

**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

PROPOSED DIRECTOR'S DECISION UNDER 10 CFR 2.206

I. Introduction

By letter dated November 5, 2001, as 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) 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.

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 highjack Department of Energy shipments of high-level nuclear waste in five separate attempts.

Evaluation: NRC staff was unable to locate the NBC Dateline report concerning mock terrorist groups. However, 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 within a heavily populated area during transport 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.

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 to-to-bottom 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 is developing an order for transportation licensees, confirming and expanding the advisories and specifying additional security measures licensees must take. When issued, the order will be an enforceable requirement. Some parts of the order will not be disclosed because they contain sensitive information. 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 adequately protect the transportation of spent nuclear fuel.

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 _____ day of _____, 2002.

(proposed decision, no signature)

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

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Martin J. Virgilio, Director
Office of Nuclear Material Safety
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