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.

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POOR ORIGINAL

NUCLEAR REGULATORY COMMISSION

[10 CFR Paris 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 "a designating activities involving quantities of special nuclear material which in

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 pubic 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. (11) those jobs in which an individual alone or in conspiracy with another individual who does not possess : NRC-U special nuclear material as iss authorization could act to steal or dir ert 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.

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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 PBI 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 recognization of the gravity of establishing a material access authortzation 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 feg., whether a full-field background investigation should be reguired 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 osychological 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 cleurance 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). Purthermore, 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

Pursuant to the Atomic Energy Act of 1954, as amended by the Energy Re-organization 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 sumbit written comments or suggestions with respect to the proposed amendments, or any other matter pertient to the subject of this notice, should send them to the Secretary of the Commission, U.a. Nuclear Regulatory Com-mission, 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.

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

PART 11-CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO OR CONTROL OVER UN-CLASSIFIED SPECIAL NUCLEAR MATE-

GENERAL PROVISIONS

- Purpose
- Scope
- 11.7 Definitions.

REQUIREMENTS FOR SPECIAL NUCLEAR MATERIAL ACCESS AUTHORIZATION

- Requirements at fixed sites
- Requirements in transportation.
 Application for special nu special nuclear material access authorization.

CRITTERIA FOR DETERMINING ELICISITITY FOR SPECIAL NUCLEAR MATERIAL ACCESS AU-

11 21 Application of the criteria

AUTHORITY: Sec. 7, Pub I. 93 377, 88 Stat. 475; sec 1611, Pub. I. 83-703, 68 Stat. 948 (42 USC 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

8 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

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

ice "NitC 'tl' special nuclear material acress 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 \$1 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 employm at 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 spe. : 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:

1) All positions in the licensee's se-

curity 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 spe-

cial 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 access' to special nuclear material or within vital areas.

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

bill After 1540 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 ob determined by the Commission to fall within the criterion of paragraph

This does not after the requirement for methods to observe individuals within ma terial score scess as stated in \$73 50(a) (7) of this chapter

(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 rany oc permitted unescorted access to any projected 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 snipments 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 \$1 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.

b) Applications for special nuclear material access authorization shall be made on forms supplied by the Commis-

sion 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

c. Special nuclear material access authorization shall expire 5 years following the dute 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

Process times for special nuclear material are a authorizations an be expected to be about 90 days for NRC-U and 30 days for NRC R

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

(1) A Personnel Security Question-naire, 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 au-thorization 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

(13	New application, "U"	6990
(2)	New application. "R"	330
	Renewal "U" or "R"	
	Change of level "R" to "U".	
(5)	Convert stisting NRC or	
	ERDA "Q" or "Q(X)" to	
	U or R	No charge
(6)	Convert existing NRC or	
	ERDA "L" or L(X)" to	
	σ	¥950
(7)	Convert existing NRC or	
	ERDA "Q". "Q(X)", "L".	
	or "L(X)" to R	No charge

CRITERIA FOR DETERMINING ELICIBILITY FOR ACCESS TO. OR CONTROL OVER. SPE-CIAL 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 of 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

(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 \$1011, 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 species 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 con-cerning the eligibility of an individual for special nuclear material access authorization shall be resolved in accordance with the procedures set forth in 14 1020 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,' 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

 Paragraph (c) of § 50 34 is amended to read as follows:

§ 50.34 Contents of applications: technical information.

cation 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

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. 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.

(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 piutonium 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 plens 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 Commisston.

Secretary of the Commission.

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

POOR ORIGINAL [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. Vu.

In accordance with the beensee'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 arrent 20% to 25%.

Prior to issuance of the pro and Naceuse amendments, the Comminave made the findings required. Atomic Energy Act of 1954, and the Actional the Commissional and regulations.

By October 7, 1977, the licensee n ay 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 have to intervene with respect to the issuance of the amendments to the subsect facility operating licenses. Petitions for leave to intervene must be filed under outh 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 petitioners contentions with respect to the proposed licensing action. Such petitions must be filed in accordance with the provisions of this PEDERAL 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, Hanton, Williams, Gny and Gibson PO 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 dealed.

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 Commis-

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 "patdown" physical searches of individuals entering a protected area.

The amendments proposed by the petitioners would modify 10 CPR 73.55 (d) 11 by deleting the bracketed words and adding the italized language as follows:

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

(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 enterting a protected area. The search function for detection of firearms, explosives
and incendiary devices shall be conducted
feither by a play is al search ort 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 stimulon instituce.

. .

The petitioners state that a requirement for a "put down" physical search is innecessary in view of the other protective measures which are required, the absence of such a requirement for other (and more sensitive) facilities, and the senous problems which the physical search requirement imposes. The petitioners state, however, that "put-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. Nucleur 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.

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

For the Nuclear Regulatory Commission.

Secretary of the Commission.
[FR Doc 77 - 27064 Filed 2-14-77-8-15 and

[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 Commissions has 4 shed

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