case law for the proposition that NEPA does not require the consideration of remote and speculative risks.[5] The court in the *Limerick* proceeding rejected the NRC's argument that severe accidents were remote and speculative because the court could find no basis for the conclusion in the NRC record. *Id.* at 739–741. The Commission is not prepared to reach the conclusion that the risks of all severe accidents in the context of license renewal are so unlikely as to warrant their elimination from consideration in our NEPA reviews. Even though there is a low probability of a severe accident, the NRC has invested considerable resources toward understanding potential severe accident sequences and alternatives for further reducing the probability of and mitigating the consequences of severe accidents, but has not yet established an agency record that severe accidents may be eliminated from NRC's NEPA reviews. In reviewing licensing actions outside of the license renewal context, it may be possible for the NRC to conclude that certain severe accident scenarios are remote and speculative and do not warrant detailed consideration for the purposes of the NEPA review for that particular NRC action. However, for the purposes of consideration of severe accidents in the context of license renewal NEPA reviews, the NRC staff has not developed the necessary basis for concluding that such occurrences are remote and speculative, and thus inappropriate for NRC review under NEPA. This position does not alter the conclusion that, in light of margins of safety and defense-in-depth, the likelihood of radiological offsite consequences is small.

In its comments, the petitioner cited two cases which, in its view, demonstrate that NEPA's requirements are satisfied where potential impacts to the environment are remote and difficult to quantify and ongoing regulatory safeguards are in place to protect against potential risks of impacts into the future. *Environmental Defense Fund* v. *Andrus*, 619 F.2d 1368 (10th Cir. 1980) reh'g en banc denied; and *Citizens for Environmental Quality* v. *Lyng*, 731 F. Supp. 970 (D. Colo. 1989). While these cases may provide more support for the general proposition that remote and speculative impacts need not be considered under NEPA, they do not displace the Commission's responsibility to make the threshold determination based on the NRC record that severe accidents are remote and speculative for the purpose of license renewal reviews. As discussed, the Commission is unable to reach that conclusion.

For the reasons cited in this document, the Commission denies the petition.

Dated at Rockville, Maryland, this 13th day of February, 2001.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 01–4104 Filed 2–16–01; 8:45 am]

BILLING CODE 7590–01–P

[5] *See, e.g., Limerick Ecology Action* v. *NRC*, 869 F.2d at 739; *San Luis Obispo Mothers for Peace* v. *NRC*, 751 F.2d 1287, 1300–01 (D.C. Cir. 1984).

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 73, 76, and 95

[Docket No. PRM–76–1]

United Plant Guard Workers of America; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking submitted by the United Plant Guard Workers of America (PRM–76–1). The petitioner requested that the NRC amend its regulations concerning security at the gaseous diffusion plants to address sites that have both special nuclear material security concerns and protection of classified matter concerns; to require that these facilities be able to detect, respond to, and mitigate threats of a sabotage event; and to require that the security force be armed and empowered to make arrests in limited situations. The petitioner believes that these amendments are necessary to address the protection of classified information, equipment and materials, and special nuclear material at the gaseous diffusion plants.

ADDRESSES: Copies of the petition for rulemaking, the public comments received, and NRC's letter to the petitioner may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. These documents also may be viewed and downloaded electronically via the rulemaking website.

Documents created or received at the NRC after November 1, 1999 are also available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/NRC/ADAMS/index.html.* From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail, pdr@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Merri Horn, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–8126, e-mail mlh1@nrc.gov.

SUPPLEMENTARY INFORMATION:

The Petition

On May 10, 2000 (65 FR 30018), the NRC published a notice of receipt of a petition for rulemaking filed by the United Plant Guard Workers of America. The petitioner requested that the NRC amend its regulations concerning security at the gaseous diffusion plants to address sites that have both special nuclear material security concerns and protection of classified matter concerns; to require that these facilities be able to detect, respond to, and mitigate threats of a sabotage event; and to require that the security force be armed and empowered to make arrests in limited situations. The petitioner believes that these amendments are necessary to address the protection of classified information, equipment and materials, and special nuclear material at the gaseous diffusion plants.

First, the petitioner asserted that the regulations do not adequately address sites that have both nuclear material security concerns and classified matter concerns. The petitioner believes that the applicable regulations were not appropriately merged in the regulations governing gaseous diffusion plants to address a site that covers the protection of classified information, equipment and materials, and special nuclear material.

As an example, the petitioner stated that the Controlled Area Fence Line does provide a minimum level of protection against the unauthorized removal of special nuclear material contained in 10- and 20-ton cylinders. However, the petitioner questioned whether the fence line adequately protects against the unauthorized removal of restricted information, equipment, and other materials or the unauthorized access to these types of materials.

The petitioner asserted that other facilities that possess Category III quantities of special nuclear material regulated by the NRC do not share the

level of concern for classified matter, equipment, and technology that exists at the gaseous diffusion plants. The petitioner suggested that the regulations concerning security programs at the gaseous diffusion plants, such as escort requirements and physical security measures, should be amended to be made more stringent to protect this technology. The petitioner did not offer any specifics as to how the regulations should be amended.

Second, according to the petitioner, the NRC typically relies on local law enforcement agencies to respond to incidents of workplace violence or sabotage at material licensee facilities. The petitioner stated that the scope and complexity of a gaseous diffusion plant makes it far different from other types of NRC-licensed materials facilities. Furthermore, the petitioner believes that these differences result in unique problems in relying on local law enforcement agencies to protect such a facility from violent incidents. The petitioner indicated that local law enforcement agencies in the vicinity of the Paducah plant have stated, for the record, that they should not be viewed as a replacement for on-site security because of their lack of knowledge of the plant site, the types of hazards contained in the plant, and their limited resources. The petitioner presented two letters, attached to the petition, from law enforcement agencies in the vicinity of the Paducah plant that support this contention.

Because of the unique nature of gaseous diffusion plants and the importance of their operation, the petitioner believes that a violent incident or an act of sabotage would affect national security. The petitioner also asserted that, because of the many radiological and toxicological hazards associated with these plants, an act of sabotage could adversely affect the safety of plant workers and the public.

The petitioner believes that these dangers were not addressed as part of the certification process. According to the petitioner, current NRC standards do not require a security force that is capable of preventing a sabotage event. The petitioner requested that the regulations be amended to require that security forces at the gaseous diffusion plants be able to detect, respond to, and mitigate violent incidents or acts of sabotage.

Last, the petitioner noted that current regulations do not require that the security force be armed or empowered to enforce the Atomic Energy Act. The petitioner requested that security officers at the gaseous diffusion plants be armed and empowered to make arrests in limited situations, such as for violations of the Atomic Energy Act.

Public Comments on the Petition

The notice of receipt of the petition for rulemaking invited interested persons to submit comments. The comment period closed on July 24, 2000. NRC received one comment letter from the United States Enrichment Corporation (USEC), the operator of the gaseous diffusion plants. The commenter was opposed to the petition. The commenter believes that the petitioner does not provide a solid and specific basis for revising the regulations to increase security at the gaseous diffusion plants. The commenter points out that the petitioner has not provided specific recommendations regarding what revisions should be made to current security regulatory requirements to address the concerns outlined in the petition. The commenter states that the security program at the gaseous diffusion plants exceeds NRC requirements for the protection of classified matter and special nuclear material of low strategic significance. The commenter asserts that research by the NRC, United States Department of Energy (DOE), and United States Federal Bureau of Investigations (FBI) does not indicate a higher potential threat level for the gaseous diffusion plants than for other fuel cycle facilities with similar nuclear materials. The commenter states that the requested changes would also affect other similar facilities and that implementation of the protective strategies described by the petitioner would result in an increase in cost for all subject facilities and that the cost is not justified based on the lack of increased associated threat. The commenter believes that the level of security is adequate to protect classified matter and special nuclear material at the gaseous diffusion plants.

Reasons for Denial

The NRC is denying the petition because we have determined that current NRC regulations and certificate conditions governing the gaseous diffusion plants provide adequate protection for both classified matter and special nuclear material at these plants. The gaseous diffusion plants operate under certificates of compliance issued under the provisions of 10 CFR part 76. Furthermore, they are subject to the physical protection provisions of 10 CFR part 73 and the security provisions of 10 CFR part 95. The gaseous diffusion plants process Category III levels of special nuclear material as described in 10 CFR 73.2. Category III levels require a minimum level of security, as specified in 10 CFR 73.67, to minimize the possibility for the unauthorized removal of special nuclear material. The specified level of security is intended to be consistent with the potential consequences of such an action. The regulations in Part 95 establish security requirements for the protection of classified matter up to and including SECRET-Restricted Data and are consistent with national policy. The gaseous diffusion plants are also required to follow the security plans approved by the NRC.

The petitioner suggested three separate areas for changing the regulations: (1) Require more stringent regulations concerning security programs at the gaseous diffusion plants, such as escort requirements and physical security measures; (2) require that these facilities be able to detect, respond to, and mitigate threats of a sabotage event; and (3) require that the security force be armed and empowered to make arrests in limited situations.

1. More Stringent Regulations

NRC believes that the petitioner is incorrect in asserting that the regulations do not adequately address sites with requirements for both physical protection of special nuclear material and protection of classified matter. The NRC staff was not able to identify any conflict with the provisions of Parts 73 and 95, nor was the staff able to identify any gaps in coverage. The combination of special nuclear material of low strategic significance (SNM–LSS) and classified material does not create any new threat to the protection of classified material. Part 95 requires that access to classified matter be limited to authorized persons who have an appropriate security clearance and a need-to-know for the classified matter. Individuals without the appropriate level of clearance and/or need-to-know must be escorted at all times by an authorized individual. Part 95 requires that all cleared employees be provided with security training. Part 95 also requires that classified matter be stored in locked vaults or safes and requires a watchman to check the safes on an established frequency. The escort of uncleared individuals is already required by Part 95. The provisions of Part 95 provide adequate protection of classified matter and are consistent with national policy (*i.e.,* National Industrial Security Program Operating Manual.)

As an example, the petitioner suggested that the security fence does not provide adequate protection of restricted information. (The NRC assumes that the petitioner is actually

referring to restricted data or national security information as there is no category called restricted information.) The petitioner does concede that unauthorized removal of SNM–LSS is not an issue. The security fence is not required by Part 95, although it does provide some protection since it prevents unauthorized individuals from gaining access to the facility. Only employees and authorized individuals are allowed access to the facility. All employees and visitors are required to enter and exit the facility through portals manned by security personnel. Security personnel do have the right to search items entering and leaving the facility. These provisions, as well as others, ensure that classified matter is used, stored, processed, reproduced, transmitted, transported, and destroyed only under conditions that will provide adequate protection and prevent access by unauthorized persons. The petitioner did not provide any information demonstrating that more stringent escort requirements or other security measures were necessary for the gaseous diffusion plants. The increased burden that would be imposed by any new regulations would not appear to be warranted. The provisions of Parts 73 and 95, coupled with the approved security plans for the protection of classified matter and for physical protection, will continue to provide the basis for adequate protection of classified matter and SNM–LSS possessed by the gaseous diffusion plants.

2. Detect, Respond to, and Prevent Sabotage

In Part 73, the requirements do reflect the need for addressing radiological sabotage for Category I facilities. A Category I facility is a facility that possesses a formula quantity of special nuclear material of strategic significance (*e.g.,* 5 kilograms of uranium enriched to 20 percent or more in the uranium-235 isotope) and a Category III facility is one that possesses special nuclear material of low strategic significance (uranium enriched to less than 10 percent in the uranium-235 isotope, with limited quantities at higher enrichments). The gaseous diffusion plants are classified as Category III facilities. When the regulations in Part 73 were promulgated, the NRC did not consider that a potential threat for radiological sabotage existed for Category III facilities. Therefore, Part 73 does not require that these facilities protect against radiological sabotage other than ensuring the security of radioactive material under 10 CFR part 20. The NRC is not aware of any changes in the threat environment that would warrant a change in this conclusion and, therefore, would warrant a change in the physical protection requirements for Category III facilities. Additionally, during the promulgation of Part 76, sabotage was not considered to be a credible threat and, therefore, was not addressed in the regulations. The staff evaluated whether the classification of the gaseous diffusion plants as Category III facilities was appropriate since the requested change to the rules would result in imposing the equivalent of Category I physical protection requirements on the gaseous diffusion plants. Currently, the gaseous diffusion plants do not have a national defense role. The production from these plants supports the commercial nuclear industry. The material is unattractive from a proliferation standpoint because of its low enrichment and its storage configuration (*e.g.,* 14-ton cylinders) reduces the likelihood of theft or diversion compared to Category I material. The staff has not identified any change in the threat environment that would warrant a change to the requirements for the gaseous diffusion plants. The staff concluded that the classification of the gaseous diffusion plants as Category III facilities was appropriate.

The petitioner also expressed concern that local law enforcement is viewed as a replacement for on-site security response capability. On-site security would be the first to respond; local law enforcement would be contacted to provide backup if deemed necessary. Both gaseous diffusion plants have agreements in place with local law enforcement agencies. The local sheriff, State police, and FBI have also participated in emergency exercises at the plants. In addition, if a specific threat were to be uncovered, the facility would be provided with the information and could increase security as necessary. State and Federal law enforcement officials would be available to respond in case of a serious threat.

The petitioner has not provided any new information for NRC consideration that could form an adequate basis to require that the plants be able to detect, respond to, and mitigate violent incidents or acts of sabotage. There is no known change in the threat environment that would warrant a change to the regulations or a change in classification for the gaseous diffusion plants from Category III to Category I. The increased burden that would be imposed on the certificate holder, the NRC staff, and other stakeholders is not warranted based on current information.

3. Armed Security Force

NRC physical security requirements vary according to the risk posed by the radioactive material possessed and do not require armed guards for the operations under NRC regulation at the gaseous diffusion plants. There is no known threat that would warrant requiring armed guards at Category III facilities, including the gaseous diffusion plants. The operations at the gaseous diffusion plants under NRC regulation involve SNM–LSS, and NRC regulations do not require the presence of armed guards for the adequate protection of SNM–LSS. However, NRC regulations do not prohibit carrying of firearms. In fact, the guards at the gaseous diffusion plants do carry firearms. USEC has committed to the presence of armed guards in its NRC-approved physical protection plans. The NRC currently does not have the authority to authorize certificate holders and their employers and contractors to have arrest authority for protection of common defense and security. However, DOE does have the authority and has now completed issuance of weapons authorization cards for the guard forces at the gaseous diffusion plants. The remedy requested by the petition (*i.e.,* rulemaking) would appear to be unnecessary as the desired outcome (armed guards and arrest authority) has been achieved by means other than rulemaking.

In conclusion, no new information has been provided by the petitioner that calls into question the classified information and physical protection requirements. Existing NRC regulations provide the basis for reasonable assurance that the common defense and security is adequately protected. Additional rulemaking would impose unnecessary regulatory burden and does not appear to be warranted for the adequate protection of the common defense and security.

For the reasons cited in this document, the NRC denies this petition.

Dated at Rockville, Maryland, this 31st day of January, 2001.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 01–4105 Filed 2–16–01; 8:45 am]

BILLING CODE 7590–01–P