

SEP 23 1977

Docket No. 50-305

Wisconsin Public Service Corporation
ATTN: Mr. E. W. James
Senior Vice President
Post Office Box 1200
Green Bay, Wisconsin 54305

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JRBuchanan
DEisenhut
JMiller

Gentlemen:

RE: KEWAUNEE NUCLEAR POWER PLANT

Enclosed is a Federal Register Notice of a petition for rulemaking regarding physical searches of individuals entering a protected area of a nuclear power plant and a copy of a proposed NRC regulation which would require clearances for those individuals who are permitted unescorted access within nuclear power plants. The Commission is assessing the implications of these two actions, particularly the "pat down" searches of individuals, and their value as elements of the total physical protection system needed for nuclear power plants. Also, the Commission is concerned with the potential effects on employee effectiveness and morale of the physical search and other requirements for the physical protection of nuclear reactors currently specified in 10 CFR 73.55.

In this regard, the Commission is endeavoring to identify alternatives that achieve the needed protection of nuclear power plants when combined with the other elements of the total plant security system. The Commission wants a broad base of public comment on these issues and, recognizing that physical searches and the obtaining of government clearances directly affect your employees, the Commission requests that you inform them of this notice of rulemaking and of the proposed clearance rule, and of the desire of the Commission to obtain comments directly from those who are or would be most affected.

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

SEP 23 1977

Docket No. 50-305

Wisconsin Public Service Corporation
ATTN: Mr. E. W. James
Senior Vice President
Post Office Box 1200
Green Bay, Wisconsin 54305

Gentlemen:

RE: KEWAUNEE NUCLEAR POWER PLANT

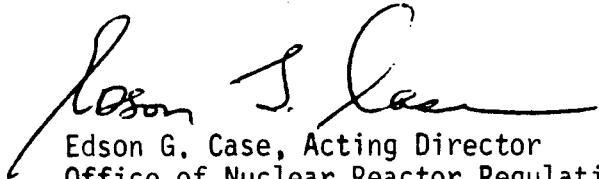
Enclosed is a Federal Register Notice of a petition for rulemaking regarding physical searches of individuals entering a protected area of a nuclear power plant and a copy of a proposed NRC regulation which would require clearances for those individuals who are permitted unescorted access within nuclear power plants. The Commission is assessing the implications of these two actions, particularly the "pat down" searches of individuals, and their value as elements of the total physical protection system needed for nuclear power plants. Also, the Commission is concerned with the potential effects on employee effectiveness and morale of the physical search and other requirements for the physical protection of nuclear reactors currently specified in 10 CFR 73.55.

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SEP 23 1977

We request that you post this notice on employee bulletin boards or otherwise notify your employees of the Commission's concerns and desire for comments on these issues.

Sincerely,

A handwritten signature in dark ink, appearing to read "Edson G. Case", is written over the typed name.

Edson G. Case, Acting Director
Office of Nuclear Reactor Regulation

Enclosures:
As stated

cc w/enclosures:
See next page

SEP 23 1977

cc: Steven E. Keane, Esquire
Foley, Sammond & Lardner
735 North Water Street
Milwaukee, Wisconsin 53202

Bruce W. Churchill, Esquire
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1800 M Street, NW.
Washington, D. C. 20036

Kewaunee Public Library
314 Milwaukee Street
Kewaunee, Wisconsin 54216

August 19, 1977

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of
PHYSICAL SEARCHES AT
NUCLEAR POWER REACTORS

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Docket No. PRM 12-2

PETITION FOR RULE MAKING

Pursuant to 10 CFR §2.802, Wisconsin Electric Power Company, Wisconsin Public Service Corporation, and Baltimore Gas and Electric Company, hereby petition the Nuclear Regulatory Commission to amend 10 CFR §73.55(d)(1) to eliminate the requirement for "pat-down" physical searches of individuals entering a protected area. Such a requirement is unnecessary as demonstrated by the absence of such physical searches for facilities such as those in which nuclear weapons are stored as well as for other highly sensitive areas. However, "pat-down" physical searches would be permitted and individuals entering a protected area would be put on notice that they are subject to such searches. Existing requirements for the use of detection equipment would not be affected.

The petitioners are interested persons within the meaning of 10 CFR §2.802 in that they own and operate nuclear power reactors and therefore are subject to the existing physical search requirements of 10 CFR §73.55(d)(1)

The proposed amendment to NRC's regulations would modify 10 CFR §73.55(d)(1) by deleting the bracketed words and adding the underscored language:

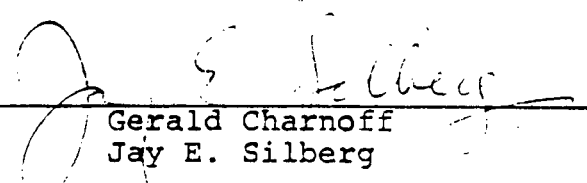
The licensee shall control all points of personnel and vehicle access into a protected area. Identification and search of all individuals shall be made and authorization shall be checked at such points. The licensee shall post signs at such points informing individuals that they may be subject to physical search prior to entering a protected area. The search function for detection of firearms, explosives and incendiary devices shall be conducted [either by a physical search or] by use of equipment capable of detecting such devices, to the extent such equipment is reasonably available. The licensee may conduct a physical search of an individual if deemed necessary or appropriate. The individual responsible for the last access control function (controlling admission to the protected area) shall be isolated within a bullet-resisting structure as described in paragraph (c) (6) of this section to assure their ability to respond or to summon assistance.

A memorandum in Support of Proposed Rule Making is attached which sets forth the justification for the proposed rule.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

By


Gerald Charnoff
Jay E. Silberg

1800 M Street, N. W.
Washington, D. C. 20036
(202) 331-4100

Dated: August 19, 1977

August 19, 1977

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)

PHYSICAL SEARCHES AT)
NUCLEAR POWER REACTORS)

Docket No. PRM 132

MEMORANDUM IN SUPPORT OF
PROPOSED RULE MAKING

On February 24, 1977, the Commission published in the Federal Register amendments to its regulations setting forth requirements for the physical protection of nuclear power reactors. 42 Fed. Reg. 10836. Among these requirements is the obligation imposed by 10 CFR §73.55(d)(1) that at all points of personnel access to the protected area "searches of all individuals be made" and that the "search function for detection of firearms, explosives, and incendiary devices shall be conducted either by a physical search or by use of equipment capable of detecting such devices." Petitioners Wisconsin Electric Power Company, Wisconsin Public Service Corporation, and Baltimore Gas and Electric Company believe that a requirement for a "pat-down" physical search is unnecessary in view of the other protective measures required, the absence of such a requirement for other (and more sensitive) facilities, and the serious problems which the physical search requirement imposes. On the other hand, "pat-down" physical searches should be permitted in any case where security personnel are suspicious about an individual and signs should be posted that individuals entering a protected area may be subject to search.

I. ACCESS CONTROLS OTHER THAN PHYSICAL SEARCH
REQUIREMENT PROVIDE ADEQUATE PROTECTION

Section 73.55(d) establishes numerous requirements for the nuclear power plant physical security plan, in addition to the physical search requirement, which provide more than adequate control over access to the protected areas of the plant. These include:

1. Control of all personnel and vehicle access points;
2. Identification of all individuals;
3. Check of authorization for all individuals;
4. Search of all individuals by metal, explosives and incendiary detectors, if available.
5. Isolation of individual controlling admission to protected area within bullet-resisting structure;
6. Search of all hand-carried packages;
7. Check of all deliveries into protected area for identification and authorization;
8. Search of all deliveries into protected area;
9. Search of all vehicles (except in emergency) prior to entry into protected area;
10. Escort of all vehicles (except designated licensee vehicles) in protected area;
11. Restriction of designated licensee vehicles to protected area except for operational, maintenance, repair, security and emergency purposes;

12. Positive licensee control over all designated licensee vehicles;
13. Numbered picture badge system for all persons authorized access to protected areas without escort;
14. Escort required for individuals not authorized to enter protected area without escort;
15. Individuals requiring escort must register name, date, time, purpose of visit, employment application, citizenship and name of individual being visited;
16. Access to vital areas limited to authorized individuals requiring access:
17. Positive control of personnel and vehicle access to vital areas;
18. Special badges for vital area access;
19. Protection by locks and active intrusion alarms of unoccupied vital areas;
20. Reactor containment doors and hatches to be alarmed and locked;
21. Positive access control to reactor containment when frequent access required;
22. Control of keys, locks, combinations and related equipment;
23. Change of key, lock combination or related equipment on evidence of its compromise;

24. Change of keys, locks, combinations or related equipment on termination of employee having access thereto.

Wholly apart from the extent and adequacy of these measures, it must also be kept in mind that sabotage of a reactor sufficient to cause significant public harm would be a most complicated act to complete, that light water reactor fuel is not a candidate for strategic material diversion, and that spent fuel is an unlikely target for sabotage.

MTR-7022, Brennan et al., The Threat to Licensed Nuclear Facilities (MITRE Corp. 1975), pp. 114-118.

The NRC has also proposed that a personnel security program be instituted which would require, inter alia, that certain individuals involved in the operation of licensed nuclear power reactors receive authorization from NRC for access to or control of special nuclear material. 42 Fed. Reg. 14880 (March 17, 1977). As the Commission observes in the statement of consideration accompanying the proposed rule, "in the opinion of the Commission, experience has shown that [clearance] programs do substantially reduce the risk of such ["insider"] conspiracies." Petitioners support the proposed rule to the extent that it would require the lower level clearance for licensee employees. Certainly, if such a clearance program is adopted, searches ought not to be required for persons with clearances. This would be consistent with NRC's proposed "Performance Oriented

Safeguards Requirements", 42 Fed. Reg. 34310 (July 5, 1977), §73.46(d)(4), which exempts from the search requirement ERDA couriers and licensee employees with NRC or ERDA clearances. Certainly, any requirements which require searches of cleared personnel are totally unnecessary.

Modifying the rule to explicitly permit physical searches on suspicion and to inform all individuals prior to entering a protected area that they may be searched would also lend further assurance to the security program.

II. OTHER FEDERAL AGENCIES WITH RESPONSIBILITY
OVER FACILITIES MORE SENSITIVE THAN NUCLEAR POWER
REACTORS DO NOT REQUIRE PHYSICAL SEARCHES AS PART
OF THEIR SECURITY REQUIREMENTS.

Nuclear power reactors are by no means the most sensitive facilities operated or licensed by the Federal Government. Nuclear weapons storage areas, military nuclear research facilities and many military bases would seem to have a greater need for physical security protection than commercial nuclear reactors. Even the anti-hijacking precautions in effect for all commercial airlines would appear to need measures at least as strict as those for nuclear power plants. Yet in none of these cases do government regulations require a physical search.

The security requirements for nuclear weapons are governed by Department of Defense Directive No. 5210.41, "Security Criteria and Standards for Protecting Nuclear Weapons" (September 10, 1976). This directive applies to all Defense Department components having responsibility for

the protection of nuclear weapons. Enclosure 3 to Directive No. 5210.41 sets forth the Criteria and Standards for Protecting Nuclear Weapons. Section F, Entry and Access Control, governs entry into Exclusive Areas (defined as a designated area in which one or more nuclear weapons are located) and Limited Areas (areas surrounding Exclusion Areas) and requires:

1. entry control to assure positive identification, including as a minimum
 - a. controlled picture badge system;
 - b. formal entry control rosters;
 - c. visitor escort system, and
 - d. a duress system (a system whereby the security personnel can be covertly informed of a situation of duress).
2. limitation of entry to authorized personnel, including either personnel security clearance for those authorized entry or surveillance by a designated escort for persons without clearance.
3. provisions for rapid entry during actual response or exercises.

No requirement exists for physical searches, even when nuclear weapons are involved.

The U.S. Army nuclear weapons security procedures similarly do not require physical searches. Army Regulation AR 50-5 (eff. September 1, 1976) provides for a badge system,

entry control rosters, a visitor control system and a duress system. Unescorted entrance to Limited and Exclusion Areas is restricted to cleared individuals with an escort system for persons without clearances. However, even for uncleared (but escorted) persons having access to nuclear weapons, no physical search is required.

Security regulations in other defense related areas also have no requirement for physical searches. The Energy Research and Development Administration procedures are set forth in ERDA Manual Chapter 2000. Specifically, ERDA Manual Appendix 2401, Physical Protection of Classified Matter and Information, makes no mention of physical searches. Defense Department regulations used for the security of naval shipyard construction (including naval nuclear construction) require no physical searches. See DOD 5220.22-M, "Industrial Security Manual for Safeguarding Classified Information", and DOD 5220.22-R, "Industrial Security Regulation."

Nonmilitary security programs similarly do not require physical searches. To deter potential hi-jackers, the Federal Aviation Administration in 1972 adopted 14 CFR §121.538, "Aircraft Security." This regulation requires that each carrier adopt

A screening system, acceptable to the Administration, that is designed to prevent or deter the carriage aboard its aircraft of any explosive or incendiary device or weapon. . . .

To our knowledge, no carrier has adopted, nor has the FAA required, a screening system which requires physical search.

Thus, our investigation of physical security requirements for activities with a sensitivity comparable to, or greater than, nuclear power reactors discloses no examples where physical searches are required

III. THE PHYSICAL SEARCH REQUIREMENT CAUSES NEEDLESS PROBLEMS TO LICENSEES REQUIRED TO IMPLEMENT IT

A number of practical problems have already surfaced in the short time since the Commission-mandated physical search requirements has been implemented. Other problems can be expected over the next several months.

Some plant personnel and their unions have made known their feeling that a physical search is highly distasteful, personally offensive, and in violation of individual rights. In at least one case of which we are aware, the employee refused to submit to a physical search. As a result, the utility felt obliged to place the employee on leave of absence without pay until such time as another position in the company could be found where the employee would not be subject to physical search. The employee has retained a lawyer and is investigating the possibility of legal action against the utility. Several unions have protested and at least one has asserted that the new physical search requirement constitutes a change in working conditions requiring a negotiated settlement.

The problem of women employees and visitors is particularly troublesome. Although most utility guard forces may include some women, there is no assurance that a woman guard would be at every entrance at any time that a woman employee

or visitor might appear. In the absence of a woman guard, the physical search, and the woman's entry, would have to be delayed until a woman guard was obtained. In some instances, this might result in a significant delay in order to have a woman guard report to the plant.

The likelihood of a substantial delay in processing people through the security system is likely with the onset of colder weather and the need for entering personnel to remove their coats, jackets and sweaters, so that those items can be searched prior to the physical search of the individual.

Significant delays may be involved in processing large numbers of people, particularly during outages when a significant increase in the number of workers coming on-site can be expected. This added time may result in additional costs to the utility in terms of reduced productivity or requests for additional compensation. Larger guard forces may also be required in an attempt to reduce the delay.

IV. CONCLUSION

As shown above, the physical search requirement imposed by the Commission is unique. In the perspective of the risks of industrial sabotage accepted by American society and the precautions taken in connection with those risks, the Commission's physical search requirement appears excessive and unreasonable. Other government agencies with responsibility over activities of equal or greater sensitivity and susceptibility to industrial or other sabotage do not require a physical search as a part of their

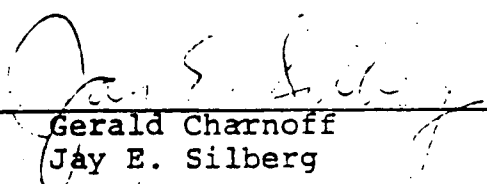
security plans. And there is no known parallel to such requirement in connection with other private activities involving perhaps larger risks to society. Other measures required by the Commission give adequate assurance that a nuclear power reactor is properly protected. Finally, the present requirements are causing and will continue to cause problems to the utilities which must implement those requirements. We therefore respectfully request that the Commission modify its physical search requirement to read as follows:

The licensee shall control all points of personnel and vehicle access into a protected area. Identification and search of all individuals shall be made and authorization shall be checked at such points. The licensee shall post signs at such points informing individuals that they may be subject to physical search prior to entering a protected area. The search function for detection of firearms, explosives and incendiary devices shall be conducted [either by a physical search or] by use of equipment capable of detecting such devices, to the extent such equipment is reasonably available. The licensee may conduct a physical search of an individual if deemed necessary or appropriate. The individual responsible for the last access control function (controlling admission to the protected area) shall be isolated within a bullet-resisting structure as described in paragraph (c) (6) of this section to assure their ability to respond or to summon assistance.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

By


Gerald Charnoff
Jay E. Silberg

1800 M Street, N.W.
Washington, D.C. 20036
(202) 331-4100

Dated: August 19, 1977

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)

PHYSICAL SEARCHES AT)
NUCLEAR POWER REACTORS)

Docket No. PRM 73-2


CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing "Petition for Rule Making" and "Memorandum In Support of Proposed Rule Making" were mailed, first class, postage prepaid, this 19th day of August, 1977, to the following:

Mr. Edson Case
Acting Director
Office of Nuclear Reactor
Regulation
U. S. Nuclear Regulatory
Commission
Washington, D. C. 20555

Docketing and Service Section
U. S. Nuclear Regulatory
Commission
Washington, D. C. 20555

General Counsel
U. S. Nuclear Regulatory
Commission
Washington, D. C. 20555



Jay E. Silberg

proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

the opinion of the Commission are important to the common defense and security, that may be conducted only by persons whose character, associations and loyalty shall have been investigated under standards and specifications established by the Commission and as to whom the Commission shall have determined that permitting each such person to conduct the activity will not be inimical to the common defense and security. . . .

Pursuant to this statutory authority, the Commission is proposing regulations which would require certain individuals involved in the operation of licensed nuclear power reactors and fuel reprocessing plants, in the licensed use, processing, or storage of certain quantities of special nuclear materials, and in the transportation by the private sector of certain quantities of special nuclear material, to receive authorization from the Commission for access to or control over special nuclear material. These regulations are being prepared to utilize a personnel security program as a measure to protect against those employed in the affected nuclear activities who might conspire to steal or divert special nuclear material or conduct sabotage which would endanger the public by exposure to radiation. Of course, a clearance program itself does not entirely solve the problem of the "insider," but, in the opinion of the Commission, experience has shown that such programs do substantially reduce the risk of such conspiracies. Moreover, the proposed program is one of several elements in the Commission's overall safeguards program which together protect against threats, both internal and external.

Two levels of special nuclear material access authorization are proposed. The higher level, NRC-U, would be based upon a full-field background investigation and would apply to (i) all individuals who require unescorted access to special nuclear material or within vital areas, (ii) those jobs in which an individual alone or in conspiracy with another individual who does not possess an NRC-U special nuclear material access authorization could act to steal or divert special nuclear material or to commit sabotage, and (iii) drivers of motor vehicles and pilots of aircraft transporting certain quantities of special nuclear material and those who escort road, rail, air or sea shipments of special nuclear material. The lower level, NRC-R, would be based upon a National Agency Check and would apply to all individuals who require unescorted access to protected areas and who are not required to possess an NRC-U special nuclear material access authorization.

NUCLEAR REGULATORY COMMISSION

[10 CFR Parts 11, 50 and 70]

SPECIAL NUCLEAR MATERIAL

Authority for Access to or Control

Section 1611 of the Atomic Energy Act of 1954, as amended, permits the Nuclear Regulatory Commission to prescribe regulations instituting a clearance program for those individuals who have access to or control over special nuclear material. Specifically, the section provides that the Commission may issue regulations " . . . designating activities involving quantities of special nuclear material which in

Both the National Agency Check and the full-field background investigation are conducted by the Civil Service Commission. The National Agency Check consists of a check of files of the FBI (fingerprint, criminal, and subversive files), Civil Service Commission (Security-Investigative Index), and a check of military records and records of other government agencies, as appropriate. The full-field background investigation consists of interviews of references, conducted by investigative agents of the Civil Service Commission, in addition to the records check. Sources of information developed in the course of the investigation are also interviewed. The full-field background investigation conducted by the Civil Service Commission generally covers the 15-year period of the individual's adult life prior to the investigation.

The program being proposed by these regulations is intended to supersede any existing requirements for licensees to screen or otherwise assure the trustworthiness of their personnel.

If the Commission adopts the proposed amendments, licensees and license applicants would be required to amend their security plans by identifying and describing jobs at their facilities which require authorization. Affected individuals would be required to obtain authorization according to the schedules set forth in the proposed rule. Individuals who are newly hired or who change jobs where the new job would require a material access authorization must obtain an authorization before beginning the job. Authorization would be updated every five years.

With due recognition of the gravity of establishing a material access authorization program in the licensed nuclear industry which would affect individuals who are not employed by any licensee or contractor of the Commission as well as licensee employees, it is the Commission's intent to minimize both the impact on the rights of privacy and association of individuals affected, and the number of individuals affected, while providing an effective measure of protection against those who would seek employment with, or use their position in, the nuclear industry for purposes of theft or sabotage. In preparing these regulations among the matters considered were the scope of investigations (e.g., whether a full-field background investigation should be required for all individuals), which job functions should require material access authorization (e.g., require authorization only for "key" positions or adopt a graded system with level of clearance determined by job), whether psychological assessment should be required, and the relation of the proposed program to current NRC and ERDA personnel security programs.

The Commission also considered the question of whether new criteria should be developed against which a decision for authorization would be made. The present NRC security clearance criteria (10 CFR Part 10) were developed for access to information and, as such, not all criteria may be equally significant for

questions of access to special nuclear material, and some may not be perceived as relevant in specific cases. Also, there may be cases in which additional criteria, not now included in 10 CFR Part 10, would be more to the point. However, these criteria do correspond to the Federal Government's general approach to personnel security, and specifically, ERDA had adopted them for use in its own materials access program (42 FR 7946). Furthermore, the criteria are in the nature of guidelines to be used in a decision process characterized by common sense judgments, rather than quantitative criteria. Moreover, the Commission is reluctant to devise a new set of criteria without evidence that any new criteria would significantly improve upon those which presently exist. Hence, the Commission's proposal is to rely on the government-wide criteria as guidelines in deciding questions of access to or control over special nuclear material. The Commission particularly requests comments both on the relevance of individual criteria of 10 CFR Part 10, and on the completeness and suitability of the criteria as a whole for questions of access to or control over special nuclear material. The Commission intends to give careful consideration to this matter, in the light of comments received, in determining the provisions of an effective rule.

Pursuant to the Atomic Energy Act of 1954, as amended by the Energy Reorganization Act of 1974, and section 553 of title 5 of the United States Code, notice is hereby given that adoption of a new 10 CFR Part 11 and adoption of the following conforming amendments to 10 CFR Parts 50 and 70 is contemplated. All interested persons who desire to submit written comments or suggestions with respect to the proposed amendments, or any other matter pertinent to the subject of this notice, should send them to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, by May 16, 1977. If sufficient interest is evidenced by comments received, the Commission will give consideration to a public hearing on this matter. Copies of comments on the proposed amendments may be examined in the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C.

1. A new Part 11 is added to read as follows:

PART 11—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO OR CONTROL OVER UNCLASSIFIED SPECIAL NUCLEAR MATERIAL

GENERAL PROVISIONS

- 11.1 Purpose.
- 11.3 Scope.
- 11.5 Policy.
- 11.7 Definitions.

REQUIREMENTS FOR SPECIAL NUCLEAR MATERIAL ACCESS AUTHORIZATION

- 11.11 Requirements at fixed sites.
- 11.13 Requirements in transportation.
- 11.15 Application for special nuclear material access authorization.

CRITERIA FOR DETERMINING ELIGIBILITY FOR SPECIAL NUCLEAR MATERIAL ACCESS AUTHORIZATION

11.21 Application of the criteria

AUTHORITY: Sec. 7, Pub. L. 93-377, 88 Stat. 475; sec. 1611, Pub. L. 93-703, 68 Stat. 948 (42 U.S.C. 2201).

GENERAL PROVISIONS

§ 11.1 Purpose.

This part establishes the requirements for special nuclear material access authorization, and the criteria and procedures for resolving questions concerning the eligibility of individuals to receive special nuclear material access authorization for conduct of certain activities, licensed or otherwise, which involve access to or control over unclassified special nuclear material.

§ 11.3 Scope.

(a) The requirements, criteria, and procedures of this part apply to the establishment of and eligibility for special nuclear material access authorization for employees, contractors, consultants of, and applicants for employment with, licensees or contractors of the Nuclear Regulatory Commission where such employment, contract, service, or consultation involves any job falling within the criteria of §§ 11.11 or 11.13 of this chapter.

(b) The requirements, criteria, and procedures of this part are in addition to and not in lieu of any requirements, criteria, or procedures for access to or control over classified special nuclear material.

§ 11.5 Policy.

It is the policy of the Nuclear Regulatory Commission to carry out its authority to establish and administer a personnel security program in the interests of the common defense and security for the purpose of safeguarding special nuclear material and preventing sabotage which would endanger the public by exposure to radiation in a manner consistent with traditional American concepts of justice. To this end, the Commission has established criteria for determining eligibility for special nuclear material access authorization and will afford affected individuals the opportunity for administrative review of questions concerning their eligibility for special nuclear material access authorization.

§ 11.7 Definitions.

As used in this part:

(a) Terms defined in Parts 10, 50, 70, and 73 of this chapter have the same meaning when used in this part.

(b) "Special nuclear material access authorization" means an administrative determination that an individual (including a contractor or consultant) who is employed by or is an applicant for employment with a Commission contractor, licensee of the Commission, or contractor of a licensee of the Commission may work at a job which affords access to or control over special nuclear material and that permitting the individual to work

at that job would not be inimical to the common defense and security.

(c) "NRC 'U' special nuclear material access authorization" means an administrative determination based upon a national agency check and a full-field background investigation conducted by the Civil Service Commission that an individual in the course of employment is eligible to work at a job falling within the criteria of §§ 11.11(a)(1) or 11.13.

(d) "NRC-'R' special nuclear material access authorization" means an administrative determination based upon a national agency check that an individual in the course of employment is eligible to work at a job falling within the criterion of § 11.11(a)(2).

REQUIREMENTS FOR SPECIAL NUCLEAR MATERIAL ACCESS AUTHORIZATION

§ 11.11 Requirements at fixed sites.

(a) Each licensee who (after 90 days following publication in final form) uses, processes, or stores special nuclear material subject to the physical protection requirements of Part 73 of this chapter, or who operates a nuclear reactor subject to the physical protection requirements of Part 73 of this chapter, by amendment to his security plan shall identify at his facility or plant and describe to the Commission:

(1) All jobs in which an individual could steal or divert special nuclear material, or commit sabotage which would endanger the public by exposure to radiation, by working alone or in cooperation with an individual who does not possess an NRC-U special nuclear material access authorization, or by directing or coercing any individual to assist in the theft, diversion, or sabotage. Such jobs include but are not limited to:

(i) All positions in the licensee's security force;

(ii) Management positions with the authority to:

(A) Direct the actions of members of the security force or alter security procedures, or

(B) Direct routine movements of special nuclear material, or

(C) Direct the routine status of vital equipment.

(iii) All jobs which require unescorted access within onsite alarm stations.

(iv) All jobs which require unescorted access¹ to special nuclear material or within vital areas.

(2) All jobs which require unescorted access within protected areas and which do not fall within the criterion of paragraph (a)(1) of this section.

(b)(1) After (540 days following publication in final form) no individual who works at a nuclear reactor subject to this part and after (180 days following publication in final form) no other individual may be permitted to work at any job determined by the Commission to fall within the criterion of paragraph

(a)(1) of this section without an NRC-U special nuclear material access authorization. (2) After (540 days following publication in final form) no individual may be permitted unescorted access to any protected area at a nuclear reactor site subject to this part, and after (180 days following publication in final form) no individual may be permitted unescorted access to any protected area at any other site subject to this part, without either an NRC-U or NRC-R special nuclear material access authorization.

§ 11.13 Requirements in transportation.

(a) All individuals who after (180 days following publication in final form) drive motor vehicles in road shipments of special nuclear material, pilot aircraft in air shipments of special nuclear material, act as monitors at transfer points, or escort road, rail, sea, or air shipments of special nuclear material subject to the appropriate physical protection requirements of §§ 73.30, 73.31, 73.35 or 73.36 of this chapter shall have NRC-U special nuclear material access authorization.

(b) Licensees who after (180 days after publication in final form) transport or who deliver to a carrier for transport special nuclear material subject to the physical protection requirements of §§ 73.30, 73.31, 73.35 or 73.36 of this chapter shall confirm and record prior to shipment the name and special nuclear material access authorization number of all drivers, escorts, and monitors assigned to the shipment.

§ 11.15 Application for Special Nuclear Material Access Authorization.

(a) Application for special nuclear material access authorization, renewal, or change in level shall be filed by the employer on behalf of the applicant with the Director, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.²

(b) Applications for special nuclear material access authorization shall be made on forms supplied by the Commission including:

(1) A Personnel Security Questionnaire (PSQ) completed by the individual.

(2) A fingerprint card with the individual's fingerprints (fingerprints may be taken by a local police authority).

(3) A statement by the employer, prospective employer, or contractor, identifying the job to be assigned to or assumed by the individual and the level of authorization needed, justified by appropriate reference to the licensee's security plan.

(c) Special nuclear material access authorization shall expire 5 years following the date of issue. If continued special nuclear material access authorization is required, an application for renewal shall be submitted at least 90 days prior to expiration date. Failure to make a timely application will result in expiration of

special nuclear material access authorization. Special nuclear material access authorization for which a timely application for renewal has been made be continued beyond the expiration date pending final action on the application. An application for renewal will consist of the following:

(1) A Personnel Security Questionnaire, completed by the applicant.

(2) A statement by the employer or contractor that at the time of application for renewal the individual's assigned or assumed job requires the level of special nuclear material access authorization which he or she holds, justified by appropriate reference to the licensee's security plan.

(d) If at any time, due to new assignment or assumption of duties, a change in special nuclear material access authorization level from NRC "R" to "U" is required, the individual shall apply for a change of level of special nuclear material access authorization. Such an application shall include a description of the new duties to be assigned or assumed, justified by appropriate reference to the licensee's security plan.

(e) Each application for special nuclear material access authorization, renewal, or change in level shall be accompanied by the employer's remittance according to the following schedule:

(1) New application, "U"-----	\$950
(2) New application, "R"-----	\$30
(3) Renewal "U" or "R"-----	\$30
(4) Change of level "R" to "U"-----	\$950
(5) Convert existing NRC or ERDA "Q" or "Q(X)" to U or R-----	No charge
(6) Convert existing NRC or ERDA "L" or "L(X)" to U-----	\$950
(7) Convert existing NRC or ERDA "Q", "Q(X)", "L", or "L(X)" to R-----	No charge

CRITERIA FOR DETERMINING ELIGIBILITY FOR ACCESS TO, OR CONTROL OVER, SPECIAL NUCLEAR MATERIAL

§ 11.21 Application of the criteria.

(a) The decision to grant or deny special nuclear material access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or unfavorable, that to grant or deny special nuclear material access authorization is or is not inimical to the common defense and security and is or is not clearly consistent with the national interest.

(b) To assist in making these determinations, on the basis of all the information in a particular case, there are set forth in § 10.11 of this chapter a number of specific types of derogatory information. These criteria are not exhaustive but contain the principal types of derogatory information which in the opinion of the Commission create a question as to the individual's eligibility for special nuclear material access authorization. These criteria are subject to continuing review and may be revised from time to time as experience and circumstances may make desirable.

¹ This does not alter the requirement for methods to observe individuals within material access areas as stated in § 73.60(a)(7) of this chapter.

² Process times for special nuclear material access authorizations can be expected to be about 90 days for NRC-U and 30 days for NRC-R.

(c) When the reports of investigation of an individual contain information reasonably falling within one or more of the classes of derogatory information listed in § 10.11, the application of the criteria shall be made in light of and with specific regard to whether the existence of such information creates a question as to the individual's eligibility for special nuclear material access authorization by raising a reasonable belief that the individual would use his access to or control over special nuclear material for theft or diversion of special nuclear material, or sabotage which would endanger the public by exposure to radiation. The Executive Director for Operations may authorize the granting of special nuclear material access authorization on the basis of the information in the case or may authorize the conduct of an interview with the individual and, on the basis of such interview and such other investigation as he deems appropriate, may authorize the granting of special nuclear material access authorization. Otherwise, a question concerning the eligibility of an individual for special nuclear material access authorization shall be resolved in accordance with the procedures set forth in §§ 10.20 through 10.37 of this chapter.

(d) In resolving a question concerning the eligibility or continued eligibility of an individual for special nuclear material access authorization by action of the Personnel Security Board,¹ the following principle shall be applied by the Board: Where there are grounds sufficient to establish a reasonable belief as to the truth of the information regarded as substantially derogatory and when the existence of such information raises a reasonable belief that the individual may use his access to or control over special nuclear material for theft or diversion of special nuclear material or sabotage which would endanger the public by exposure to radiation, this shall be the basis for a recommendation for denying or revoking special nuclear material access authorization if not satisfactorily rebutted by the individual or shown to be mitigated by circumstance.

PART 50—LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

2. Paragraph (c) of § 50.34 is amended to read as follows:

§ 50.34 Contents of applications; technical information.

(c) Physical security plan. Each application for a license to operate a production or utilization facility shall include a physical security plan. The plan shall consist of two parts. Part I shall address vital equipment, vital areas, and isolation zones, and shall demonstrate how the applicant plans to comply with the

¹ The function of the Personnel Security Board is described in Part 10 of this chapter.

requirements of Part 73 of this chapter, if applicable, at the proposed facility including the identification and description of jobs at the proposed facility as required by § 11.11(a) of this chapter.¹ Part II shall list tests, inspections, and other means to be used to demonstrate compliance with such requirements, if applicable.

PART 70—SPECIAL NUCLEAR MATERIAL

3. Paragraph (h) of § 70.22 is amended to read as follows:

§ 70.22 Contents of applications.¹

(h) Each application for a license to possess or use at any site or contiguous sites subject to control by the licensee uranium-235 (contained in uranium enriched to 20 percent or more in the uranium-235 isotope), uranium-233, or plutonium alone or in any combination in a quantity of 5,000 grams or more computed by the formula, grams = (grams contained U-235) + 2.5 (grams U-233 + grams plutonium), other than a license for possession or use of such material in the operation of a nuclear reactor licensed pursuant to Part 50 of this chapter, shall include a physical security plan, consisting of two parts. Part I shall address vital equipment, vital areas, and isolation zones, and shall demonstrate how the applicant plans to meet the physical protection requirements of Part 73 of this chapter in the conduct of the activity to be licensed including the identification and description of jobs as required by § 11.11(a) of this chapter. Part II shall list tests, inspections, and other means to demonstrate compliance with such requirements.

Dated at Washington, D.C. this 11th day of March, 1977.

For the Nuclear Regulatory Commission,

SAMUEL J. CHILK,
Secretary of the Commission.

[FR Doc. 77-8023 Filed 3-16-77; 8:45 am]

[Docket Nos. 50-280 and 50-281]

VIRGINIA ELECTRIC & POWER CO.**Proposed Issuance of Amendments to Facility Operating Licenses**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. DPR-32 and DPR-37 issued to Virginia Electric and Power Co. (the licensee), for operation of the Surry Power Station Units Nos. 1 and 2, located in Surry County, Va.

In accordance with the licensee's application for amendment dated August 9, as supplemented August 26, 1977, the amendments would revise the provisions in the Technical Specifications relating to the transient and accident analysis as affected by an increase in steam generator tube plugging levels from the current 20% to 25%.

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

By October 7, 1977, the licensee may file a request for a hearing and any person whose interest may be affected by this proceeding may file a request for a hearing in the form of a petition for leave to intervene with respect to the issuance of the amendments to the subject facility operating licenses. Petitions for leave to intervene must be filed under oath or affirmation in accordance with the provisions of Section 2.714 of 10 CFR Part 2 of the Commission's regulations. A petition for leave to intervene must set forth the interest of the petitioner in the proceeding, how that interest may be affected by the results of the proceeding, and the petitioner's contentions with respect to the proposed licensing action. Such petitions must be filed in accordance with the provisions of this Federal Register notice and Section 2.714, and must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Section, by the above date. A copy of the petition and/or request for a hearing should be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Mr. Michael W. Maupin, Esquire, Hunton, Williams, Gay, and Gibson, P.O. Box 1535, Richmond, Va. 23213, the attorney for the licensee.

A petition for leave to intervene must be accompanied by a supporting affidavit which identifies the specific aspect or aspects of the proceeding as to which intervention is desired and specifies with particularity the facts on which the petitioner relies as to both his interest and his contentions with regard to each aspect on which intervention is requested. Petitions stating contentions relating only to matters outside the Commission's jurisdiction will be denied.

All petitions will be acted upon by the Commission or licensing board, designated by the Commission or by the

Chairman of the Atomic Safety and Licensing Board Panel. Timely petitions will be considered to determine whether a hearing should be noticed or another appropriate order issued regarding the disposition of the petitions.

In the event that a hearing is held and a person is permitted to intervene, he becomes a party to the proceeding and has a right to participate fully in the conduct of the hearing. For example, he may present evidence and examine and cross-examine witnesses.

For further details with respect to this action, see the application for amendment dated August 9, as supplemented August 26, 1977, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. at the Swem Library College of William and Mary, Williamsburg, Va.

Dated at Bethesda, Md., this 6th day of September 1977.

For the Nuclear Regulatory Commission.

ROBERT W. REID,
Chief, Operating Reactors Branch
No. 4, Division of Operating Reactors.

[FR Doc 77-26861 Filed 9-14-77; 8:45 am]

[Docket No. PRM-73-2]

WISCONSIN ELECTRIC POWER CO., ET AL.**Filing of Petition for Rulemaking**

Notice is hereby given that Gerald Charnoff, Esquire, and Jay E. Silberg, Esquire have filed with the Commission on behalf of the Wisconsin Electric Power Co., Wisconsin Public Service Corp., and Baltimore Gas and Electric Co. a petition for rulemaking dated August 19, 1977.

The petitioners request the Commission to amend § 73.55(d) (1) of the Commission's regulation "Physical Protection of Plants and Materials," 10 CFR Part 73, to eliminate the requirement for "pat-down" physical searches of individuals entering a protected area.

The amendments proposed by the petitioners would modify 10 CFR 73.55 (d) (1) by deleting the bracketed words and adding the italicized language as follows:

§ 73.55 Requirements for physical protection of licensed activities in nuclear power reactors against industrial sabotage.

(d) Access requirements. (1) The licensee shall control all points of personnel and vehicle access to a protected area. Identification and search of all individuals shall be made and authorization shall be checked at such points. *The licensee shall post signs at such points informing individuals that they may be subject to physical search prior to entering a protected area.* The search function for detection of firearms, explosives and incendiary devices shall be conducted either by a physical search or by the

of equipment capable of detecting such devices, *to the extent such equipment is reasonably available. The licensee may conduct a physical search of an individual if deemed necessary or appropriate.* The individual responsible for the last access control function (controlling admission to the protected area) shall be isolated within a bullet-resisting structure as described in paragraph (c) (6) of this section to assure their ability to respond or to summon assistance.

The petitioners state that a requirement for a "pat-down" physical search is unnecessary in view of the other protective measures which are required, the absence of such a requirement for other (and more sensitive) facilities, and the serious problems which the physical search requirement imposes. The petitioners state, however, that "pat-down" physical searches should be permitted in any case where security personnel are suspicious about an individual, and signs should be posted that individuals entering a protected area may be subject to physical search.

The Commission is assessing the implications of "pat-down" searches and their value as a part of a total physical protection system, considering their relation to other features of security systems required by the rule that affect access controls intended to protect with high confidence against insiders. It is endeavoring to identify alternatives that will achieve equivalent protection in the context of the total security system. Public comments are solicited specifically on such alternatives, and further opinions as to the value of searches as a contributing element of security systems.

A copy of the petition for rule making is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. A copy of the petition may be obtained by writing to the Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

All persons who desire to submit written comments or suggestions concerning the petition for rule making should send their comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch by October 17, 1977.

Dated at Washington, D.C., this 13th day of September 1977.

For the Nuclear Regulatory Commission.

SAMUEL J. CHILK,
Secretary of the Commission.

[FR Doc 77-27053 Filed 9-14-77; 8:45 am]

[Docket No. 50-266]

WISCONSIN ELECTRIC POWER CO., AND WISCONSIN MICHIGAN POWER CO.**Issuance of Amendments to Facility Operating Licenses**

The U.S. Nuclear Regulatory Commission (the Commission) has issued