

April 29, 2003

~~**SAFEGUARDS INFORMATION**~~

EA-03-086

Holders of Licenses for Operating
Power Reactors as listed in
Attachment 1 to the Order

SUBJECT: ISSUANCE OF ORDER REQUIRING COMPLIANCE WITH REVISED DESIGN
BASIS THREAT FOR OPERATING POWER REACTORS

The U.S. Nuclear Regulatory Commission (NRC or the Commission) has issued the enclosed Order that modifies the current license for your facility to require compliance with the revised Design Basis Threat (DBT) provided in Attachment 2 to the enclosed Order. The Order applies to all Addressees listed in Attachment 1 to the enclosed Order. The Commission recognizes that you have voluntarily and responsibly implemented additional security measures following the events of September 11, 2001. As part of the Commission's review of the security and safeguards program, the Commission has assessed information provided by the intelligence community and determined that revisions to the DBT, as currently specified in Title 10 of the *Code of Federal Regulations*, § 73.1(a), are required. The Commission has determined that the current threat environment requires that the enclosed Order be effective immediately.

NOTICE: Attachment 2 to the Order (Revised Design Basis Threat) contains ~~Safeguards Information~~. Upon separation from Attachment 2 to the Order, this letter, the enclosed Order, and Attachment 1 to the Order (Addressee List) are DECONTROLLED.

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The basis for the Order is the need to take prompt actions to address the current threat environment. This Order does not obviate the need for licensees to continue to meet the objectives of the appropriate security level described in NRC Regulatory Issue Summary 2002-12A, "Power Reactors NRC Threat Advisory and Protective Measures System," and maintain the effectiveness of existing security measures taken in response to the events of September 11, 2001, and the Orders issued on February 25, 2002, January 7, 2003, and April 29, 2003. Upon completion of NRC review and approval of the revised security plans, including pertinent requirements of the Order issued on February 25, 2002, safeguards contingency plans, and training and qualification plans, and their full implementation, the NRC will consider requests to relax or rescind, either in whole or in part, the requirements of the Order issued on February 25, 2002, imposing the Interim Compensatory Measures. The revised security plans submitted in response to Condition III.A.1 of this Order must consider and be consistent with other security-related Orders applicable to your facility.

The enclosed Order calls for responses and actions within specified time frames. Please contact your Licensing Project Manager to facilitate resolution of any issues related to compliance with the requirements in the enclosed Order, or if you have any other questions.

The enclosed Order has been forwarded to the Office of the Federal Register for publication.

Sincerely,

/RA/

Samuel J. Collins, Director
Office of Nuclear Reactor Regulation

Docket Nos.: See Order Attachment 1

Enclosure: Order

Attachment 1: List of Addressees

Attachment 2: Revised DBT

cc (w/o Order Attachment 2): See Plant Mailing Lists

OFFICIAL RECORD COPY

7590-01-P

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
ALL OPERATING POWER REACTOR) Docket Nos. (as shown in Attachment 1)
LICENSEES) License Nos. (as shown in Attachment 1)
) EA-03-086

**ORDER MODIFYING LICENSES
(EFFECTIVE IMMEDIATELY)**

I.

The licensees identified in Attachment 1 to this Order hold licenses issued by the U.S. Nuclear Regulatory Commission (NRC or the Commission) authorizing operation of nuclear power plants in accordance with the Atomic Energy Act of 1954 and Title 10 of the *Code of Federal Regulations* (10 C.F.R.) Part 50. Commission regulations at 10 C.F.R. § 50.54(p)(1) require these licensees to maintain safeguards contingency plan procedures in accordance with 10 C.F.R. Part 73, Appendix C. Specific safeguards requirements for reactors are contained in 10 C.F.R. § 73.55.

II.

On September 11, 2001, terrorists simultaneously attacked targets in New York, N.Y., and Washington, D.C., utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees, and eventually Orders to selected licensees, to strengthen licensees' capabilities and readiness to respond to a potential attack

on a nuclear facility. The Commission has also communicated with other Federal, State and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the nature of the current threat. In addition, the Commission has been conducting a comprehensive review of its safeguards and security programs and requirements. As part of this review, the Commission issued Orders to the licensees of all operating power reactors on February 25, 2002, to implement interim compensatory measures (ICMs) to enhance physical security of licensed operations at these facilities. In addition, the Commission issued Orders to all operating power reactor licensees on January 7, 2003, to enhance access authorization requirements.

As a result of information provided by the intelligence community concerning the nature of the threat and the Commission's assessment of this information, the Commission has determined that a revision is needed to the Design Basis Threat (DBT) specified in 10 C.F.R. § 73.1. Therefore, the Commission is imposing a revised DBT, as set forth in Attachment 2¹ of this Order, on all operating power reactor licensees. The revised DBT, which supercedes the DBT specified in 10 C.F.R. § 73.1, provides the Commission with reasonable assurance that the public health and safety and common defense and security continue to be adequately protected in the current threat environment. The requirements of this Order remain in effect until the Commission determines otherwise. To address the DBT set forth in Attachment 2 of this Order, all licensees must revise their physical security plans, safeguards contingency plans, and guard training and qualification plans that are required by 10 C.F.R. §§ 50.34(c), 50.34(d), and 73.55(b)(4)(ii), respectively.

In order to provide assurance that licensees are implementing prudent measures to protect against the revised DBT, all licenses identified in Attachment 1 to this Order shall be

¹ Attachment 2 contains safeguards information and will not be released to the public.

modified to require that the physical security plans, safeguards contingency plans, and the guard training and qualification plans required by 10 C.F.R. §§ 50.34(c), 50.34(d), and 73.55(b)(4)(ii) be revised to provide protection against this revised DBT. Consistent with the provisions of 10 C.F.R. § 73.55(a), the licensee may provide measures for protection against the DBT specified in Attachment 2 to this Order other than those required by 10 C.F.R. § 73.55 if the licensee demonstrates: (1) that the measures have the same high assurance objective as specified in 10 C.F.R. § 73.55(a); and (2) that the overall level of system performance provides protection against the DBT specified in Attachment 2 to this Order equivalent to that which would be provided by 10 C.F.R. §§ 73.55(b) through (h) and meets the general performance requirements of 10 C.F.R. § 73.55. Upon completion of NRC review and approval of the revised physical security plans, including pertinent requirements of the Order issued on February 25, 2002, safeguards contingency plans, and guard training and qualification plans, and their full implementation, the Commission will consider requests to relax or rescind, either in whole or in part, the requirements of the Order issued on February 25, 2002, imposing ICMs. In addition, pursuant to 10 C.F.R. § 2.202, I find that in the circumstances described above, the public health, safety, and interest and the common defense and security require that this Order be immediately effective.

III.

Accordingly, pursuant to Sections 103, 104, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 C.F.R. § 2.202 and 10 C.F.R. Parts 50 and 73, IT IS HEREBY ORDERED, **EFFECTIVE IMMEDIATELY**, THAT ALL LICENSES IDENTIFIED IN ATTACHMENT 1 TO THIS ORDER ARE MODIFIED AS FOLLOWS:

- A. 1. All licensees shall, notwithstanding the provisions of any Commission regulation, license, or order to the contrary, revise their physical security plans and safeguards contingency plans, prepared pursuant to 10 C.F.R. §§ 50.34(c) and 50.34(d), to provide protection against the DBT set forth in Attachment 2 to this Order. In addition, all licensees shall, notwithstanding the provisions of any Commission regulation, license, or order to the contrary, revise their guard training and qualification plans, required by 10 C.F.R. § 73.55(b)(4)(ii), to implement the DBT set forth in Attachment 2 to this Order. The licensees shall submit the revised physical security plans, safeguards contingency plans, and guard training and qualification plans, including an implementation schedule, to the Commission for review and approval **no later than April 29, 2004.**
2. The revised physical security plans, revised safeguards contingency plans, and revised guard training and qualification plans, must be fully implemented by the licensees **no later than October 29, 2004.**
- B. 1. All licensees shall, within **thirty-five (35) days** of the date of this Order, notify the Commission, (1) if they are unable to comply with any of the requirements of this Order, (2) if compliance with any of the requirements is unnecessary in their specific circumstances, or (3) if implementation of any of the requirements would cause the licensee to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide the licensee's justification for seeking relief from, or variation of, any specific requirement.
2. Any licensee that considers that implementation of any of the requirements of this Order would adversely impact safe operation of the facility must notify the Commission, within **thirty-five (35) days** of this Order, of the adverse safety

impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives of this Order, or a schedule for modifying the facilities to address the adverse safety condition. If neither approach is appropriate, the licensee must supplement its response to Condition B.1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B.1.

- C. All licensees shall report to the Commission, in writing, when they have fully implemented the approved revisions to their physical security plans, safeguards contingency plans, and guard training and qualification plans, to protect against the DBT described in Attachment 2 to this Order.
- D. Notwithstanding the provisions of any Commission regulation, license, or order to the contrary, all measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise, except that licensees may make changes to their revised physical security plans and safeguards contingency plans and guard training and qualification plans if authorized by 10 C.F.R. § 50.54(p).

Licensee responses to Conditions A.1, B.1, B.2, and C above, shall be submitted in accordance with 10 C.F.R. § 50.4. In addition, licensee submittals that contain safeguards information shall be properly marked and handled in accordance with 10 C.F.R. § 73.21.

The Director, Office of Nuclear Reactor Regulation, may, in writing, relax or rescind any of the above conditions upon demonstration by the licensee of good cause.

IV.

In accordance with 10 C.F.R. § 2.202, the licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within **thirty-five (35) days** of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for an extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and include a statement of good cause for the extension. 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 set forth the matters of fact and law on which the licensee or 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, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555-0001. Copies also shall be sent to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; to the Assistant General Counsel for Materials Litigation and Enforcement at the same address; to the Regional Administrator for NRC Region I, II, III, or IV, as appropriate for the specific facility; and to the licensee if the answer or hearing request is by a person other than the licensee. Because of possible disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301-415-1101 or by e-mail to hearingdocket@nrc.gov and also to the Office of the General Counsel either by means of facsimile transmission to 301-415-3725 or by e-mail to OGCMailCenter@nrc.gov. If a person other than the licensee

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 C.F.R. § 2.714(d).

If a hearing is requested by the licensee or a 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 C.F.R. § 2.202(c)(2)(i), the licensee 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 the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final **thirty-five (35) days** from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Samuel J. Collins, Director
Office of Nuclear Reactor Regulation

Dated this 29th day of April 2003.