



**PR 52  
(76FR10269)**

DOCKETED  
USNRC

March 7, 2011

March 8, 2011 (2:08 pm)

Rulemakings and Adjudications Staff  
Office of the Secretary  
U.S. Nuclear Regulatory Commission  
11555 Rockville Pike  
Rockville, MD 20852  
[rulemaking.comment@nrc.gov](mailto:rulemaking.comment@nrc.gov)

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

*Re:* Request for Access to SGI and SUNSI for AP1000 Rulemaking Comments, 76 Fed. Reg. 10,269 (Feb. 24, 2011), RIN 3150-A181, Docket ID NRC-2010-0131

Dear Rulemakings and Adjudications Staff:

Pursuant to Section VII of the proposed rule for the AP1000 Design Certification Amendment, 76 Fed. Reg. 10,269, 10,277 (February 24, 2011), I am writing to request access to certain Safeguards Information (“SGI”) and Sensitive Unclassified Non- Safeguards Information (“SUNSI”) necessary for a meaningful review of the proposed rule and preparation of comments by the Union of Concerned Scientists (“UCS”).

UCS is a public interest environmental organization with more than 76,000 paid members and 350,000 supporters, whose longstanding mission includes advocacy of rigorous regulation of the safety and environmental risks posed by nuclear reactors. UCS therefore has a strong interest in reviewing the AP1000 design certification amendment with regard to whether it meets regulatory requirements for adequate protection of public health and safety and the environment. A primary concern of UCS is the ability of new reactor designs to provide enhanced intrinsic protection against radiological sabotage attacks, with regard to land-based, water-based and 9/11-type aircraft attacks. The publicly available record does not contain the level of detail necessary to assess whether the design features to protect against radiological sabotage are adequate. Therefore UCS has a need to know the SGI and SUNSI requested here.

In support of this request, the following additional information is provided:

**1. Authorization**

UCS has authorized its undersigned attorney and its Senior Scientist, Dr. Edwin S. Lyman, to review the requested information and prepare comments on the proposed rule. Contact information for these individuals is as follows:

Template = SECY-067

DS 10



Rulemakings and Adjudications Staff  
March 7, 2011  
Page 2

Diane Curran  
Harmon, Curran, Spielberg & Eisenberg, LLP  
1726 M Street N.W. Suite 600  
Washington, D.C. 20036  
Tel.: 202-328-3500  
Fax: 202-328-6918  
E-mail: [dcurran@harmoncurran.com](mailto:dcurran@harmoncurran.com)

Dr. Edwin S. Lyman  
Union of Concerned Scientists  
1825 K St, NW Ste. 800  
Washington, D.C. 20006  
Tel: (202) 223-6133  
Fax: (202) 223-6162  
E-mail: [elyman@ucsusa.org](mailto:elyman@ucsusa.org)

## 2. Request for SUNSI

UCS seeks access to SUNSI for the purpose of evaluating Westinghouse's and the NRC Staff's analyses of Westinghouse's compliance with the NRC's regulations regarding aircraft crash impacts, 10 C.F.R. § 50.150.

In particular, UCS requests access to unredacted versions of the following documents, which are not in the public record: AP1000 Design Control Document, Appendix 19F, Revision 18; the subsequent markup of Appendix 19F, submitted to the NRC on February 9, 2011, by letter from R.F. Ziesing, Westinghouse Director of U.S. Licensing; and any subsequent revisions to Appendix 19F. UCS also requests all referenced figures and descriptions that are not present in the public version of the DCD, as well as the unredacted versions of any documents referenced by Appendix 19F.

The requested documents contain information about the detailed design of the AP1000 and the effects of an aircraft attack which is not presented in any publicly available documents regarding aircraft impacts.<sup>1</sup> Those documents address in general terms the performance of the AP1000 design following a malevolent aircraft impact but are incomplete in the respect that they do not contain sufficient detail about the postulated aircraft specifications and other relevant attack parameters, or justification for the asserted physical separation and survivability of vital systems,

---

<sup>1</sup> UCS has just learned from Mr. Stanley Ritterbusch that Westinghouse plans to submit a redacted version of Appendix 19F today. We hereby request you to e-mail us a copy of that document as soon as it is publicly available. If our review of the redacted document shows that it is not necessary to review the withheld portions of the document, we will amend this request.



Rulemakings and Adjudications Staff

March 7, 2011

Page 3

structures and components. Therefore Dr. Lyman must review the requested information in order to assess whether the designated key design features would be adequate to keep the containment and spent fuel pool intact or to maintain core and spent fuel cooling capability. Without that information, Dr. Lyman cannot determine in any meaningful way whether Westinghouse satisfies the NRC's regulations of 10 C.F.R. § 50.150.

UCS' undersigned attorney, Diane Curran, also requires access to the information in order to assist Dr. Lyman in his evaluation of whether Westinghouse complies with the NRC's regulations and in the preparation of UCS' comments on the legal and technical adequacy of the aircraft impact analysis to comply with NRC regulations.

As required by the Federal Register notice for this rulemaking, on March 3, 2011, UCS submitted a request for access to PI to Mr. Ritterbusch of Westinghouse, who responded by telephone today that the requested documents do not contain PI and are strictly SUNSI. Mr. Ritterbusch also stated that Westinghouse would cooperate with UCS in its efforts to obtain the SUNSI.

### **3. Request for SGI**

UCS also seeks access by Dr. Lyman and Ms. Curran to Section 13.6 of the AP1000 DCD, the technical reports (TRs) referenced therein (including the AP1000 Interim Compensatory Measures Report, the AP1000 Safeguards Enhancement Report, and the AP1000 Safeguards Assessment Report), and the NRC Staff's comprehensive physical protection safety evaluation. All of these documents constitute SGI.

UCS has a need to know with respect to these documents because no publicly available documents contain details about the aspects of the AP1000 physical security system within the scope of design certification that are necessary for Dr. Lyman to determine whether the AP1000 design complies with NRC physical protection requirements that ensure adequate protection against acts of radiological sabotage and theft of special nuclear material. Dr. Lyman must also review the documents in order to establish whether security-related Inspections, Tests, Analyses and Acceptance Criteria ("ITAAC") are appropriately classified as within or outside the scope of design certification. Without the requested information, it is not possible for UCS to comment on the adequacy of the AP1000 design with regard to features that will facilitate protection against the design basis threat. Therefore, the requested documents are indispensable to Dr. Lyman's ability to provide comments on whether the AP1000 design complies with NRC security regulations.

UCS' undersigned attorney, Diane Curran, also requires access to the information in order to assist Dr. Lyman in evaluating whether Westinghouse complies with the NRC's security regulations and in preparing comments on the legal and factual sufficiency of the AP1000 DCD to satisfy NRC regulations.



Rulemakings and Adjudications Staff  
March 7, 2011  
Page 4

#### 4. Qualifications of Dr. Lyman and Ms. Curran

Dr. Lyman has an active Level L security clearance. In addition, his qualifications as an expert on nuclear facility security and safety issues have been established in numerous NRC licensing cases. *See, e.g., Duke Energy Corporation* (Catawba Nuclear Station, Units 1 and 2), LBP-04-13, 60 NRC 33, affirmed, CLI-04-21, 60 NRC 21 (2004) (nuclear reactor security issues); *Duke Cogema Stone & Webster Co.* (Mixed Oxide Fuel Fabrication Facility), LBP-01-35, 54 NRC 403, 425 (2001) (security and material control and accounting issues in licensing proceeding for nuclear fuel manufacturing facility); *Duke Energy Corporation* (Catawba Nuclear Station, Units 1 and 2), LBP-04-32, 60 NRC 713 (2004) (nuclear reactor safety issues); *Duke Energy Corporation* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), LBP-02-04, 55 NRC 49, 120-21, 127 (2002) (environmental risk issues).

Ms. Curran also has a Level L security clearance. She has substantial experience in the litigation of safety and security issues before the NRC, including representation of intervenors in licensing cases for a spent fuel storage facility at the Diablo Canyon nuclear power plant (Docket No. 72-26 (security-related environmental issues), use of mixed oxide plutonium fuel in the Catawba reactors (Docket Nos. 50-413, 50-414), and the construction authorization and operating license proceedings for the proposed MOX Fuel Fabrication Facility (Docket No. 70-3098) (security, MC&A and environmental issues).

#### 5. Request for exemption from requirement for criminal history records check and background check

UCS requests that it be exempted from the requirement to submit Form SF-85 and a processing fee of \$200 each for Dr. Lyman and Ms. Curran because they already have undergone criminal history records checks and background checks in order to obtain their Level L security clearances. Although Dr. Lyman and Ms. Curran do not fall into any of the particular categories of individuals who qualify for such an exemption under 10 C.F.R. § 73.59, there appears to be no practical reason to treat them differently than the individuals listed under that regulation.

We note that on Monday, February 28, 2011, we sent an e-mail to Ms. Serita Sanders, inquiring whether the exemptions in 10 C.F.R. § 73.59 could be applied to UCS. Ms. Sanders has informed us by e-mail and telephone that she is still in the course of responding to our request and expects to get back to us by March 18, 2011.

Please do not hesitate to contact me if you have any questions about this request.

Sincerely,

/s/



Rulemakings and Adjudications Staff  
March 7, 2011  
Page 5

Diane Curran  
Counsel to Union of Concerned Scientists

Cc: Stanley E. Ritterbusch, Manager  
AP1000 Design Certification  
Westinghouse Electric Co.  
1000 Westinghouse Drive  
Cranberry Township, PA 16066  
(By e-mail to: [ritterse@westinghouse.com](mailto:ritterse@westinghouse.com))

Serita Sanders, Office of New Reactors, NRC  
(By e-mail to: [serita.sanders@nrc.gov](mailto:serita.sanders@nrc.gov))

**Harmon, Curran, Spielberg + Eisenberg LLP**



## Rulemaking Comments

---

**From:** Diane Curran [dcurran@harmoncurran.com]  
**Sent:** Monday, March 07, 2011 5:52 PM  
**To:** Rulemaking Comments  
**Cc:** Sanders, Serita; ritterse@westinghouse.com; elyman@ucsusa.org  
**Subject:** AP1000 proposed rule, 76 Fed. Reg. 10,269 (February 24, 2011)  
**Attachments:** UCS SUNSI-SGI Access Request 3-7-11.pdf

Dear NRC Rulemakings and Adjudications Staff:

Attached please find the Union of Concerned Scientists' request for SUNSI and SGI with respect to the AP1000 proposed rulemaking.

Sincerely,  
Diane Curran

Diane Curran  
Harmon Curran Spielberg & Eisenberg LLP  
1726 M Street NW, Suite 600  
Washington, DC 20036  
(202)328-3500