

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
Nuclear Support Services, Inc.) EA 93-236
Hershey, Pennsylvania)

ORDER REQUIRING THE REMOVAL OF AN INDIVIDUAL FROM
NRC-LICENSED OR REGULATED ACTIVITIES AND
ORDER DIRECTING REVIEW OF PERSONNEL SECURITY FILES
(EFFECTIVE IMMEDIATELY)

I

Nuclear Support Services, Inc. (NSSI) of Hershey, Pennsylvania, provides health physics personnel and support to various nuclear power plants. To perform these services, these NSSI personnel require unescorted access authorization to NRC-licensed or regulated nuclear power plants. As of January 3, 1990, the provisions of the NRC Fitness-For-Duty (FFD) rule (10 CFR Part 26) became effective for personnel (including contractors) granted unescorted access authorization to nuclear power plants.

II

Mr. Robert C. Dailey was the NSSI Security Officer from November 1989 to May 1991. While in that position, Mr. Dailey provided letters to NRC reactor licensees requesting unescorted access authorization for NSSI personnel and certifying that these personnel met all applicable FFD and access authorization requirements. A licensee's granting of unescorted access authorization to NSSI personnel who did not meet the FFD requirements would constitute a violation of 10 CFR Part 26 requirements.

On August 14, 1991, two NRC licensees (Northern States Power Company (NSP) and Wisconsin Electric Power Company (WEPC)) submitted Licensee Event Reports to the Commission because an NSSI employee had been improperly granted unescorted access to the NSP Prairie Island plant and the WEPC Point Beach plant based on written requests for such access from Mr. Dailey. These requests stated that the employee met all of the FFD requirements for unescorted access. However, in fact, the employee had four past drug-related access denials at other nuclear power plants since 1987. Both Licensee Event Reports noted that NSSI was aware of the past denials.

An NSSI letter dated August 8, 1991, from Fred H. Ershine, NSSI Senior Vice President and Chief Operating Officer, to Mr. Thomas R. Eells, Security Representative for WEPC, stated that the incident that required WEPC to submit a report to the NRC was caused by the former NSSI Security Officer not properly documenting or following up on the report of derogatory information and/or material concerning prior FFD violations with the appropriate individuals at each nuclear plant.

An investigation was initiated by the NRC Office of Investigations (OI). The OI investigation concluded that Mr. Dailey had sent on three occasions to Point Beach, and one occasion to Prairie Island, letters stating that the person for whom he was requesting unescorted access had met all applicable

FFD requirements and had no previous positive drug or alcohol use test results within the previous five years. The OI investigation concluded that the letters sent by Mr. Dailey were inaccurate because the person did have positive drug or alcohol use test results.

Despite what was contained in the access authorization request letters, Mr. Dailey told the OI investigator during a January 1993 interview that he had verbally advised the appropriate NSP and WEPC security personnel of the past positive test results. These licensee representatives denied being advised of such information. In Mr. Dailey's statement to the OI investigator, which was subsequently determined to be false, Mr. Dailey deliberately provided to the NRC investigator material information that he knew was inaccurate. This constitutes a violation of 10 CFR 50.5(a)(2).

In addition, WEPC and NSP notified NRC in LERs dated August 14, 1991 that several individuals were recommended by NSSI for unescorted access without revealing their past access denials or past positive drug/alcohol tests.

III

Mr. Dailey, as the NSSI security manager, was responsible for the administration of the NSSI security screening program including

determining the qualifications of applicants for unescorted access into the protected and vital areas of NSSI's client-owned nuclear power plants and for requesting such access from NSSI's clients. In the matters described in section II of this Order, Mr. Dailey was acting for and on behalf of NSSI. As such, his actions are imputed to NSSI since a corporation can only act through its agents and employees. Therefore, Mr. Dailey and NSSI violated 10 CFR 50.5.

The NRC must be able to rely on licensee contractors and contractor personnel, in addition to licensees, to comply with NRC requirements including the requirement to provide information and maintain records that are complete and accurate in all material respects. Mr. Dailey's violation of 10 CFR 50.5 has raised serious doubt as to whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to the NRC, an employer, or a licensee with regard to NRC-licensed or regulated activities. Consequently, I lack the requisite assurance that NRC-licensed and regulated activities can be conducted by Mr. Dailey in compliance with the Commission's requirements. Therefore, I find that the significance of the conduct described above is such that the public health, safety, and interest require that NSSI be directed to remove Mr. Dailey from participation in NRC-licensed or regulated activities for a period of five years from the date of this Order, effective immediately.

In addition, the conduct of Mr. Dailey raises serious concerns about the adequacy of the NSSI security screening program during his tenure as Security Officer (November 1989 to May 1991). Therefore, the public health, safety and interest require that we order NSSI to review security records in which Mr. Dailey was involved to assure that NSSI personnel granted unescorted access to NRC-licensed nuclear plants met access authorization and fitness-for-duty requirements.

IV

Accordingly, pursuant to sections 62, 63, 81, 103, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 26.27 and 10 CFR 50.5, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

- A.1. Nuclear Support Services, Inc., remove Robert C. Dailey from participation in NRC-licensed or regulated activities for a period of five years from the date of this Order.
- A.2. Nuclear Support Services, Inc., shall, if contacted by another person considering employing Robert C. Dailey in NRC-licensed or regulated activities, advise that person of the existence of condition A. 1 of this order as well as the existence and conditions of the Order issued to Mr. Dailey.

This condition is to remain in effect for a period of five years from the date of this Order.

- B.1. Nuclear Support Services, Inc., shall notify the NRC of the names of licensees who employ or have employed NSSI personnel whose recommendation for access authorization was handled by Mr. Dailey or by NSSI during Mr. Dailey's tenure as NSSI Security Officer between November 1989 and May 31, 1991.
- B.2. Nuclear Support Services, Inc., shall complete a review of all NSSI personnel security files processed during the period of November 1989 through May 31, 1991, to ensure that, based upon the information in the files, any NSSI personnel recommended for unescorted access to NRC-licensed nuclear plants during that period met applicable 10 CFR Part 26 Fitness-for-Duty requirements and access authorization requirements for unescorted access in accordance with requirements applicable to NSSI's clients' security plans as prescribed in such clients' contracts with NSSI.
- B.3. Nuclear Support Services, Inc., shall advise the NRC, in writing, of the results of the review required by conditions B.1 and 2. within 60 days of the date of this Order.

B.4. Nuclear Support Services, Inc., shall also, within 7 days of NSSI's discovery, advise the appropriate nuclear power plant licensees and the NRC of any personnel identified during the review described above who were recommended for unescorted access authorization by NSSI but did not meet Part 26 requirements or access authorization requirements at the time the NSSI request was submitted to the licensee.

B.5. Nuclear Support Services, Inc. shall provide an audit plan to the NRC, to verify the accuracy of information obtained by NSSI in its background inquiries which formed the basis for its access decisions during the period from November 1989 to May 31, 1991. The plan shall be submitted within 30 days of the date of this Order and include the sample size, the milestones and schedule for completing the audit, qualifications of the auditors, and the basis for concluding that the audit plan will provide assurance that NSSI's records are complete and accurate. Following NRC approval of the plan, it shall be implemented. The results of the audit shall be provided to the applicable licensees and the NRC within 7 days of the completion of the audit.

B.6. Submittals to the NRC required by the above conditions shall be provided to the Chief, Safeguards Branch, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory

Commission, Washington, DC 20555, with a copy to the Regional Administrator, Region III.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Nuclear Support Services, Inc., of good cause.

In accordance with 10 CFR 2.202, Nuclear Support Services, Inc., must, and Robert C. Dailey or any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Nuclear Support Services, Inc., Robert C. Dailey, or any other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the

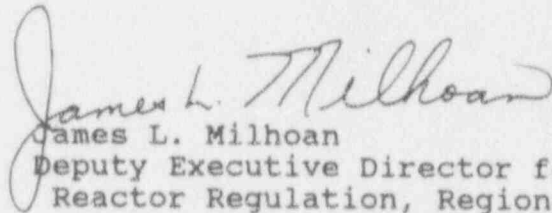
same address, to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, IL 60532-4351, and to Nuclear Support Services, Inc., if the answer or hearing request is by a person other than Nuclear Support Services, Inc. If a person other than Nuclear Support Services, Inc., or Robert C. Dailey requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Nuclear Support Services, Inc., Robert C. Dailey, or any other person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Nuclear Support Services, Inc., Robert C. Dailey or any other person adversely affected by this Order may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of a portion of the Order on the ground that the Order, including the need for immediate effectiveness for a part of the Order, is not based on adequate evidence but on mere suspicion, unfounded allegations or error.

In the absence of any request for hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. AN ANSWER OR A REQUEST FOR A HEARING SHALL NOT STAY THE IMMEDIATELY EFFECTIVE PART OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION



James L. Milhoan
Deputy Executive Director for Nuclear
Reactor Regulation, Regional Operations
and Research

Dated at Rockville, Maryland
this 22nd day of March 1994

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IMS:RIII

PDR: Yes No
DCS: Yes No