

2.318, 2.1300, and 2.1319(a), notice is hereby given that a member of the Atomic Safety and Licensing Board Panel is being designated as Presiding Officer in the following proceeding in compliance with the Commission's directions in its Memorandum and Order dated April 26, 2007 (CLI-07-18):

**Consumers Energy Company, Nuclear Management Company, LLC, Entergy Nuclear Palisades, LLC, and Entergy Nuclear Operations, Inc. (Palisades Nuclear Power Plant)**

This proceeding, which will be conducted pursuant to 10 CFR Part 2 Subpart M of the Commission's Regulations, "Procedures for Hearings on License Transfer Applications," concerns a Notice of Consideration of Approval of Transfer of Facility Operating License and Conforming Amendment and Opportunity for a Hearing published in the **Federal Register** at 71 FR 66,805 (Nov. 16, 2006). The Commission is considering issuing an order approving the transfer of Facility Operating License No. DPR-20 for Palisades Nuclear Plant currently held by Consumers Energy Company and Nuclear Management Company, LLC to Entergy Nuclear Palisades, LLC and Entergy Nuclear Operations, Inc. As relevant here, in CLI-07-18 (slip op. at 4), the Commission determined that petitioners Van Buren County and Covert Township have standing in this proceeding. The Commission deferred ruling on the admissibility of the contentions proffered by the County and the Township, but it granted their request for access to proprietary information redacted by the applicants from the license transfer application (*id.* at 14). The Commission directed the applicants to provide the County and Township access to the unredacted version of the application pursuant to a confidentiality agreement (*id.* at 16-17). Unless and until directed otherwise by the Commission, the Presiding Officer's responsibilities shall be limited to resolving any disputes regarding the County's and Township's access to proprietary information in the application (*id.* at 17, 18).

The Presiding Officer is: Administrative Judge Michael C. Farrar, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

All correspondence, documents, and other materials relating to disputes regarding the County's and Township's access to proprietary information in the application shall be filed with the

Presiding Officer in accordance with 10 CFR 2.302.

Issued at Rockville, Maryland, this 30th day of April 2007.

**E. Roy Hawkens,**

*Chief Administrative Judge, Atomic Safety and Licensing Board Panel.*

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**NUCLEAR REGULATORY COMMISSION**

[EA-07-074]

**In the Matter of All Research and Test Reactor Licensees Identified in Attachment 1; Order Imposing Fingerprinting and Criminal History Records Check Requirements for Unescorted Access to All Research and Test Reactor Licensees Identified in Attachment 1 (Effective Immediately)**

**I**

The Licensees identified in Attachment 1<sup>1</sup> to this Order hold licenses as research and test reactors (RTRs) issued in accordance with the Atomic Energy Act (AEA) of 1954, as amended, by the U.S. Nuclear Regulatory Commission (NRC or Commission). On August 8, 2005, the Energy Policy Act of 2005 (EPAct) was enacted. Section 652 of the EPAct amended Section 149 of the AEA to require fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records check of any person who is permitted unescorted access to a utilization facility, which includes the RTRs listed in Attachment 1 to this Order.

**II**

Prior to September 11, 2001, the Commission established physical protection requirements applicable to RTRs, which included storing and using the special nuclear material in controlled access areas, monitoring the controlled access areas for unauthorized activities, and ensuring a response to all unauthorized activities.

Subsequent to the terrorist events of September 11, 2001, the NRC took various actions to ensure the acceptability of individuals for unescorted access to RTRs. RTRs were advised to consider taking additional precautions including observation of activities within their facility, and licensee precautions were evaluated at specific RTR sites in the remainder of

2001. From 2002 through 2004, RTRs implemented compensatory measures (CMs), which included site-specific background investigations or checks. Additionally, in January 2003, NRC sent the names of and information on all individuals with unescorted access at RTRs to U.S. intelligence agencies for review. This review found no issues. Individuals with unescorted access since January 2003 have undergone site-specific background investigations or checks, which were implemented as part of CMs implemented at RTRs in response to NRC initiatives.

The RTR site-specific background investigations and checks were established using a graded approach, considering the specific configuration, uses and radiological risk of each facility, to provide acceptable protection of the nuclear material and any associated radioactive materials. The background investigations and checks at a minimum verify identity, nationality, immigration status (if applicable), and determine whether the individual demonstrates a pattern of trustworthy and reliable behavior through facility-specific verification of various aspects of a person's background. These verifications include consideration of educational, military, employment and criminal histories. With regard to criminal history, some of the RTR facilities use FBI fingerprint-based criminal history records checks, while others use either State fingerprint-based criminal history records checks or criminal history records checks which do not include fingerprints. These background investigations or checks, through a combination of various elements, have provided additional assurance for the protection of the specific facility from potential radiological risk from insider threats.

Further, RTRs are required by Orders dated September 29, 2006, to have FBI fingerprint-based identification and criminal history records checks for persons allowed access to Safeguards Information.<sup>2</sup> These individuals are those who are allowed access to the details of security plans or procedures at the specific facility and, therefore, have actual knowledge and ability to affect the facility security. Therefore, those Orders provide additional assurance that security information and associated RTRs facilities are adequately protected.

Previously, AEA Section 149 only required fingerprinting and criminal history records checks of persons

<sup>1</sup> Attachment 1 contains sensitive information and will not be released to the public.

<sup>2</sup> "Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information (Effective Immediately)," (EA-06-203) dated September 29, 2006, (71 FR 59140, Oct. 6, 2006) (ML061510049).

seeking unescorted access to facilities licensed under Sections 103 and 104b of the AEA, e.g., power reactors. Power reactors are required by 10 CFR 73.57 to have fingerprint-based criminal history records checks performed as part of granting unescorted access to the facility. RTRs have not been subject to this requirement, and have only been required to control access to authorized persons and screen those persons for access in accordance with their security plans or procedures.

Congress left intact the Commission's authority to relieve persons by rule from the fingerprinting, identification, and criminal history records check requirements of AEA Section 149 "if the Commission finds that such action is consistent with its obligations to promote the common defense and security and to protect the health and safety of the public."<sup>3</sup> Currently, the NRC has no rule that would provide relief from or require the implementation of AEA section 149 for fingerprinting for unescorted access to RTRs.

The NRC is planning a rulemaking to reexamine the extent of fingerprint-based criminal history records checks for unescorted access to RTRs that it finds to be necessary to ensure adequate protection of the public health and safety and common defense and security. In the interim, the NRC has decided to implement this requirement, in part, prior to the completion of the rulemaking to provide acceptable, additional assurance that an individual with unescorted access to a RTR facility will not adversely impact the common defense and security or the public health and safety. Therefore, in accordance with Section 149 of the AEA, as amended by the EPAct, the Commission is imposing the FBI criminal history records check requirements, as set forth in this Order, including Attachment 2 to this Order, on all Licensees identified in Attachment 1 to this Order. These requirements will remain in effect until the Commission determines otherwise.

The AEA requires fingerprint-based criminal history records checks at utilization facilities. Section 11cc of The AEA defines utilization facility as

(1) any equipment or device, except an atomic weapon, determined by rule of the Commission to be capable of making use of special nuclear material in such quantity as to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public, or peculiarly adapted for making use of atomic energy

in such quantity as to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public; or

(2) any important component part especially designed for such equipment or device as determined by the Commission.

The Commission's rules, in 10 CFR 50.2, define a "[u]tilization facility" as "any nuclear reactor other than one designed or used primarily for the formation of plutonium or U-233." Further, "Nuclear reactor" is defined as "an apparatus, other than an atomic weapon, designed or used to sustain nuclear fission in a self-supporting chain reaction." These definitions include the RTRs listed in Attachment 1.

For purposes of this Order, an individual who is granted "unescorted access" could exercise physical control over the special nuclear material possessed by the licensee, which would be of significance to the common defense and security or would adversely affect the health and safety of the public, such that the special nuclear material could be used or removed in an unauthorized manner without detection, assessment, or response by systems or persons designated to detect, assess or respond to such unauthorized use or removal. At RTRs, such individuals include those with the capability and knowledge to use the special nuclear material in the utilization facility or remove the special nuclear material from the utilization facility in an unauthorized manner without detection, assessment and response by the physical protection system or related provisions or persons.

In addition, pursuant to 10 CFR 2.202, I find that in light of the common defense and security matters identified above, which warrant the issuance of this Order, the public health, safety, and interest require that this Order be effective immediately.

### III

Accordingly, pursuant to Sections 53, 104, 149, 161b, 161i, 161o, 182, and 186 of the AEA of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR Part 50 and 10 CFR Part 73, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT ALL LICENSEES IDENTIFIED IN ATTACHMENT 1 TO THIS ORDER SHALL COMPLY WITH THE REQUIREMENTS SET FORTH IN THIS ORDER.

A. All licensees identified in Attachment 1 to this Order shall comply with the following requirements:

1. The Licensee shall, within twenty (20) days of the date of this Order, establish and maintain a fingerprinting program for unescorted access that meets the requirements of Attachment 2 to this Order.

2. The Licensee shall, in writing, within twenty (20) days of the date of this Order, notify the Commission (1) of receipt and confirmation that compliance with the Order will be achieved or (2) if it is unable to comply with any of the requirements described in Attachment 2, or (3) if compliance with any of the requirements is unnecessary in its specific circumstances. The notification shall provide the Licensee's justification for seeking relief from or variation of any specific requirement.

B. In accordance with the NRC's "Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information (Effective Immediately)" (EA-06-203) issued on September 29, 2006, (71 FR 59140, October 6, 2006), only the NRC-approved reviewing official shall review results from a FBI criminal history records check. In accordance with all other applicable requirements and the evaluation of the results of the FBI criminal history records check as specified in this Order, the reviewing official shall determine whether an individual may have, or continue to have, unescorted access. No person may have access to Safeguards Information or unescorted access to any utilization facility, or radioactive material or property subject to regulation by the NRC if the NRC has determined, in accordance with its administrative review process based on fingerprinting and an FBI identification and criminal history records check, either that the person may not have access to SGI or that the person may not have unescorted access to a utilization facility, or radioactive material or property subject to regulation by the NRC.

C. Fingerprints shall be submitted and reviewed in accordance with the procedures described in Attachment 2 to this Order. Individuals who have been fingerprinted and granted access to SGI by the NRC-approved reviewing official in accordance with EA-06-203 (September 29, 2006), do not need to be fingerprinted again for purposes of authorizing unescorted access. In addition, individuals who have a favorably decided U.S. Government criminal history records check within the last five (5) years, or who have an active Federal security clearance have satisfied the EPAct fingerprinting requirement and need not be

<sup>3</sup> AEA § 149.b.

fingerprinted again, provided in each case that the appropriate documentation is made available to the Licensee's reviewing official. However, all other applicable requirements must be satisfied to allow any individual unescorted access to the facility.

D. The Licensee may allow any individual who currently has unescorted access, in accordance with applicable requirements, to continue to have unescorted access, pending a decision by the reviewing official (based on fingerprinting and a FBI criminal history records check) that the individual may continue to have unescorted access. The licensee shall complete implementation of the requirements of Attachment 2 to this Order by July 30, 2007.

Licensee responses to Condition A.2. shall be submitted to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

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

#### IV

In accordance with 10 CFR 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 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, 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, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Material Litigation and Enforcement at the same address, and to the Licensee if the answer or

hearing request is by a person other than the Licensee. Because of possible delays 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](mailto: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](mailto: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 CFR 2.309.

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 CFR 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 as specified above in Section III 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 as specified above 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.

Dated this 30th day of April 2007.

For the Nuclear Regulatory Commission.

**James T. Wiggins,**

*Acting Director, Office of Nuclear Reactor Regulation.*

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## NUCLEAR REGULATORY COMMISSION

### Report to Congress on Abnormal Occurrences Fiscal Year 2006; Dissemination of Information

Section 208 of the Energy Reorganization Act of 1974 (Public Law 93-438) defines an abnormal occurrence (AO) as an unscheduled incident or event which the U.S. Nuclear Regulatory Commission (NRC) determines to be significant from the standpoint of public health or safety. The Federal Reports Elimination and Sunset Act of 1995 (Public Law 104-66) requires that AOs be reported to Congress annually. During fiscal year 2006, nine events that occurred at facilities licensed or otherwise regulated by the NRC and/or Agreement States were determined to be AOs. The report describes three events at facilities licensed by the NRC. The three AOs at NRC-licensed facilities included a spill of high-enriched uranium solution at a fuel fabrication facility, a medical event, and an unintended dose to an embryo/fetus. The report also addresses six AOs at facilities licensed by Agreement States. [Agreement States are those States that have entered into formal agreements with the NRC pursuant to Section 274 of the Atomic Energy Act (AEA) to regulate certain quantities of AEA licensed material at facilities located within their borders.] Currently, there are 34 Agreement States. During Fiscal Year 2006, Agreement States reported six events that occurred at Agreement State-licensed facilities, including four medical events, one unintended dose to an embryo/fetus, and one industrial event. As required by Section 208, the discussion for each event includes the date and place, the nature and probable consequences, the cause or causes, and the action taken to prevent recurrence. Each event is also being described in NUREG-0090, Vol. 29, "Report to Congress on Abnormal Occurrences, Fiscal Year 2006." This report is available electronically at the NRC Web site <http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/>.

#### Nuclear Power Plants

During this period, no events at U.S. nuclear power plants were significant enough to be reported as AOs.

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#### Fuel Cycle Facilities

*(Other Than Nuclear Power Plants)*

During this reporting period, one event at an NRC-licensed fuel fabrication facility was significant