSAR, Chapter 15 (Accident Analysis) and] Surry Units 1 and 2 UFSAR, Chapter 14 (Safety Analysis). The fuel rods are designed to prevent excessive fuel temperatures, excessive fuel rod internal gas pressures due to fission gas releases, and excessive cladding stresses and strains. Westinghouse topical report WCAP-12610-P-A and CENPD-404-P-A, Addendum 1-A, "Optimized ZIRLO," provides the details and results of material testing of Optimized ZIRLO compared to standard ZIRLO, as well as the material properties to be used in various models and methodologies when analyzing Optimized ZIRLO. The original fuel design basis requirements have been maintained. No new single failure mechanisms will be created, and there are no alterations to plant equipment or procedures that would introduce any new or unique operational modes or accident precursors.

   Addition of Optimized ZIRLO as another approved cladding material of similar composition and properties as the current approved cladding materials to the [NAPS and] Surry Units 1 and 2 Technical Specifications therefore does not create the possibility of a new or different kind of accident or malfunction from those previously evaluated within the UFSAR.

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

   Response: No.

   The cladding materials used for fuel rods are designed and tested to prevent excessive fuel temperatures, excessive fuel rod internal gas pressures due to fission gas releases, and excessive cladding stresses and strains. Optimized ZIRLO was developed to meet these needs while providing a reduced cladding corrosion rate and maintaining the benefits of mechanical strength and resistance to accelerated corrosion from potential abnormal chemistry conditions. Reducing the associated corrosion buildup reduces temperature feedback effects, providing additional margin to the fuel rod internal pressure

design criterion. Westinghouse topical report WCAP-12610-P-A and CENPD-404-P-A, Addendum 1-A, "Optimized ZIRLO," provides the details and results of material testing of Optimized ZIRLO compared to standard ZIRLO, as well as the material properties to be used in various models and methodologies when analyzing Optimized ZIRLO. The NRC has allowed use of the Optimized ZIRLO fuel cladding material as detailed in their Safety Evaluation of this topical report. The original fuel design basis requirements have been maintained, and evaluations will be performed under 10 CFR 50.59 for each reload cycle that incorporates Optimized ZIRLO cladding to confirm that design and safety limits are satisfied. Therefore inclusion of Optimized ZIRLO as an additional fuel rod cladding material for [NAPS and] Surry Units 1 and 2 does not result in a reduction in margin required to preclude or reduce the effects of an accident or malfunction previously evaluated in the UFSAR.

The 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.

The Commission is seeking public comments on this proposed determination. Any comments received by [**INSERT DATE: 30 DAYS FROM THE DATE OF PUBLICATION OF THIS FEDERAL REGISTER NOTICE**] will be considered in making any final determination. You may submit comments using any of the methods discussed under the ADDRESSES caption.

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.

II. Opportunity to Request a Hearing

Requirements for hearing requests and petitions for leave to intervene are found in 10 CFR 2.309, "Hearing requests, petitions to intervene, requirements for standing, and contentions." Interested persons should consult 10 CFR Part 2, Section 2.309, which is available at the NRC's Public Document Room (PDR), located at O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852 (or call the PDR at 800-397-4209 or 301-415-4737). NRC regulations are also accessible electronically from the NRC's Electronic Reading Room on the NRC Web site at http://www.nrc.gov.

III. Petitions for Leave to Intervene

Any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the requestor/petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition must provide the name, address, and telephone number of the requestor or petitioner and specifically explain the reasons why the intervention should be permitted with particular reference to the following factors: (1) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (3) 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 identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

A petition for leave to intervene must also include a specification of the contentions that the petitioner seeks to have litigated in the hearing. For each contention, the requestor/petitioner must provide a specific statement of the issue of law or fact to be raised or controverted, as well

as a brief explanation of the basis for the contention. Additionally, the requestor/petitioner must demonstrate that the issue raised by each contention is within the scope of the proceeding and is material to the findings the NRC must make to support the granting of a license amendment in response to the application. The petition must include a concise statement of the alleged facts or expert opinions which support the position of the requestor/petitioner and on which the requestor/petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely. Finally, the petition must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact, including references to specific portions of the application for amendment that the requestor/petitioner disputes and the supporting reasons for each dispute, or, if the requestor/petitioner believes that the application for amendment fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the requestor's/petitioner's belief. Each contention must be one which, if proven, would entitle the requestor/petitioner to relief.

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 with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with NRC regulations, policies, and procedures. The Licensing Board will set the time and place for any prehearing conferences and evidentiary hearings, and the appropriate notices will be provided.

Non-timely petitions for leave to intervene and contentions, amended petitions, and supplemental petitions will not be entertained absent a determination by the Commission, the Licensing Board or a Presiding Officer that the petition should be granted and/or the contentions should be admitted based upon a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)-(viii).

A State, county, municipality, Federally recognized Indian Tribe, or agencies thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(d)(2). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by [**INSERT DATE: 60 DAYS FROM THE DATE OF PUBLICATION OF THIS FEDERAL REGISTER NOTICE**]. The petition must be filed in accordance with the filing instructions in section IV of this document, and should meet the requirements for petitions for leave to intervene set forth in this section, except that State and Federally recognized Indian tribes do not need to address the standing requirements in 10 CFR 2.309(d)(1) if the facility is located within its boundaries. The entities listed above could also seek to participate in a hearing as a nonparty pursuant to 10 CFR 2.315(c).

Any person who does not wish, or is not qualified, to become a party to this proceeding may request permission to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to such limits and conditions as may be imposed by the Licensing Board. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission by [**INSERT DATE: 60 DAYS FROM THE DATE OF PUBLICATION OF THIS FEDERAL REGISTER NOTICE**].

If a hearing is requested, 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.

IV Electronic Submissions (E-Filing)

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 (72 FR 49139, August 28, 2007). 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 an exemption 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 participant should contact the Office of the Secretary by e-mail at hearing.docket@nrc.gov, or by telephone at 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 (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at http://www.nrc.gov/site-help/e-submittals/apply-certificates.html. System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at

http://www.nrc.gov/site-help/e-submittals.html. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through EIE, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at http://www.nrc.gov/site-help/e-submittals.html.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant 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 Web site at http://www.nrc.gov/site-help/e-submittals.html. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing 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 E-Filing 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 using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located

on the NRC Web site at http://www.nrc.gov/site-help/e-submittals.html, by e-mail at MSHD.Resource@nrc.gov, or by a toll-free call at 866-672-7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, 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. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

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, or the 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, unless an NRC regulation or other law requires submission of such information. 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.

Petitions for leave to intervene must be filed no later than 60 days from [**INSERT DATE OF PUBLICATION IN FEDERAL REGISTER**]. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Counsel, Dominion Resources Services, Inc., 120 Tredegar St., RS-2, Richmond, VA 23219.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation.

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing Sensitive Unclassified Non-Safeguards Information (SUNSI).

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request such access. A “potential party” is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requester shall submit a letter requesting permission to access SUNSI 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, Maryland 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@nrc.gov*, respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this *Federal Register* notice;

(2) 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 C.(1); and

(3) The identity of the individual or entity requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly-available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the 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) The requester has established a legitimate need for access to SUNSI.

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1 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 under these procedures should be submitted as described in this paragraph.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain between the date the petitioner is granted 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 contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff either after a determination on standing and need for access, or after a determination on trustworthiness and reliability, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requester may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) the presiding officer designated in

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2 Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

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 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

H. Review of Grants of Access. A party other than the requestor 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 with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

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.[3]

I. 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 motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the

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3 Requestors should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007) 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 request submitted to the NRC staff under these procedures.

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

IT IS SO ORDERED.

Dated at Rockville, Maryland, this 23rd day of August 2010.

For the 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 in this Proceeding

Day	Event/Activity
0	Publication of *Federal Register* notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) 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.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 requestor/petitioner reply).
20	Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need 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).

Day	Event/Activity
25	If NRC staff finds no “need” or no likelihood of standing, the deadline for requestor/petitioner 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.
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 consistent with decision issuing the protective order.

Day	Event/Activity
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. 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 contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.