

November 12, 2002

Mr. Jim Warren  
Executive Director  
NC WARN  
PO Box 61051  
Durham, NC 27715-1051

SUBJECT: REQUEST TO HALT RAIL SHIPMENTS OF SPENT NUCLEAR FUEL

Dear Mr. Warren:

This letter responds to the Petition you filed with Chairman Meserve pursuant to Section 2.206 of Title 10 of the *Code of Federal Regulations* (10 CFR 2.206) on November 5, 2001, and supplemented on February 12, 2002. In your Petition you requested that the Nuclear Regulatory Commission (NRC or the Commission) take immediate action to halt Carolina Power and Light Company (CP&L) rail shipments of spent nuclear fuel to the Shearon Harris Nuclear Plant due to terrorist threat. I appreciate your interest in ensuring the safety of the citizens of your state and along the transportation route. The NRC is responding to the terrorist threat in a comprehensive fashion.

On January 31, 2002, the NRC staff acknowledged receiving your Petition and stated pursuant to 10 CFR 2.206 that your Petition was being referred to me for action. You were also told that your Petition was reviewed by a Petition Review Board (PRB) on January 16, 2002. Lastly, you were informed that the PRB decided not to grant the part of your Petition that requested immediate halting of the rail shipments of spent nuclear fuel from CP&L.

On August 29, 2002, the NRC sent a copy of the proposed Director's Decision to you and CP&L for review and comments. You responded with comments on September 27, 2002, and the licensee responded on September 24, 2002. The comments are included as attachments to the Director's Decision.

As I indicated in my January 31, 2002, letter, the NRC maintains that public health and safety can be adequately protected at this time. The NRC is continuing to evaluate the effectiveness of the safeguards and controls in place for transporting spent nuclear fuel. As a result of these evaluations, the Commission issued transportation Orders on October 3, 2002, to licensees who transport spent nuclear fuel (67 FR 63167; October 10, 2002). These immediately-effective Orders were developed in light of the current threat environment and are consistent with the established regulatory framework.

A copy of the Director's Decision DD-02-05 will be filed with the Secretary of the Commission for the Commission to review in accordance with 10 CFR 2.206(c). As provided for by this regulation, the decision will constitute the final action of the Commission 25 days after the date of the decision unless the Commission, on its own motion, institutes a review of the decision within that time. The Director's Decision is also available from the ADAMS Public Library component on the NRC's Web site, <http://www.nrc.gov>.



J. Warren

-2-

I have enclosed a copy of the notice of "Issuance of the Director's Decision Under 10 CFR 2.206" that has been filed with the Office of the *Federal Register* for publication.

The NRC appreciates your concerns to matters related to the transportation of spent nuclear fuel. Should you have further questions related to this subject, please contact me.

Sincerely,

**/RA/**

Martin J. Virgilio, Director  
Office of Nuclear Material Safety  
and Safeguards

Docket Nos. 72-3

Enclosures: Director's Decision DD-02-05  
*Federal Register* Notice

cc: List attached

cc:

ATTN: Scotty Hinnant, Chief Nuclear Officer  
Carolina Power and Light Company  
411 S. Wilmington Street  
PEB 13  
Raleigh, NC 27601

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
OFFICE OF NUCLEAR MATERIAL SAFETY AND SAFEGUARDS  
Martin J. Virgilio, Director**

In the Matter of	)	Docket No. 050-00400
	)	
	)	
Carolina Power & Light Company	)	License No. NPF-63
	)	
	)	
Shearon Harris Nuclear Plant	)	10 CFR 2.206

**DIRECTOR'S DECISION UNDER 10 CFR 2.206**

**I. Introduction**

By letter dated November 5, 2001, and supplemented on February 12, 2002, Jim Warren of NC WARN filed a Petition pursuant to Title 10 of the Code of Federal Regulations, Section 2.206. The Petitioner requested that, in light of the attacks on September 11, 2001, the U.S. Nuclear Regulatory Commission (NRC or the Commission) take immediate action to halt Carolina Power and Light Company (CP&L) rail shipments of spent nuclear fuel to the Shearon Harris Nuclear Plant due to continued terrorist threat. The bases for this request were described in the Petitioner's letters, and included the following:

1. In the letter dated November 5, 2001, Mr. Warren states that the U.S. Department of Energy (DOE) suspended a shipment of irradiated fuel assemblies in mid-October, 2001, due to possible terrorist attacks on the slow-moving transport train. He further adds that, based on DOE's suspension, NRC should also halt shipments of irradiated fuel, especially those rail shipments performed by Carolina Power and Light Company (CP&L). Additionally, he maintains that it would be inconsistent for one federal agency to contradict another's findings concerning public safety involving rail transport of irradiated fuel. Finally, Mr. Warren believes that due to continued terrorist threat, the NRC must order CP&L to permanently cease spent fuel transport, or as a minimum, stop shipments pending open public meetings to evaluate and understand the risk of transport of this material.
2. In the letter dated February 12, 2002, Mr. Warren further requested that NRC take actions to immediately halt CP&L's transport of spent nuclear fuel to the Shearon Harris Nuclear Plant. Mr. Warren refers to Federal Bureau of Investigation (FBI) and NRC warnings of attacks on nuclear plants. He also describes an NBC Dateline report that indicates mock terrorist groups working for the federal government were able to successfully highjack DOE shipments.
3. In the comment letter dated September 27, 2002, Mr. Warren discussed reports from the news media that a nuclear facility was almost chosen as the target for attack on September 11, 2001. Based on these revelations, Mr. Warren is seeking NRC consideration for this issue.

## II. Discussion

As the basis for his requested action, the Petitioner raised specific concerns related to the transport of spent nuclear fuel. These concerns, and the evaluations of these concerns by NRC staff, follow.

1. Concern: Mr. Warren states in his letter dated November 5, 2001, that the U.S. Department of Energy (DOE) suspended a shipment of irradiated fuel assemblies in mid-October, 2001, due to possible terrorist attacks on the slow-moving transport train. He further adds that, based on DOE's suspension, NRC should also halt shipments of irradiated fuel, especially those rail shipments performed by Carolina Power and Light Company (CP&L). Additionally, he maintains that it would be inconsistent for one federal agency to contradict another's findings concerning public safety involving rail transport of irradiated fuel.

Evaluation: In response to this comment, NRC staff spoke with DOE representatives and determined that the shipment in question was halted for reasons unrelated to the events of September 11, 2001. Separately, the NRC was aware that DOE temporarily halted all shipments of hazardous materials, not just radioactive materials, following September 11, 2001. Subsequent to the action by DOE, the NRC determined that shipment of spent nuclear fuel and other radioactive materials could continue under current NRC regulations provided additional security measures were implemented as described in advisories issued by the Commission to various classes of NRC licensees.

2. Concern: Mr. Warren cites an NBC Dateline report in his letter dated February 12, 2002, that indicates mock terrorists working for the federal government were able to hijack Department of Energy shipments of high-level nuclear waste in five separate attempts.

Evaluation: NRC has physical protection regulations in 10 CFR Part 73 that are used for protection of spent nuclear fuel. For spent nuclear fuel in transit, the regulations in 10 CFR 73.37 apply and include:

- Pre-shipment coordination with law enforcement agencies
- Pre-shipment notice of States and NRC
- In-transit shipment call-in to communications center
- Shipment monitoring
- Armed escorts (in populated areas)
- Immobilization devices

Specific to rail transport, one armed escort is required to be on the train during transport within a heavily populated area to permit observation of the shipment car while in motion. As a result of the events of September 11, 2001, additional physical protection measures for the transportation of spent fuel have been implemented, the details of which cannot be discussed here.

Included with the comment letter dated September 27, 2002, Mr. Warren also provided a transcript of the Dateline NBC report that he cited in his February 12, 2002 letter. NRC staff has reviewed the transcript and has determined that there is no new information in the transcript that changes the NRC position in response to the Petition.

Regarding Mr. Warren's comment that "CP&L could revert to using zero armed guards at the company's discretion", NRC has issued transportation Orders that specifically address the issue of armed escorts for spent nuclear fuel shipments (67 FR 63167; October 10, 2002). The details of the escort requirements cannot be disclosed in this forum, since they contain safeguards information. As was the practice when the transportation advisories were issued in December 2001, NRC will inspect the licensees who received the transportation Orders to confirm that these controls are in place. Thus, the security issue is not at CP&L's discretion, but is required by direct order from the Commission.

3. Concern: Mr. Warren is seeking NRC consideration on the issue of increased indications that terrorists have targeted nuclear facilities in the United States.

Evaluation: The NRC is aware of Mr. Warren's concern regarding terrorist attacks on nuclear facilities in the U.S. and, as mentioned in previous correspondence, the NRC increased security requirements for all nuclear facilities immediately after the attacks on September 11. Not only do these increased security measures remain in effect, but as a result of its consideration of current safeguards and security plan requirements, the Commission has determined that certain compensatory measures are required to be implemented by licensees as prudent, interim measures. Thus, to address the current threat environment, the Commission imposed Orders for dry spent fuel storage facility licensees (67 FR 65150 and 65152; October 23, 2002). Additional Orders have also been issued for operating power reactor licensees (67 FR 9792; March 4, 2002), Honeywell International, Inc. (67 FR 16128; April 4, 2002), and decommissioning power reactors (67 FR 37879; May 30, 2002). Collectively, these Orders provide the Commission with reasonable assurance that the public health and safety and common defense and security continue to be adequately protected based on the current threat environment.

General Comments: Following the events of September 11, 2001, the NRC has taken additional measures to protect the public. A few of these include a heightened security posture at nuclear facilities and regulated activities, including spent fuel transportation, advisories and Orders issued to our licensees, and a continuing comprehensive review of the agency's safeguards and physical security programs. Through our interaction with the Office of Homeland Security, the Federal Bureau of Investigation, the Federal Emergency Management Agency, the Federal Aviation Administration, the Department of Energy, the military, and many other agencies, the NRC continues to evaluate the threat environment for all nuclear facilities.

The previously-mentioned review of the agency's safeguards and physical security programs will be a multi-tiered process. One of the first outcomes of this process has been the issuance of advisories to licensees, specifying additional security measures that they should take. Prior to September 11, 2001, the NRC had in place written guidance for licensees to follow in the event of any kind of threat. This guidance was implemented immediately after the terrorist attacks on September 11, and supplemented periodically thereafter by additional threat and safeguards advisories, providing direction for the licensees to enhance their security. NRC has inspected to make sure these measures are in place and that facilities and shipments are adequately protected. NRC issued transportation Orders on October 3, 2002 to licensees who transport spent nuclear fuel (67 FR 63167; October 10, 2002). The Orders are an enforceable requirement. NRC believes

that these additional controls will further enhance the existing controls and protection for all nuclear materials.

### **III. Conclusion**

NRC has denied the Petitioner's request to halt rail shipments of spent nuclear fuel by Carolina Power and Light Company. NRC continues to believe that the established system of regulations coupled with the added physical security measures found in the transportation Orders adequately protect the transportation of spent nuclear fuel.

The proposed Director's Decision was sent to Mr. Warren and CP&L on August 29, 2002, for a 30-day comment period. The response letters are included at the end of this document.

As provided in 10 CFR 2.206(c), a copy of this Director's Decision will be filed with the Secretary of the Commission for the Commission to review. As provided for by this regulation, the Decision will constitute the final action of the Commission 25 days after the date of the Decision unless the Commission, on its own motion, institutes a review of the Decision within that time.

Dated at Rockville, Maryland, this 12th day of November, 2002.

***/RA/***

Martin J. Virgilio, Director  
Office of Nuclear Material Safety  
and Safeguards



### III. Conclusion

NRC has denied the Petitioner's request to halt rail shipments of spent nuclear fuel by Carolina Power and Light Company. NRC continues to believe that the established system of regulations coupled with the added physical security measures found in the transportation Orders adequately protect the transportation of spent nuclear fuel.

The proposed Director's Decision was sent to Mr. Warren and CP&L on August 29, 2002 for a 30-day comment period. The response letters are included at the end of this document.

As provided in 10 CFR 2.206(c), a copy of this Director's Decision will be filed with the Secretary of the Commission for the Commission to review. As provided for by this regulation, the Decision will constitute the final action of the Commission 25 days after the date of the Decision unless the Commission, on its own motion, institutes a review of the Decision within that time.

Dated at Rockville, Maryland, this 12th day of November, 2002.

**/RA/**

Martin J. Virgilio, Director  
Office of Nuclear Material Safety  
and Safeguards

DISTRIBUTION: [Reference G20010502/LTR-01-0588 and G20020078/LTR-02-0094]

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DOCKET NO. 050-00400

LICENSE NO. NPF-63

CAROLINA POWER AND LIGHT COMPANY

NOTICE OF ISSUANCE OF DIRECTOR'S DECISION UNDER 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission (NRC), has issued a Director's Decision with regard to a Petition dated November 5, 2001, filed by Mr. Jim Warren from NC WARN, hereinafter referred to as the "Petitioner." The Petition was supplemented on February 12, 2002, with another letter on the same topic. The Petition concerns the rail transport of spent nuclear fuel by Carolina Power and Light Company (CP&L).

The Petitioner requested that NRC take immediate action to halt the rail shipments of spent nuclear fuel by CP&L due to the terrorist attacks on September 11, 2001, and the continuing threat of terrorism.

As the basis for the request, the Petitioner raised concerns stemming from recent terrorist attacks, and the fact the Petitioner believes the trains transporting the spent nuclear fuel are slow-moving targets. The Petitioner considers such transport to be potentially unsafe for the citizens in his state and especially for those along the transport route.

On January 16, 2002, the NRC Petition was reviewed by a Petition Review Board (PRB). During the review, the PRB decided not to grant the part of the Petition that requested immediate halting of the rail shipments of spent nuclear fuel. Additionally, the letter dated February 12, 2002, supplementing the initial position taken by Mr. Warren and further requesting that NRC halt the rail shipments of spent nuclear fuel, did not change the decision of the PRB.

The NRC sent a copy of the proposed Director's Decision to the Petitioner and to CP&L for comment on August 29, 2002. The Petitioner responded with comments on September 27, 2002, and the licensee responded on September 24, 2002. The comments and the NRC staff's response to those comments are included in the Director's Decision.

The Director of the Office of Nuclear Material Safety and Safeguards has determined that the requests to immediately halt rail shipments of spent nuclear fuel shipments by CP&L be denied. The reasons for this decision are explained in the Director's Decision pursuant to 10 CFR 2.206 [DD-02-05], the complete text of which is available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and via the NRC's Web site (<http://www.nrc.gov>) on the World Wide Web, under the "Public Involvement" icon.

NRC staff has determined that the established system of existing regulations for spent nuclear fuel transport, coupled with the additional security measures from the recently issued transportation Orders, adequately protect the transportation of spent nuclear fuel. Thus, the

Petition sent by Mr. Warren of NC WARN to halt CP&L rail shipments of spent nuclear fuel has been denied.

A copy of the Director's Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206 of the Commission's regulations. As provided for by this regulation, the Director's Decision will constitute the final action of the Commission 25 days after the date of the Decision, unless the Commission, on its own motion, institutes a review of the Director's Decision in that time.

Dated at Rockville, Maryland, this 12th day of November, 2002.

FOR THE NUCLEAR REGULATORY COMMISSION

***/RA/***

Martin J. Virgilio, Director  
Office of Nuclear Material Safety  
and Safeguards

Petition sent by Mr. Warren of NC WARN to halt CP&L rail shipments of spent nuclear fuel has been denied.

A copy of the Director's Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206 of the Commission's regulations. As provided for by this regulation, the Director's Decision will constitute the final action of the Commission 25 days after the date of the Decision, unless the Commission, on its own motion, institutes a review of the Director's Decision in that time.

Dated at Rockville, Maryland, this 12th day of November, 2002.

FOR THE NUCLEAR REGULATORY COMMISSION

**/RA/**

Martin J. Virgilio, Director  
Office of Nuclear Material Safety  
and Safeguards

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\*see previous concurrence ADAMS PKG  
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