

SAFEGUARDS INFORMATION

EA-03-099

August 18, 2004

[Chief Nuclear Officer Address]

SUBJECT: ISSUANCE OF ORDER FOR IMPLEMENTATION OF ADDITIONAL SECURITY MEASURES ASSOCIATED WITH ACCESS AUTHORIZATION, FITNESS FOR DUTY AND BEHAVIOR OBSERVATION FOR [Name of Licensee]

Dear [CNO]:

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 specified access authorization, fitness for duty and behavior observation compensatory measures. The Order applies to decommissioning nuclear power plants with spent fuel in the spent fuel pool. Addressees are listed in Attachment 2 to the enclosed Order. The additional security measures are listed in Attachment 1 (contains Safeguards Information) to the enclosed Order.

The Commission recognizes that you have voluntarily and responsibly implemented additional security measures following the events of September 11, 2001. However, in light of the current threat environment, the Commission concludes that these additional security measures are necessary, consistent with the established regulatory framework. The Commission has determined that the current threat environment requires that the enclosed Order be effective immediately.

This Order does not eliminate the need for licensees to continue to meet the objectives of the current security protective measures as promulgated by updated security advisories. Licensees must also continue to maintain the effectiveness of existing security measures taken in response to the events of September 11, 2001, and any subsequent Orders issued. The requirements of this Order remain in effect until the Commission determines otherwise.

Warning: Violation of Section 147 of the Atomic Energy Act, "Safeguards Information" is subject to Civil and Criminal Penalties.

Document transmitted herewith contains sensitive unclassified information. When separated from Attachment 1, this document is decontrolled.

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[CNO Heading]

The enclosed Order calls for responses and actions within specified time frames. Please contact your Project Manager or Brad Baxter (301-415-6742) 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/

Margaret V. Federline, Deputy Director
Office of Nuclear Material Safety
and Safeguards

Enclosure: Order w/Attachments

Docket No(s). Included in Addressee List

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Non-Public P. Norry CIO RIDS/NMSS/OD EDO R/F W. Dean OPA
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RIDS/SFPO/OD FCongel A.Thadani

* See previous concurrence ADAMS NO. ML042250002

OFFICE	LPSS		LPSS/ASC		DNS/DD		DNS/D	
NAME	BBaxter*		GWest*		JShea*		GTracy*	
DATE	07/27/04		08/06/04		08/09/04		08/13/04	
OFFICE	NMSS/DWB		NMSS/DWB		OE		OGC	
NAME	JHickman*		DGillen*		FCongel*		DCummings*	
DATE	08/10/04		08/10/04		08/13/04		08/13/04	
OFFICE	NMSS/DWB:D		NSIR/D		NMSS/D			
NAME	JGreeves*		RZimmerman*		MFederline			
DATE	08/11/04		08/13/04		08/18/04			

OFFICIAL RECORD COPY

SAFEGUARDS INFORMATION

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
) Docket Nos. (as shown in Attachment 2)
ALL DECOMMISSIONING POWER) License Nos. (as shown in Attachment 2)
REACTOR LICENSEES) EA-03-099

**ORDER MODIFYING LICENSE
(EFFECTIVE IMMEDIATELY)**

I

The licensees identified in Attachment 2 to this Order hold licenses issued by the Nuclear Regulatory Commission (NRC or Commission) authorizing possession of nuclear power plants in accordance with the Atomic Energy Act of 1954 and 10 C.F.R. Part 50. Commission regulations at 10 C.F.R. § 50.54(p)(1) require these licensee to maintain safeguards contingency plan procedures in accordance with 10 C.F.R. Part 73, Appendix C. Specific safeguards requirements 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 in order to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility.

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~~SAFEGUARDS INFORMATION~~

The Commission has also communicated with other Federal, State, and local government agencies and industry representatives to assess the adequacy of security measures at licensed facilities. In addition, the Commission conducted a comprehensive review of its safeguards and security programs and requirements.

As a result of its initial consideration of current safeguards and security requirements and the Order issued on May 23, 2002, as well as a review of information provided by the intelligence community, the Commission has determined that certain additional security measures are required to address the current threat environment. Therefore, the Commission is imposing requirements, as set forth in Attachment 1¹ of this Order, on all decommissioning power reactor licensees with spent fuel in the spent fuel pool. These requirements, which supplement existing regulatory requirements, provide 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. These requirements will remain in effect until the Commission determines otherwise.

The Commission recognizes that licensees may have already initiated many of the measures set forth in Attachment 1 to this Order in response to previously issued advisories, the May 2002 Order, or on their own. It also recognizes that some measures may not be possible or may need to be tailored to accommodate the specific circumstances existing at the licensee's facility to achieve the intended objectives and avoid any unforeseen effect on safety.

Although the additional security measures implemented by licensees in response to the Safeguards and Threat Advisories and the May 2002 Order have been adequate to provide reasonable assurance of adequate protection of public health and safety, the Commission

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

concludes that these security measures must be supplemented further because the current threat environment continues to persist. Therefore, it is appropriate to require additional security measures and these measure must be embodied in an Order, consistent with the established regulatory framework. In order to provide assurance that licensees are implementing prudent measures to achieve a consistent level of protection to address the current threat environment, all licenses identified in Attachment 2 to this Order shall be modified to include the requirements identified in Attachment 1 to this Order. In addition, pursuant to 10 C.F.R. § 2.202, I find that in the circumstances described above, the public health, safety and interest 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 2 TO THIS ORDER IS MODIFIED AS FOLLOWS:

- A. All licensees shall, notwithstanding the provisions of any Commission regulation or license to the contrary, comply with the requirements described in Attachment 1 to this Order except to the extent that a more stringent requirement is set forth in the licensee's security plan. The licensees shall immediately start implementation of the requirements in Attachment 1 to the Order and shall complete implementation **no later than 180 days from the date of this Order** with the exception of additional security measure B.4, which shall be implemented **no later than 365 days from the date of this Order**.
- B. 1. The Licensee shall, within **twenty (20) days** of the date of this Order, notify the Commission, (1) if it is unable to comply with any of the requirements described in

Attachment 1, (2) if compliance with any of the requirements is unnecessary in its 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 described in Attachment 1 to this Order would adversely impact the safety of the facility must notify the Commission within **twenty (20) days** of this Order, of the adverse impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment 1 requirements in question or a schedule for modifying the facility 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 under Condition B.1.
- C.
1. All licensees shall, within **twenty (20) days** of this Order, submit to the Commission a schedule for achieving compliance with each requirement described in Attachment 1.
 2. All licensees shall report to the Commission when they have achieved full compliance with the requirements described in Attachment 1.
- D. Notwithstanding the provisions of 10 C.F.R. § 50.54(p), all measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise.

The Licensee's response to Conditions B.1, B.2, C.1, and C.2, 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 Material Safety and Safeguards, 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 twenty (20) 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 extension of time must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, 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. Copies also shall be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, 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 decontrolled answers, (no Safeguards Information) and requests for a hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301-415-1101 or by email to hearingdocket@nrc.gov and also to the Office of General Counsel either by means of facsimile transmission to 301-415-3725 or by email 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/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 grounds 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 twenty (20) 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

Margaret V. Federline, Director
Office of Nuclear Material Safety
and Safeguards

Dated this 18 day of August 2004.

Attachments:

- 1) Additional Security Measures
- 2) List of Addressees

Decommissioning Nuclear Power Plants with Spent Fuel in the Spent Fuel Pool

Senior Executive Contacts

Mr. K. J. Heider
Vice President - Operations and Decommissioning
Haddam Neck Plant
Connecticut Yankee Atomic Power Co.
Docket No. 50-213
License No. DPR-61
362 Injun Hollow Road
East Hampton, CT 06424-3099

Mr. Gregory Rueger
Senior Vice President Generation and Chief Nuclear Officer
Humboldt Bay Power Plant Unit 3
Pacific Gas and Electric Co.
Docket No. 50-133
License No. DPR-7
Pacific Gas and Electric Company
77 Beale Street, 32nd Floor
San Francisco, California 94105

Mr. William L. Berg
President & CEO
La Crosse Boiling Water Reactor
Docket No. 50-409
License No. DPR-45
Dairy Land Power Cooperative
3200 East Avenue South
La Crosse, WI 54601

Mr. Harold B. Ray
Executive Vice President
San Onofre Nuclear Generating Station, Unit 1
Docket No. 50-206
License No. DPR-13
8631 Rush Street
Rosemead, CA 91770

Mr. John L. Skolds
President and Chief Nuclear Officer
Zion Nuclear Power Station, Units 1 and 2
Docket Nos. 50-295 & 50-304
License Nos. DPR-39 & DPR-48
Exelon Nuclear
Exelon Generation Company, LLC
4300 Winfield Road
Warrenville, IL 60555