

December 22, 2010

Mr. Jeffrey A. Halfinger, Vice President
Technology Development
Babcock & Wilcox Nuclear Energy, Inc.
13024 Ballantyne Corporate Place, Ste. 500
Charlotte, NC 28277

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

Dear Mr. Halfinger:

In June 2009, the Commission issued a rulemaking requiring nuclear power plant designers to perform a design-specific assessment of the effects of the impact of a large, commercial aircraft and to incorporate design features and functional capabilities into the nuclear power plant design to provide additional inherent protection with reduced use of operator actions. To assist designers in completing this assessment, the Commission has decided to provide the detailed aircraft impact characteristics that should be used as reasonable inputs for reactor vendors and architect/engineers who have a need to know and meet the U.S. Nuclear Regulatory Commission's (NRC's) requirements for the disclosure of such information to use in studies of the inherent capabilities of their designs. The NRC derived these characteristics from agency analyses performed on operating reactors to support, in part, the development of a broadly effective set of mitigation strategies to combat fires and explosions from a spectrum of hypothetical aircraft impacts. Although these detailed characteristics were not selected as a basis for designing new reactors, the staff is suggesting them as a starting point for aircraft impact assessments.

The agency has issued a draft regulatory guide, DG-1176, "Guidance for the Assessment of Beyond-Design-Basis Aircraft Impacts," to guide applicants in completing the assessment. The agency is in the process of finalizing that guidance and intends to include these aircraft impact characteristics in the safeguards information (SGI) version of the final regulatory guide. In addition, the staff recognizes that no national or international consensus has been reached on the selection of appropriate characteristics for such analyses. Therefore, the information should be considered preliminary and subject to authorized stakeholder comment. The enclosed order designates the detailed aircraft characteristics as SGI,¹ in accordance with Section 147 of the Atomic Energy Act of 1954, as amended (AEA).

In a letter to the NRC, dated July 2, 2010, Babcock and Wilcox Nuclear Energy (B&W) stated its intent to establish and implement a SGI program for the B&W mPower reactor program pursuant to 10 CFR 73.21 at its Nuclear Operations Group in Lynchburg, Virginia. Additionally, B&W

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

stated its desire to rely upon the existing SGI program in place at Lynchburg, Virginia, to receive, store and control a limited amount of SGI until the B&W mPower reactor SGI program is found to be acceptable and can be approved by the NRC. The SGI that B&W has requested access to, has additional security requirements that exceeds the information security requirements stated in 10 CFR 73.21. As such, the information designated SGI by the enclosed order is subject to additional requirements as detailed in the enclosed order. The NRC is issuing the enclosed order to B&W to impose additional requirements related to storage of the SGI and the process used for making a trustworthiness and reliability determination.

Before your company grants an individual access to SGI, your company must submit the individual's fingerprints to the NRC for a Federal Bureau of Investigation (FBI) criminal history records check. Your company will receive the results of the FBI criminal history records check and must consider that information along with the results of the background check as prescribed by Title 10 of the *Code of Federal Regulations* (10 CFR) 73.22(b)(2), when making a determination of whether an individual, who has a need to know SGI, may be given access to SGI (see Enclosure 2 to this letter).

Certain categories of individuals are exempt by rule from the fingerprinting requirement, as provided in 10 CFR 73.59, "Relief from Fingerprinting Identification and Criminal History Records Check and Other Elements of Background Checks for Designated Categories of Individuals." This exemption includes Federal, State, and local law enforcement personnel; Agreement State inspectors who conduct security inspections on behalf of the NRC; members of Congress; certain employees of members of Congress or congressional committees who have undergone fingerprinting for a prior U.S. Government criminal history check; and representatives of the International Atomic Energy Agency or certain foreign government organizations. In addition, the NRC has determined that individuals who have active Federal security clearances, or who have had a favorably decided U.S. Government criminal history records check within the last 5 years, have already been subjected to fingerprinting and criminal history records checks and, thus, have satisfied the fingerprinting requirement under the Energy Policy Act of 2005.

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

In the event that the NRC does not approve access to SGI for the individual nominated as your company's initial reviewing official, the individual may appeal this decision by following the

procedures in Enclosure 3. Your company may then nominate a different individual to be the reviewing official. If your company decides to withdraw the nomination of an individual as a reviewing official after submitting fingerprints to the FBI through the NRC, the NRC will still complete the review process for determining access to SGI.

Your company is required to submit fingerprints in accordance with the enclosed order. The current processing fee is \$26.00 per submission, and payment must accompany the request. The attachment to the order provides details regarding fingerprint submittals and payment of fees. If the person your company nominates as reviewing official already has a national security clearance, please submit that person's name along with documentation that supports the claim. The NRC staff will verify that the nominated individual has the necessary clearance prior to approving the individual as reviewing official. If your company has had a reviewing official previously approved by the NRC, provide a copy or a reference to the approval letter in your response.

The enclosed order is effective immediately.

The enclosed order requires that your company respond to the order within 20 days of the date of the order, and implement its requirements before providing access to SGI to any individual. Please contact Wesley Held at (301) 415-1583, or via e-mail to Wesley.Held@nrc.gov, to facilitate resolution of any issues or questions related to compliance with the requirements of the enclosed order.

Your company's responses to the order (not fingerprint cards) must be submitted to the Director, Office of New Reactors, and should be addressed to the attention of Wesley Held, Mail Stop T-6E04.

For normal postal delivery, mail to the following address:

Director, Office of New Reactors
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Attn: Wesley Held, Mail Stop T-6E04

For delivery services requiring a street address, mail to the following address:

Director, Office of New Reactors
U.S. Nuclear Regulatory Commission
Two White Flint North
11545 Rockville Pike
Rockville, MD 20852-2738
Attn: Wesley Held, Mail Stop T-6E04

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

J. Halfinger

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

Sincerely,

/RA/

Michael R. Johnson, Director
Office of New Reactors

Project No. 0776

Enclosures:

1. Order Imposing Safeguards Information Protection Requirements for Access to Safeguards Information
2. Guidance for the Evaluation of Access to Safeguards Information with the Inclusion of Criminal History Records (Fingerprint) Checks
3. Process to Challenge NRC Denials or Revocations of Access to Safeguards Information
4. General Requirements

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/RA/

Michael R. Johnson, Director
Office of New Reactors

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NRO-002

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