

DOCKET NUMBER PR-73 (6)  
PROPOSED RULE (51 FR 40438)



Pennsylvania Power & Light Company

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Mr. Samuel J. Chilk, Secretary  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555  
Attn: Docketing and Service Branch

SUSQUEHANNA STEAM ELECTRIC STATION  
COMMENTS ON PROPOSED REGULATIONS  
CRIMINAL HISTORY CHECKS  
PLA-2764 FILE R41-2/A17-11

Docket Nos. 50-387  
50-388

Dear Mr. Chilk:

Pennsylvania Power and Light Company has the following comments on the proposed rules on requirements for criminal history checks (51 FR 40438).

73.57(b)(1) and (5)

The proposed rule states that for individuals who do not have unescorted access after the published date of the rule, the results of the criminal history records check shall be used in making a determination for granting unescorted access. This is contrary to the NUMARC Industry guidelines, paragraph 6.4d which would allow the granting of temporary unescorted access once the request for a criminal history check has been submitted. Failure to provide for temporary unescorted access would have significant impacts on licensees, particularly during outages. The final rule should be reworded to permit unescorted access pending receipt and review of criminal history records.

73.57(b)(3)

The wording proposed in this section does not adequately address the transfer provisions contained in the NUMARC guidelines, section 8.1. It is recommended that the wording of this section pertaining to the transfer of unescorted access authorization information be consistent with section 8.1 of the NUMARC guidelines. Additionally, this section of the proposed rule addresses the issue of temporary unescorted access authorization in an ambiguous fashion. It is recommended that the addressing of the temporary unescorted access authorization be clearly worded to be in accordance with section 6.4 of the NUMARC guidelines.

While this section addresses the transfer of unescorted access authorization from one licensee to another and attempts to address the temporary unescorted access authorization, it misses one key element contained in the NUMARC guidelines. Section 8.2 of the guidelines provides for reinstatement of an

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unescorted access authorization if certain conditions are met. The reinstatement provision allows for reinstating of an unescorted access authorization if that authorization has not been interrupted for a continuous period of more than 365 days and if the previous unescorted access authorization was terminated under favorable conditions. No such provisions are contained in the proposed rule, and in the absence of addressing this particular issue, it may be determined that the rule will prevail over the guidelines. Therefore, the reinstatement provision which was established during the NUMARC/NRC discussions would be overtaken by regulatory requirements and thus negated as an option available to licensees. PP&L recommends that this provision of the proposed rule be revised to be consistent with the NUMARC guidelines. The proposed 73.57(b)(3) needs to be made consistent with 73.57(f)(3) and the NUMARC Guidelines.

#### 73.57(b)(6)

The language in this section implies that the FBI check of fingerprints is only part of the criminal history records check. It has been discussed at industry meetings with members of the NRC staff that the FBI fingerprint criminal history records check satisfies the entire criminal history requirements for a background investigation. It is recommended that the provisions of this section clearly spell out that the FBI criminal history records check satisfies all background investigative requirements with respect to a criminal history check.

#### 73.57(c)(1)(i)

This section of the proposed rule limits the use of arrest data to one year unless there is information indicating the disposition of the case. Our experience in conducting criminal history checks through other means has shown that it is not unusual for attorneys to routinely employ delaying tactics to avoid or delay trial dates. It is not uncommon to find a case as not having gone to trial within one year of the date of arrest. It would appear that this limitation somewhat restricts the ability of the licensee to handle those situations in which it is apparent that attorneys are employing tactics to delay or avoid trial. If this provision becomes known, then for future cases involving workers requiring unescorted access to nuclear power facilities, we may expect additional emphasis by the legal community on delay to attempt to circumvent the provisions of this rule.

#### 73.57(e)(1)

This section provides the applicant for unescorted access the right to correct and complete information which is returned as a result of the criminal history records check. It would appear that no adverse action may be taken while the individual is challenging the record to correct it. Also with regard to the individual right to complete, correct and explain the information contained in the criminal history records check, the supplementary information outlines this individual's right prior to any final adverse action, whereas in the proposed regulation, the licensee must make records available to the

individual for the purpose of assuring correct and complete information prior to any adverse action. The proposed 10 CFR 73.57(e)(2) states that no final adverse action may be taken against an individual who has challenged the FBI records until it has been resolved through the various noted means, whereas the supplementary information would seem to establish that this must be done prior to any adverse action. The final rule should be reworded to prohibit only final adverse action. It is PP&L's belief that we must have the flexibility to suspend or withhold access where warranted pending final resolution.

#### 73.57(e)(2)

Similar to 73.57(e)(1), this section should be clarified to explicitly state whether an applicant for unescorted access authorization who chooses to change, correct or update an alleged deficiency in the criminal history records should be granted or denied unescorted access while such a change, correction or update is being accomplished. This section addresses that a reasonable amount of time must be allowed for such a process to take place; however, it does not address whether or not access is or is not to be granted during such a challenge. The provision with respect to providing a reasonable amount of time seems to provide a very arbitrary and ambiguous time frame which will be individually interpreted according to the discretions of the many licensees. It is recommended that the Nuclear Regulatory Commission safeguards staff define a reasonable amount of time to provide standardization to the industry in this regard. Again, PP&L believes it must have the flexibility to suspend or withhold access where warranted pending final resolution.

#### 73.57(f)(4)

The proposed rule would require that criminal history records be available onsite for examination by NRC. The regulations should not be so prescriptive. PP&L would plan to maintain these records at the corporate headquarters where security clearances are processed and records are maintained. The final rule should be revised by deleting the word "onsite."

#### Additional Comments

- o NRC requested specific comments on whether fingerprinting should be required only for unescorted access to vital areas or for unescorted access to the facility. It has been PP&L's experience that in over 70% of the cases, those personnel authorized unescorted access to the protected area also require access to vital areas of the plant. Based upon our experience and the fact that the proposed NUMARC guidelines establish only a single level of access authorization, it is our recommendation that fingerprints be submitted on all persons who are granted unescorted access to either protected or vital areas. It is also pointed out that the requirements to fingerprint personnel who have access to safeguards information could be better met if there is a single level of coverage for vital and protected area unescorted access because it may be assumed that

if a person is granted access, they have complied with the fingerprint requirements for access to safeguards information.

- o The proposed rule does not permit grandfathering. However, the NUMARC guidelines, in section 11.0, establish a grandfathering provision. The proposed rule should provide a grandfathering provision for those personnel who have been granted unescorted access on the date of their amended security plan approval or those who were granted unescorted access authorization within the 365 days prior to that date. A recent EEI survey indicated that 41 of 55 nuclear licensees favored grandfathering of the criminal history records checks which had previously been conducted through means other than a fingerprint card submission to the FBI.
- o PP&L is concerned about the provisions of the rule which require criminal history checks for those who require access to Safeguards Information. We understand that this provision was imposed by Congress, and that NRC is not able to eliminate this requirement without legislative relief. PP&L strongly encourages NRC to seek that relief. In the meantime, additional guidance would be appreciated when the final rule is issued. Our specific concerns involve several areas.
  1. A number of clerical personnel who do not work at the facility handle Safeguards Information in the normal course of their duties. These individuals do not have unescorted access and therefore are not investigated for a clearance. It appears that these personnel must now be fingerprinted and subjected to a criminal history check. Because of personnel turnover and to avoid having to constantly verify whether or not a particular clerk has been fingerprinted, we will probably have to fingerprint all our clerical personnel as a condition of assignment to the Nuclear Department.
  2. NRC employees are exempted from the fingerprint requirements, but it appears that NRC contractors are not. This may result in delays for NRC contractors since we will have to submit their fingerprints to NRC before allowing access to Safeguards Information. The proposed rule does not provide for transfer of these records from NRC. If we must submit fingerprints for NRC contractors, provisions should be made so that we do not have to pay the \$15 fee.

We hope that you will address these concerns in the final rule.

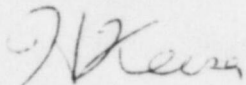
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Mr. Samuel J. Chilk

PP&L appreciates this opportunity to comment on the proposed rules. If you have any questions concerning our comments, please contact Mr. R. M. Harris at (215) 770-7862.

Very truly yours,



H. W. Keiser  
Vice President-Nuclear Operations

cc: Mr. M. C. Thadani      USNRC  
Mr. L. R. Plisco      USNRC