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Waste Awareness and Reduction Network

**NC WARN**

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January 29, 2001

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

Dr. Richard Meserve, Chairman  
United States Nuclear Regulatory Commission

Via Fax: 301-415-1672

**SERVED FEB 21 2001**

Subject: Investigation Into NRC Staff On CP&L Harris License Amendment

Dear Dr. Meserve,

NC WARN, a nonprofit environmental group, respectfully requests your personal intervention in the matter of Carolina Power & Light's pending application to increase storage of spent fuel at the Shearon Harris Nuclear Plant in Wake County, North Carolina. I am writing to you because it appears NRC staff has not acted with scientific integrity nor independence, and has not respected the ongoing hearing process.

As you may know, CP&L's expansion is highly controversial in North Carolina. This is due in part to the very large volume of waste involved and the fact that spent fuel assemblies would be stacked at the maximum possible density in the only four-pool storage site in the nation. Orange County, through two prominent and respected nuclear experts, has raised serious and disturbing concerns about an increased potential for a very large accident. Although additional accident scenarios should also be explored, the NRC's Atomic Safety and Licensing Board has admitted Orange's contention involving one scenario which has never previously been considered. The County has submitted convincing evidence that the accident risk warrants rigorous and open scientific scrutiny. The ASLB is now weighing the evidence and considering whether to grant the County a full trial-type hearing.

Throughout the ongoing ASLB adjudication, Orange County, numerous other elected officials including U.S. Senator John Edwards, and citizen groups such as ours have insisted that the license amendment should be subject to safety hearings, conducted by the ASLB and held in public. Compounding our concerns is the fact that CP&L has now spent an estimated \$2 million to prevent those hearings. Throughout this time, CP&L has repeatedly insisted that its reliance on the NRC Staff for a "full scientific review" ensures that the public's interests are protected. However, we believe that the NRC Staff has lost its independence to such a degree that there is a total lack of integrity in the 25-month review process and a serious lack of accountability to the public.

We call on you to immediately suspend the issuance of the license amendment. Furthermore, we ask you to request an investigation by the NRC inspector general into the aspects of the amendment review process listed below. We are also asking Sen. Edwards and Rep. David Price to call for an investigation by the General Accounting Office into the same issues. Our complaints are reflected in an extensive paper trail of legal and technical documents, including transcripts of oral arguments conducted by the ASLB.

- 1) *A lack of scientific integrity by NRC Staff.* There are numerous instances where NRC Staff accepts CP&L's assertions without verification. One key example: Orange County has postulated that SF cooling

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could be lost following a degraded-core reactor accident with containment failure or bypass, in part because high radiation levels onsite would preclude workers from restoring cooling to the pools. A key to this potential accident is the radiation dose estimate that a person on the Harris site would experience. Dr. Gordon Thompson's analysis for Orange County shows that these levels would be quite high; CP&L insists that workers would be able to return to the site to restore cooling to the pools, but failed to provide any supporting data regarding onsite radiation levels.

By failing to supply data to support its analysis, CP&L violated fundamental requirements of scientific review. We are very disturbed that NRC's technical expert, Dr. Gareth Parry, endorsed CP&L's argument without demanding data to substantiate CP&L's conclusion. In other words, on an issue which is central to CP&L's whole argument that the probability of that accident is remote, CP&L bases its argument on numerical calculations for which it refused to submit a single number. This is scientifically illegitimate, as is Staff's unquestioning reliance on CP&L's analysis of the accident scenario, although that work has not been peer-reviewed – despite CP&L's claim that it had. At other points, Dr. Parry's attacks on Dr. Thompson's analysis indicate that either he had not read the analysis, or was badly misrepresenting it. The Staff's actions reflect a serious lack of scientific integrity.

- 2) *Misrepresentations and unwarranted attacks on Orange County's technical consultant in place of debating the issues raised by the County.* Instead of dealing with the substance of Dr. Gordon Thompson's analysis, NRC Staff has waged a disingenuous attack on Dr. Thompson's qualifications. As Orange County noted in its January 16 motion, "Both the Staff's and CP&L's briefs are replete with mischaracterization of Dr. Thompson's position in this proceeding, and appear designed to falsely undercut his credibility before the Commission." In doing this, the Staff shows an amazing lack of objectivity because the Staff has accepted most of Dr. Thompson's key ideas. However, instead of reaching the same or similar logical outcome – that an environmental impact statement is necessary, or at the least, evidentiary hearings – the Staff instead sides with CP&L without exception, seeming unable to come to conclusions independent of the corporation.

Instead of debating the serious concerns of a county government, CP&L and the Staff have created a smokescreen which masks their technical omissions and obvious inability to justify CP&L's waste expansion proposal outside their own closed doors. These misrepresentations and distortions, if left unchecked, could compromise the safety of the North Carolina public.

- 3) *Undermining of the hearing process through premature issuance of license amendment:* The pinnacle of the NRC's lack of independence came with the December 21<sup>st</sup> No Significant Hazard Determination, in which the Staff issued the operating license before the hearing process was concluded. This ruling was obviously made by a high-ranking NRC Staff official. The Staff had proposed the NSH Determination in January 1999, but did not act until late December 2000, almost two years later. The timing of the Staff's decision is disturbing on several counts: It seemed geared to mute media and public attention and to inhibit Orange's ability to respond during the year-end holidays; it came just after Orange County had presented strong and convincing evidence that it should be granted a full trial-type hearing before the ASLB; it came at a time when CP&L was running dangerously short of storage space in pools A and B; and it came just after the company openly complained about the licensing process taking too long.

Also, the ruling subverted the ASLB process – in which Orange County, our organization and others have expended much energy and resources because we were led to believe ASLB would make the decision as to whether hearings and an EIS would be conducted before the license amendment could be granted. We realize that the ASLB may still call for the hearing, but as the County argues, the NSH ruling prejudices that process.

Now, the NRC Staff refuses to even attempt to justify its ruling. As noted in Orange County's Jan. 16 motion, "... the Staff does not even attempt to provide a rationalization for its NSH Determination, but remains resoundingly silent in response to Orange County's charge that it unlawfully failed to respond to comments on

the NSH Determination, arbitrarily ignored the relevance of the pending environmental adjudication [wherein the ASLB has admitted Orange's contention about accidents], and clearly erred" on the very merits of the case.

Both NRC Staff and CP&L now argue that the County has no right to seek the involvement of the very Commission which you chair, so that in effect, the County and the North Carolina public, after two years of good faith effort, would be left to accept CP&L's hotly contested waste expansion based on a ruling by an unnamed NRC Staff official and a highly questionable, closed-door review process.

After the August ASLB decision calling for further examination of Orange County's contention - which validated the strength of the County's case - it would have been prudent for CP&L to begin making contingency plans to provide dry storage, since there was no certainty of approval for the new pools. Instead, CP&L raised its level of rhetoric at the Dec. 7 oral argument about Congress insisting on "expedited review." We are concerned that the Staff's ruling may have resulted from direct or perceived pressure from CP&L's numerous channels of influence.

Regarding Congress's wish for "expedited review," this was intended to provide quick approval for onsite dry storage at utilities running out of space - not for opening new pools. Congress never meant for a case such as Shearon Harris to be expedited in a way that would subvert the hearing process. The licensing of pools C and D is a convenience for CP&L, so it can ship waste from its other plants, and would not be necessary if Harris stored only its own waste.

As I am sure you would agree, agency review of complex matters involving nuclear safety requires technical expertise, attention to process, but perhaps most of all, a level of independence from the corporation whose proposal is being evaluated. Your staff is responsible for carrying out the laws designed to protect the public, but in the Harris case they seem unable to act independently enough to do so, and have resorted to decision-making with no accountability to the public. Orange County, NC WARN and the public have relied on the NRC to do a technically valid, independent review, but it simply has not happened.

We are always concerned about the degree to which NRC Staff coordinates efforts with a licensee, but throughout the Harris case, the Staff has compromised its independence to a degree which we believe jeopardizes public safety. Thus, we believe that only independent investigations by the GAO and the NRC inspector general can properly address our complaints.

We do not mean to impugn all NRC personnel. We know that many good people are trying to do their job properly. But we know that members of Congress constantly pressure the NRC Staff to do what the industry wants. Unfortunately, NRC actions over the past two years in North Carolina only perpetuate the longstanding national citizen complaint that the agency serves the industry - not the public.

Dr. Meserve, there clearly are legitimate scientific concerns with CP&L's unprecedented plan, with far too many uncertainties to in any way allow the North Carolina public to feel secure in the absence of an open and careful examination of all of the safety concerns. As you have seen in your dialogue with the Advisory Committee on Reactor Safeguards, and in the Jan. 17<sup>th</sup> NRC study on spent fuel risks, there are continuing - and troubling - technical issues about nuclear waste pools which require full scientific resolution.

The NRC has recently estimated a 1 in 100 chance for a waste pool fire in the U.S. This is close to the estimate for just one cause of a major fire at Harris by Orange consultant Thompson. Both estimates exclude the risk of terrorism or sabotage, although those are among the most troubling factors of risk at nuclear plants - especially with the federal government's increasing warnings about terrorism on U.S. soil. The NRC acknowledges concern about terrorism/sabotage, but excludes it from risk calculations due to difficulty in quantifying the risk. No one can credibly claim that the chance of a waste pool accident is remote.

The whole point of the Atomic Energy Act is that the public must be able to participate in the decision-making process (in this case through our local governments and technical consultants) and, at the least, to have an open

hearing when asked to bear a new or increased danger. The only exception to that is when there is no doubt about the safety of a proposal. In the CP&L case, there clearly is a heated scientific dispute, which must not be overridden by technicalities which mask the company's desire to proceed with its business and the public be damned.

In closing, I recount a 1996 quote in TIME magazine by nuclear engineer and whistleblower George Galatis: "I believe in nuclear power, but after seeing the NRC in action, I'm convinced a serious accident is not just likely but inevitable." Frankly, I am afraid that Galatis might be correct. I have watched your agency closely for two years and am deeply concerned that, if its present course continues, we may all be very sorry.

Dr. Meservic, I appeal to you to address these issues in an open and expedient manner. I look forward to your earliest possible response.

Sincerely,



Jim Warren  
Executive Director

CC: Sen. John Edwards  
Rep. David Price  
Orange County Board of Commissioners  
ASLB Judges Bolwerk, Lam and Murphy  
Diane Curran

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of )  
 )  
CAROLINA POWER & LIGHT COMPANY ) Docket No. 50-400-LA  
 )  
(Shearon Harris Nuclear Power Plant) )

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LETTER FROM NC WARN TO CHAIRMAN RICHARD MESERVE DATED 01/29/01 have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

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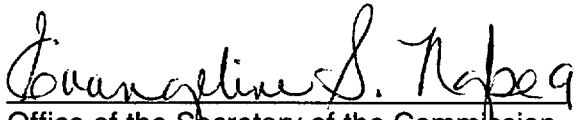
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Docket No. 50-400-LA  
LETTER FROM NC WARN TO CHAIRMAN  
RICHARD MESERVE DATED 01/29/01

  
Office of the Secretary of the Commission

Dated at Rockville, Maryland,  
this 21<sup>st</sup> day of February 2001