

February 5, 2001

The Honorable John Edwards
United States Senate
Washington, D.C. 20510

Dear Senator Edwards:

I am responding to your letter of January 5, 2001, requesting information regarding the recent Nuclear Regulatory Commission (NRC) staff approval of Carolina Power & Light Company's application for a license amendment to expand spent fuel pool capacity at its Shearon Harris Nuclear Power Plant. As you are aware, certain issues relating to the license amendment are presently pending before the Atomic Safety and Licensing Board (ASLB). In addition, a request for the Commission to review the staff's issuance of the amendment and its "no significant hazards considerations" determination is pending before the Commission. Therefore, it would not be appropriate for me to comment on the specific facts of the pending litigation. I am, however, able to provide you general information on the procedures applied by the agency in issuing license amendments.

You have asked that I explain the rationale behind the regulations that permit a license amendment to be issued during the pendency of a hearing before the ASLB. The Atomic Energy Act of 1954, as amended, is the source of the procedure that permits issuance of an amendment while a hearing is pending. Specifically, 42 U.S.C. § 2239(a)(2)(A) permits the Commission to "issue and make immediately effective any amendment to an operating license . . . upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person. Such amendment may be issued and made immediately effective in advance of the holding and completion of any required hearing." The statutory provision is intended to permit the NRC to issue a license amendment if it involves no significant hazards consideration in order to avoid unwarranted disruption or delay in the operation of nuclear power plants or the imposition of unnecessary regulatory burdens unrelated to significant safety matters. The provisions of the statute are implemented in the Commission's regulations in 10 C.F.R. §§ 50.58(b)(5), 50.91 and 50.92.

The finding with respect to "no significant hazards consideration" is made in accordance with 10 C.F.R. § 50.92, which provides that a final no significant hazards considerations determination may be made if the operation of the facility in accordance with the amendment would not: "(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety." The "no significant hazards consideration determination" is procedural; that is, it guides the analysis of whether a license amendment may be issued prior to completion of a hearing. It is not a

determination of the merits of the amendment request. That is, the standards of 10 C.F.R. § 50.92 are screening devices for a decision about whether to hold a hearing before or after an amendment is issued. The determination does not reflect any prejudgment of the Commission's final decision to issue or deny the amendment request, which is a separate decision, based on separate public health and safety findings.

Prior to the issuance of any amendment, whether before or after the completion of a hearing, the NRC staff, in carrying out the agency's mission to protect the public health and safety, fully evaluates the merits of the request and makes its health and safety findings. It is only upon a finding that there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, that the activities will be conducted in compliance with the Commission's regulations, and that the issuance of the amendment will not be inimical to the common defense and security or to the health and safety of the public, that the amendment will be issued.

You have asked whether the staff's action compromises the integrity of the ASLB proceeding. The issuance of a license amendment upon a final finding of no significant hazards consideration determination in no way compromises the integrity of proceedings before an ASLB. An amendment issued by the NRC staff prior to completion of a proceeding is subject to modification or rescission based upon the decision of the ASLB, or, on review, the full Commission, which is the final decision maker in any proceeding. Thus, I do not foresee any complications if the ASLB rules in favor of Orange County.

I appreciate your interest in this matter and I hope that this sufficiently answers your questions. I will have a copy of your letter and this response placed in the docket of the Shearon Harris license amendment proceeding. Please feel free to contact me if you have any further concerns related to this and any other matter within the jurisdiction of the NRC.

Sincerely,

/RA/

Richard A. Meserve

February 5, 2001

The Honorable David E. Price
United States House of Representatives
Washington, D.C. 20515

Dear Congressman Price:

I am responding to your letter of January 5, 2001, requesting information regarding the recent Nuclear Regulatory Commission (NRC) staff approval of Carolina Power & Light Company's application for a license amendment to expand spent fuel pool capacity at its Shearon Harris Nuclear Power Plant. As you are aware, certain issues relating to the license amendment are presently pending before the Atomic Safety and Licensing Board (ASLB). In addition, a request for the Commission to review the staff's issuance of the amendment and its "no significant hazards considerations" determination is pending before the Commission. Therefore, it would not be appropriate for me to comment on the specific facts of the pending litigation. I am, however, able to provide you general information on the procedures applied by the agency in issuing license amendments.

You have asked that I explain the rationale behind the regulations that permit a license amendment to be issued during the pendency of a hearing before the ASLB. The Atomic Energy Act of 1954, as amended, is the source of the procedure that permits issuance of an amendment while a hearing is pending. Specifically, 42 U.S.C. § 2239(a)(2)(A) permits the Commission to "issue and make immediately effective any amendment to an operating license . . . upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person. Such amendment may be issued and made immediately effective in advance of the holding and completion of any required hearing." The statutory provision is intended to permit the NRC to issue a license amendment if it involves no significant hazards consideration in order to avoid unwarranted disruption or delay in the operation of nuclear power plants or the imposition of unnecessary regulatory burdens unrelated to significant safety matters. The provisions of the statute are implemented in the Commission's regulations in 10 C.F.R. §§ 50.58(b)(5), 50.91 and 50.92.

The finding with respect to "no significant hazards consideration" is made in accordance with 10 C.F.R. § 50.92, which provides that a final no significant hazards considerations determination may be made if the operation of the facility in accordance with the amendment would not: "(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety." The "no significant hazards consideration determination" is procedural; that is, it guides the analysis of whether a license amendment may be issued prior to completion of a hearing. It is not a

determination of the merits of the amendment request. That is, the standards of 10 C.F.R. § 50.92 are screening devices for a decision about whether to hold a hearing before or after an amendment is issued. The determination does not reflect any prejudgment of the Commission's final decision to issue or deny the amendment request, which is a separate decision, based on separate public health and safety findings.

Prior to the issuance of any amendment, whether before or after the completion of a hearing, the NRC staff, in carrying out the agency's mission to protect the public health and safety, fully evaluates the merits of the request and makes its health and safety findings. It is only upon a finding that there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, that the activities will be conducted in compliance with the Commission's regulations, and that the issuance of the amendment will not be inimical to the common defense and security or to the health and safety of the public, that the amendment will be issued.

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Sincerely,

/RA/

Richard A. Meserve