

99-367

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### RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) / PRIVACY ACT (PA) REQUEST

RESPONSE TYPE  FINAL  PARTIAL

DATE **DEC 28 1999**

REQUESTER **Mr. Jim Warren**

#### PART I. -- INFORMATION RELEASED

- No additional agency records subject to the request have been located.
- Requested records are available through another public distribution program. See Comments section.
- APPENDICES F** Agency records subject to the request that are identified in the listed appendices are already available for public inspection and copying at the NRC Public Document Room.
- APPENDICES G** Agency records subject to the request that are identified in the listed appendices are being made available for public inspection and copying at the NRC Public Document Room.
- Enclosed is information on how you may obtain access to and the charges for copying records located at the NRC Public Document Room, 2120 L Street, NW, Washington, DC.
- APPENDICES G&H** Agency records subject to the request are enclosed.
- Records subject to the request that contain information originated by or of interest to another Federal agency have been referred to that agency (see comments section) for a disclosure determination and direct response to you.
- We are continuing to process your request.
- See Comments.

#### PART I.A -- FEES

AMOUNT \*  
\$

- You will be billed by NRC for the amount listed.
- None. Minimum fee threshold not met.
- You will receive a refund for the amount listed.
- Fees waived.

\* See comments for details

#### PART I.B -- INFORMATION NOT LOCATED OR WITHHELD FROM DISCLOSURE

- No agency records subject to the request have been located.
- Certain information in the requested records is being withheld from disclosure pursuant to the exemptions described in and for the reasons stated in Part II.
- This determination may be appealed within 30 days by writing to the FOIA/PA Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Clearly state on the envelope and in the letter that it is a "FOIA/PA Appeal."

#### PART I.C COMMENTS (Use attached Comments continuation page if required)

PUBLIC DOCUMENT ROOM

JAN -4 P2:00

RECEIVED

FOIA

SIGNATURE - FREEDOM OF INFORMATION ACT AND PRIVACY ACT OFFICER

Carol Ann Reed

PDR. FOIA 99-367

**RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) / PRIVACY ACT (PA) REQUEST**

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DEC 2 8 1999

**PART II.A -- APPLICABLE EXEMPTIONS**

APPENDICES  
**H&I**

Records subject to the request that are described in the enclosed Appendices are being withheld in their entirety or in part under the Exemption No.(s) of the PA and/or the FOIA as indicated below (5 U.S.C. 552a and/or 5 U.S.C. 552(b)).

- Exemption 1: The withheld information is properly classified pursuant to Executive Order 12958.
- Exemption 2: The withheld information relates solely to the internal personnel rules and procedures of NRC.
- Exemption 3: The withheld information is specifically exempted from public disclosure by statute indicated.
  - Sections 141-145 of the Atomic Energy Act, which prohibits the disclosure of Restricted Data or Formerly Restricted Data (42 U.S.C. 2161-2165).
  - Section 147 of the Atomic Energy Act, which prohibits the disclosure of Unclassified Safeguards Information (42 U.S.C. 2167).
  - 41 U.S.C., Section 253(b), subsection (m)(1), prohibits the disclosure of contractor proposals in the possession and control of an executive agency to any person under section 552 of Title 5, U.S.C. (the FOIA), except when incorporated into the contract between the agency and the submitter of the proposal.
- Exemption 4: The withheld information is a trade secret or commercial or financial information that is being withheld for the reason(s) indicated.
  - The information is considered to be confidential business (proprietary) information.
  - The information is considered to be proprietary because it concerns a licensee's or applicant's physical protection or material control and accounting program for special nuclear material pursuant to 10 CFR 2.790(d)(1).
  - The information was submitted by a foreign source and received in confidence pursuant to 10 CFR 2.790(d)(2).
- Exemption 5: The withheld information consists of interagency or intraagency records that are not available through discovery during litigation. Applicable privileges:
  - Deliberative process: Disclosure of predecisional information would tend to inhibit the open and frank exchange of ideas essential to the deliberative process. Where records are withheld in their entirety, the facts are inextricably intertwined with the predecisional information. There also are no reasonably segregable factual portions because the release of the facts would permit an indirect inquiry into the predecisional process of the agency.
  - Attorney work-product privilege. (Documents prepared by an attorney in contemplation of litigation)
  - Attorney-client privilege. (Confidential communications between an attorney and his/her client)
- Exemption 6: The withheld information is exempted from public disclosure because its disclosure would result in a clearly unwarranted invasion of personal privacy.
- Exemption 7: The withheld information consists of records compiled for law enforcement purposes and is being withheld for the reason(s) indicated.
  - (A) Disclosure could reasonably be expected to interfere with an enforcement proceeding (e.g., it would reveal the scope, direction, and focus of enforcement efforts, and thus could possibly allow recipients to take action to shield potential wrongdoing or a violation of NRC requirements from investigators).
  - (C) Disclosure would constitute an unwarranted invasion of personal privacy.
  - (D) The information consists of names of individuals and other information the disclosure of which could reasonably be expected to reveal identities of confidential sources.
  - (E) Disclosure would reveal techniques and procedures for law enforcement investigations or prosecutions, or guidelines that could reasonably be expected to risk circumvention of the law.
  - (F) Disclosure could reasonably be expected to endanger the life or physical safety of an individual.
- OTHER (Specify)

**PART II.B -- DENYING OFFICIALS**

Pursuant to 10 CFR 9.25(g), 9.25(h), and/or 9.65(b) of the U.S. Nuclear Regulatory Commission regulations, it has been determined that the information withheld is exempt from production or disclosure, and that its production or disclosure is contrary to the public interest. The person responsible for the denial are those officials identified below as denying officials and the FOIA/PA Officer for any denials that may be appealed to the Executive Director for Operations (EDO).

DENYING OFFICIAL	TITLE/OFFICE	RECORDS DENIED	APPELLATE OFFICIAL		
			EDO	SECY	IG
Luis A. Reyes	Regional Administrator, RII	App. H/I	✓		
Samuel J. Collins	Director, NRR	App. I	✓		

Appeal must be made in writing within 30 days of receipt of this response. Appeals should be mailed to the FOIA/Privacy Act Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, for action by the appropriate appellate official(s). You should clearly state on the envelope and letter that it is a "FOIA/PA Appeal."

**APPENDIX F  
RECORDS ALREADY AVAILABLE IN THE PDR**

<u>NO.</u>	<u>DATE</u>	<u>ACCESSION NUMBER</u>	<u>DESCRIPTION/(PAGE COUNT)</u>
1.	4/9/96	9604230175	Letter to CP&L from M. Shymlock, subject: "NRC Inspection Report No. 50-400/96-02 and Notice of Violation,".
2.	7/1/96	9607080216	Letter to W. Robinson, from N. Le, subject: "Spent Fuel Survey Commitments for Shearon Harris".
3.	9/17/96	9609190298	Letter to W. Robinson, from N. Le, subject: "Resolution of Spent Fuel Storage Pool Safety Issues: Issuance of Final Report".
4.	12/10/98	9812150068	Letter to J. Warren from S. Flanders, subject: "Shearon Harris Spent Fuel Pool Activation Project".
5.	1/11/99	9903220190	Letter to J. Scarola, from S. Flanders, subject: "Shearon Harris Nuclear Plant, Request for Amendment re: Spent Fuel Storage".
6.	3/11/99	9904190145	Letter to S. Jackson from K. Singh, subject: "Letter dated 1/22/99 from D. Lochbaum to S. Jackson".
7.	3/24/99	9903260263	Letter to J. Scarola from R. Laufer, subject: "Request for Additional Information Regarding the Alternative Plan for Spent Fuel Pool Cooling and Cleanup System Piping".
8.	6/14/99	9906210117	Letter to NRC from D. Alexander, subject: "Response to NRC Request for Additional Information Regarding the License

Amendment Request to Place HNP Spent  
Fuel Pools 'C' and 'D' Service".

9. 6/16/99

9906210180

Letter to J. Scarola from R. Laufer, subject:  
"Request for Additional Information  
Regarding Amendment Request to Increase  
Fuel Storage Capacity".

## APPENDIX G

**RECORDS BEING RELEASED IN THEIR ENTIRETY  
(If copyrighted identify with\*)**

<b>NUMBER</b>	<b>DATE</b>	<b>DESCRIPTION/PAGES</b>
1.	6/28/96	Note to: J. Stoiz from E. Imbro, subject: Spent Fuel Pool Survey - Harris Unit 1, (2 pgs.) with enclosure: Shearon Harris - Unit 1 Spent Fuel Pool Practices and Current Licensing Basis, (7 pgs.).
2.	10/8/99	Nuclear Safety Nuclear Profits - Will CP&L Reject Public Concerns About its Massive High-Level Waste Build-Up article by NC WARN, (5 pgs.) attaching article by NC WARN, "CP&L Doesn't Want You to Know," (1 pg.).
3.	10/19/99	NRC RII Press Release, "ASLB to Hear Limited Appearance Statements December 7 and 8 on CP&L Request to Increase Spent Fuel Storage at Harris," (2 pgs.).

**COPYRIGHTED INFORMATION**

4.		*Newspaper article from the News & Observer written by J. Shiffer, "CP&L to Double N-Waste Capacity," (1 pg.).
5.		*Newspaper article from the News & Observer written by J. Shiffer, "Nuclear Storage Change Proposed," (1 pg.).
6.		*Newspaper article from the News & Observer written by J. Price, , "Open House Quiet at Harris Plant," (2 pgs.).
7.		*Newspaper article from the News & Observer written by J. Price, "Expert to Review CP&L Proposal," (2 pgs.).
8.	2/18/98	*Copyrighted article from WRAL 5 ONLINE, "CP&L Asked to Explain Apparent Security Violations," (1 pg.).
9.	7/29/98	*Newspaper article, written by A. James, "Official Responds to Waste Concerns," (1 pg.).
10.	10/8/98	*Newspaper article from the News & Observer written by Karin Schill, "Generators to be Replaced," (1 pg.).
11.	10/28/98	*Newspaper article from the News & Observer written by W. Eddleman, "Generating Trouble," (1 pg.).

12. 12/28/98 \*Newspaper article from the News & Observer written by J. Warren, "Scrutinize CP&L Plan," (1 pg.).
13. 1/2/99 \*Newspaper article from the Chapel Hill Herald written by J. Lucas, "CP&L Seeks OK to Store Nuclear Waste," (1 pg.).
14. 1/7/99 \*Newspaper article from the News & Observer written by J. Shiffer, "CP&L Waste Site would be Among Largest in U. S.," (3 pgs.).
15. 1/12/99 \*Newspaper article from the News & Observer, "Open Pools, Open Process," (1 pg.).
16. 2/3/99 \*Newspaper article from the News & Observer, written by J. Shiffer and J. Price, "Officials Claim Smear in Battle Over Spent Fuel," (1 pg.).
17. 2/15/99 \*Newspaper article from the News & Observer, written by J. Shiffer and J. Price, "How a Battle With a Utility Giant Reached Critical Mass," (6 pgs.).
18. 2/21/99 \*Newspaper article from the Chapel Hill News written by Mark Marcoplos, (1 pg.) attaching \*Newspaper article from the News & Observer, "Talk Back, Letters to the Editor," (2 pgs.).
19. 2/25/99 \*Newspaper article from the News & Observer, written by D. Dudziak, "Point of View: Nuclear Fuel Storage is Safe; Get on With It," (3 pgs.).
20. 3/5/99 \*Newspaper article from the News & Observer, written by J. Price, "CP&L Urged to Rethink Request on Fuel Storage," (1 pg.).
21. 3/10/99 \*Newspaper article from the News & Observer, written by Karin Schill, "CP&L Plant Back Up After Shutdown," (1 pg.).
22. 3/17/99 \*Newspaper article from the News & Observer, written by Karin Schill, "Another Snag at the Power Plant," (1 pg.).
23. 4/8/99 \*Newspaper article from the News & Observer, written by J. Price, "Residents Grill CP&L Over Waste Plan at Wake Site," (2 pgs.).
24. 4/8/99 \*Newspaper article from the News & Observer, written by D. Leone, "Apex Board Silent on High-Level Nuke Waste," (2 pgs.).

- 25. 5/14/99 \*Copyrighted article from the Nuclear News Flashes, (3 pgs.).
- 26. 5/26/99 \*Newspaper article from the News & Observer, written by J. Scarola, "Point of View: Careful Process; Safe Storage," (3 pgs.).
- 27. 6/4/99 \*Newspaper article from the News & Observer, written by J. Price, "Environmentalists Accuse CP&L of Attempted Bribery, (3 pgs.).

\*NOTE: DUE TO COPYRIGHT RESTRICTIONS, DUPLICATION OF RECORDS MARKED WITH AN \* ARE NOT ENCLOSED. THESE RECORDS ARE FILED AT NRC'S PUBLIC DOCUMENT ROOM FOR REVIEW.

**APPENDIX H**

**DOCUMENTS BEING RELEASED IN PART**

<b>NUMBER</b>	<b>DATE</b>	<b>DESCRIPTION/EXEMPTION</b>
1.	5/17/99	E-Mail from J. Brady to B. Bonser, B. Mallett, and C. Evans, subject: "Regarding NRC Concerns UCS Allegations Regarding Spent Fuel Storage at Harris, (1 pg.) - <b>PORTIONS WITHHELD, EX. 5.</b>



APPENDIX I

DOCUMENTS BEING WITHHELD IN THEIR ENTIRETY

NUMBER	DATE	DESCRIPTION/EXEMPTION/PAGES
1.	Undated	Draft Memo to J. Shea from N. Le, subject: "Shearon Harris, Unit 1 - Spent Fuel Pool Survey," (10 pgs.) - EX. 5.
2.	4/9/96	Memo to J. Shea from N. Le, subject: "Shearon Harris, Unit 1 - Spent Fuel Pool Survey," (10 pgs.) - EX. 5.