

RAS 2714



CHAIRMAN

DOCKET NUMBER
PROD. & UTIL. FAC. 50-400-LAUNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

February 5, 2001

DOCKETED
USNRC

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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFFThe Honorable John Edwards
United States Senate
Washington, D.C. 20510

SERVED FEB - 6 2001

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

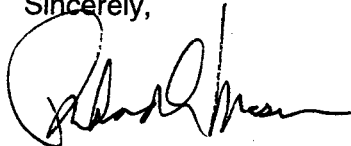
determination of the merits of the amendment request. That is, the standards of 10 C.F.R. § 50.92 are screening devices for a decision about whether to hold a hearing before or after an amendment is issued. The determination does not reflect any prejudgment of the Commission's final decision to issue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

A handwritten signature in black ink, appearing to read "Richard A. Meserve", written over a circular stamp or seal.

Richard A. Meserve



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

February 5, 2001

CHAIRMAN

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

Dear Congressman Price:

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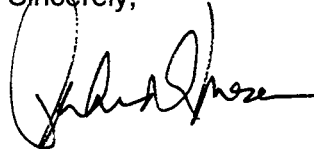
determination of the merits of the amendment request. That is, the standards of 10 C.F.R. § 50.92 are screening devices for a decision about whether to hold a hearing before or after an amendment is issued. The determination does not reflect any prejudice of the Commission's final decision to issue or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

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Sincerely,

A handwritten signature in black ink, appearing to read "Richard A. Meserve", written over a horizontal line.

Richard A. Meserve

Congress of the United States

Washington, DC 20515

January 5, 2001

Dr. Richard Meserve, chairman
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, MD 20852-2738

Dear Dr. Meserve:

We are writing with regard to the recent decision by the Nuclear Regulatory Commission (NRC) to approve Carolina Power & Light Company's (CP & L) request to expand the nuclear waste storage capacity of its Shearon Harris nuclear power plant. We appreciate your attention to the concerns we have raised over the past two years with regard to this matter.

Throughout the license amendment process, we have tried to play a facilitative role in encouraging the NRC to provide as much opportunity for public participation as possible under NRC regulations. We have also urged the NRC to take every possible step to ensure that public safety is the paramount concern underlying NRC decision making and to inspire public confidence in the NRC process.

While we have no expertise with which to evaluate the judgment of the NRC that CP & L's license amendment should be approved, we do have a concern that a negative perception of the NRC among some of our constituents has been enhanced because of the timing and sequencing of this decision. The "no significant hazards" finding by the NRC staff appears to turn on the very issues that are still pending before the Atomic Safety & Licensing Board (ASLB) panel. We understand that NRC regulations permit it to approve a license amendment prior to the conclusion of the proceedings before the ASLB. We think it would be helpful, however, for the NRC to more fully explain the rationale behind these regulations. What regulatory purpose is served by granting a license amendment while a related ASLB proceeding is ongoing? Does this decision compromise the integrity of the ASLB proceeding? What complications do you foresee if the ASLB eventually rules in favor of Orange County after used nuclear fuel rods have begun to be installed in the third waste storage pool?

An NRC spokesperson was recently quoted as saying that the NRC staff "makes license decisions based strictly on technical safety issues and not on public perception." While we would agree that it is entirely appropriate for the staff to base its decision making on technical safety issues, we again encourage the NRC and the NRC staff to go further in reassuring the public that NRC decision making does not disregard issues of the sort that have been raised in the ASLB proceeding. While the NRC will no doubt always have its critics, public perception is an important component of ensuring that the NRC continues to have the public credibility necessary for carrying out its work.

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Again, we appreciate your attention to our concerns and look forward to your response.

Sincerely,

John Elsworth David Price

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)

CAROLINA POWER & LIGHT COMPANY)

(Shearon Harris Nuclear Power Plant))

Docket No. 50-400-LA

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LETTER FROM CHAIRMAN RICHARD A. MESERVE TO SENATOR JOHN EDWARDS AND CONGRESSMAN DAVID E. PRICE DATED 02/05/01 have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
G. Paul Bollwerk, III, Chairman
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Peter S. Lam
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Thomas D. Murphy
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

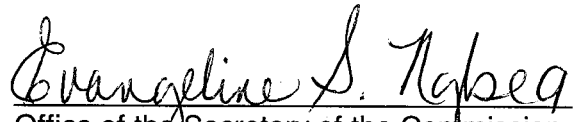
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Docket No. 50-400-LA
LETTER FROM CHAIRMAN RICHARD A. MESERVE
TO SENATOR JOHN EDWARDS AND CONGRESSMAN
DAVID E. PRICE DATED 02/05/01


Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 6th day of February 2001