

**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
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)	
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

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/RA/

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Office of Nuclear Material Safety
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