

NUCLEAR REGULATORY COMMISSION

[Docket No. 71-0122, Approval No. 0122 EA-01-164]

In the Matter of J.L. Shepherd & Associates, San Fernando, California; Confirmatory Order Relaxing Order; Effective Immediately

I

J.L. Shepherd & Associates (JLS&A or Approval Holder) was the holder of Quality Assurance (QA) Program Approval for Radioactive Material Packages No. 0122 (Approval No. 0122), issued by the U. S. Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 71, subpart H. The approval was previously issued pursuant to the QA requirements of 10 CFR 71.101. QA activities authorized by Approval No. 0122 include: design, procurement, fabrication, assembly, testing, modification, maintenance, repair, and use of transportation packages subject to the provisions of 10 CFR part 71. Approval No. 0122 was originally issued January 17, 1980. Revision No. 5 was issued January 24, 1996, with an expiration date on January 31, 2001, and is under timely renewal. In addition to having a QA program approved by the NRC to satisfy the provisions of 10 CFR part 71, subpart H, to transport or deliver for transport licensed material in a package, JLS&A is required by 10 CFR part 71, subpart C, to have and comply with the package's Certificate of Compliance (CoC) issued by the NRC. Based on JLS&A failure to comply with 10 CFR part 71, QA Program Approval No. 0122 was withdrawn, by the immediately effective NRC Order dated July 3, 2001.

II

NRC staff conducted an inspection on May 29-31, 2001, at JLS&A's facility. The inspection identified significant concerns with the implementation of the JLS&A QA program regarding the design, use, repair, and maintenance of transportation packages approved for use by NRC under CoC No. 6280. Specifically, NRC found that JLS&A failed to implement portions of the QA Program Approval No. 0122 which resulted in JLS&A delivering for export radioactive material in a transportation package that did not comply with the requirements of 10 CFR part 71. As a result of the findings during the May 29-31, 2001, inspection the NRC lacked confidence that JLS&A would implement the QA Program approved by NRC in accordance with 10 CFR part 71, subpart H, in a manner that would

assure the required preparation and use of transportation packages in full conformance with the terms and conditions of an NRC CoC and with 10 CFR part 71. Consequently, as noted above, in the interest of protecting public health and safety, JLS&A QA Approval No. 0122 was withdrawn by an immediately effective Order issued July 3, 2001, (July 2001 Order).

III

By letter dated August 17, 2001, JLS&A responded to the U.S. Nuclear Regulatory Commission's July 2001 Order. In a response, dated August 16, 2001, JLS&A requested that provisions of the Order be relaxed based on a showing of good cause. Specifically, JLS&A requested interim relief from the July 2001 Order based on JLS&A's proposed Near-Term Corrective Action Plan (NTCAP), to allow 66 shipments to 15 customers, in Department of Transportation specification packaging designated as 20WC. The NRC staff reviewed JLS&A's relief request and identified, in a September 7, 2001, letter, information necessary for the NRC staff to determine whether to grant the requested relief consistent with assurances that public health and safety are maintained.

By letter dated September 13, 2001, JLS&A requested to make two additional shipments to an additional customer also using the 20WC packaging. With respect to the substantive concerns identified by the staff in the July 2001 Order, JLS&A agreed to take the following corrective actions listed below, before it makes any of the proposed 68 shipments to 16 customers in accordance with the proposed NTCAP.

1. a. JLS&A will correct the deficiencies or clarify language, as applicable, in the QA/QC implementing documents, including procedures, for the 1995 JLS&A Quality Assurance Program Plan (QAPP), identified in the Quality Assurance Audit (QA Audit) issued by Donald R. Neely Associates on December 4, 2000, with respect to those items that require full or limited application of the NTCAP as stated in Section 1.2 and Appendix A of the August response;

b. JLS&A will make available to NRC inspectors a document indicating how each deficiency in the QA Audit was corrected;

2. a. JLS&A will use the implementing procedures for the 1995 QAPP, as revised and corrected in accordance with Item 1, to complete an inspection of all 20WC packages involved in the proposed NTCAP. The inspection will confirm that the packages and

associated procedures are in conformance with 49 CFR 178.362, "Specification 20WC wooden protective jacket." Each inspection will include, at a minimum, actual physical measurements, and visual inspections for damage, corrosion, or other potentially unacceptable conditions;

b. JLS&A will document the results of each inspection in separate reports approved by the QA Administrator and prepared in accordance with the revised QAPP and implementing procedures. The report will include the list of attributes verified, the acceptance criteria, and the results for each attribute;

3. JLS&A will train all JLS&A's staff, contractors, and sub-contractors, involved in the NTCAP, in the revised QAPP and implementing procedures for NTCAP activities. Training of the QA Administrator will be performed by a QA auditor with the following minimum qualifications; an understanding of the NTCAP, a university degree in a physical science or engineering program or equivalent experience, experience in the review of engineering drawings, scientific technology, nuclear technology, transportation regulations, and at least 5 years experience with International and American national quality assurance standards and quality assurance programs. Training of the JLS&A staff, contractors, and sub-contractors shall be performed by either the QA Auditor or the QA Administrator once trained. The QA Auditor who will perform duties under this paragraph will be Mr. Donald R. Neely;

4. JLS&A will provide certifications under oath and affirmation from both J. L. Shepherd and the independent auditor that the three conditions listed above have been completed;

5. JLS&A commits to implement the actions in the August response;

6. a. JLS&A commits to have an independent auditor, who has full authority, to review and inspect all aspects of JLS&A operations, shipments, and documentation, that the independent auditor believes are necessary, perform monthly performance based and in-depth audits of all ongoing NTCAP items. The independent auditor shall be approved by NRC or have been previously approved by NRC to perform audits at JLS&A. The QA Auditor who will perform duties under this paragraph will be Mr. Donald R. Neely;

b. The audits described in paragraph 6.a. will, at a minimum, be performed using the inspection evaluation guidelines in Chapter 4 of NUREG/CR-6314, "Quality Assurance Inspections

for Shipping and Storage Containers,” and will include a combination of procedures and records review and observations of actual packaging activities, as appropriate for the audits performed;

c. The independent QA auditor will document the objective, scope, findings and proposed corrective actions of the audits and will provide copies simultaneously to both JLS&A and NRC. The audit report shall be provided 20 calendar days after the end of each month; and

7. JLS&A commits to hold all shipments until NRC has completed an inspection. At the conclusion of the inspection, NRC will notify JLS&A if shipments can commence.

In addition, on September 13, 2001, JLS&A consented to issuance of this Confirmatory Order granting interim relief from the July 2001 Order subject to the commitments, as described in Section IV below, agreed that this Confirmatory Order is to be effective upon issuance, and agreed to waive its right to a hearing on this action. Implementation of these commitments will provide assurance that sufficient resources will be applied to the QA program, and that the program will be conducted safely and in accordance with NRC requirements.

I find that JLS&A's commitments as set forth in Section IV are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health and safety require that JLS&A's commitments be confirmed by this Confirmatory Order. Based on the above and JLS&A's consent, this Confirmatory Order is effective immediately upon issuance.

IV

Accordingly, pursuant to sections 62, 81, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR parts 71 and 110, *It Is Hereby Ordered, Effective Immediately, That The July 3, 2001 Order Is Relaxed To Grant Interim Relief To Allow 68 Shipments to 16 Customers 20 WC Packages in Accordance with JLS&A'S NTCAP, Through March 2002, Provided:*

1. a. JLS&A will correct the deficiencies or clarify language, as applicable, in the QA/QC implementing documents, including procedures, for the 1995 QAPP, identified in the Quality Assurance Audit (QA Audit) issued by Donald R. Neely Associates on December 4, 2000, with respect to those items that require full or limited

application of the NTCAP as stated in Section 1.2 and Appendix A of the August response;

b. JLS&A will make available to NRC inspectors a document indicating how each deficiency in the QA Audit was corrected;

2. a. JLS&A will use the implementing procedures for the 1995 QAPP, as revised and corrected in accordance with Item 1, to complete an inspection of all 20WC packages involved in the proposed NTCAP. The inspection will confirm that the packages and associated procedures are in conformance with 49 CFR 178.362, “Specification 20WC wooden protective jacket.” Each inspection will include, at a minimum, actual physical measurements, and visual inspections for damage, corrosion, or other potentially unacceptable conditions;

b. JLS&A will document the results of each inspection in separate reports approved by the QA Administrator and prepared in accordance with the revised QAPP and implementing procedures. The report will include the list of attributes verified, the acceptance criteria, and the results for each attribute;

3. JLS&A will train all JLS&A's staff, contractors, and sub-contractors, that will be involved in the NTCAP, in the revised QAPP and implementing procedures for NTCAP activities. Training of the QA Administrator will be performed by a QA auditor with the following minimum qualifications; an understanding of the NTCAP, a university degree in a physical science or engineering program or equivalent experience, experience in the review of engineering drawings, scientific technology, nuclear technology, transportation regulations, and at least 5 years experience with International and American national quality assurance standards and quality assurance programs. Training of the JLS&A staff, contractors, and sub-contractors shall be performed by either the QA Auditor or the QA Administrator once trained. The QA Auditor who will perform duties under this paragraph will be Mr. Donald R. Neely;

4. JLS&A will provide certifications under oath and affirmation from both J. L. Shepherd and the independent auditor that the three conditions listed above have been completed;

5. JLS&A commits to implement the actions in the August response;

6. a. JLS&A commits to have an independent auditor, who has full authority to review and inspect all aspects of JLS&A operations, shipments, and documentation that the independent auditor believes are

necessary, perform monthly performance-based and in-depth audits of all ongoing NTCAP items. The independent auditor shall be approved by NRC or have been previously approved by NRC to perform audits at JLS&A. The QA auditor who will perform duties under this paragraph will be Mr. Donald R. Neely;

b. The audits described in paragraph 6.a. will, at a minimum, be performed using the inspection evaluation guidelines in Chapter 4 of NUREG/CR-6314, “Quality Assurance Inspections for Shipping and Storage Containers,” and will include a combination of procedures and records review and observations of actual packaging activities, as appropriate for the audits performed;

c. The independent QA auditor will document the objective, scope, findings and proposed corrective actions of the audits and will provide copies simultaneously to both JLS&A and NRC. The audit report shall be provided 20 calendar days after the end of each month; and,

7. JLS&A commits to hold all shipments until NRC has completed an inspection. At the conclusion of the inspection, NRC will notify JLS&A if shipments can commence for the proposed 68 shipments to 16 customers in accordance with the NTCAP.

The Director, Office of Enforcement or Office of Nuclear Material Safety and Safeguards, may in writing, relax or rescind this Confirmatory Order upon demonstration of good cause by the Approval Holder.

V

In accordance with 10 CFR 2.202, any person, other than JLS&A, adversely affected by this Confirmatory Order may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies of the hearing request also should be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Director, Office of Nuclear Material Safety and Safeguards at the same address, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to

the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, TX 76011, and to the Approval Holder. If such person requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Confirmatory Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Confirmatory Order without further Order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. A Request for Hearing Shall Not Stay The Immediate Effectiveness of This Confirmatory Order.

Dated this 19th day of September 2001.

For the Nuclear Regulatory Commission.

Frank J. Congel,

Director, Office of Enforcement.

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NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-498 and 50-499]

STP Nuclear Operating Company, South Texas Project, Units 1 and 2; Notice of Consideration of Approval of Application of Central Power and Light Company Regarding Transfer of Facility Operating Licenses and Conforming Amendments and Opportunity for a Hearing

The Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80, approving the direct transfer of control of the 25.2 percent undivided ownership interest of Central Power and Light Company (CPL) in the South Texas Project Electric Generating Station (STPEGS), Units 1 and 2, under Facility Operating License Nos. NPF-76 and NPF-80, to an as yet unnamed Texas partnership (referred to in the application as CPL Genco LP); and, to the extent a direct transfer would result,

CPL's 25.2 percent interest in STP Nuclear Operating Company (STPNOC), the licensed operator of STPEGS under the licenses, to CPL Genco LP. CPL is one of four joint owners of STPEGS under the licenses. CPL Genco LP will be indirectly wholly owned by American Electric Power Company, the parent company of CPL.

The Commission is further considering amending the licenses for administrative purposes to reflect the proposed direct transfer of CPL's interest in STPEGS, including reflecting the company now referred to as CPL Genco LP as the licensee. According to an application for approval filed by STPNOC, acting on behalf of CPL, NRC will be provided with the actual name of the new company before the Commission can issue conforming administrative amendments.

According to the application, following the proposed transfer, CPL Genco LP would possess a 25.2 percent undivided ownership interest in STPEGS under essentially the same conditions and authorizations as included in the existing NRC licenses for STPEGS, including the antitrust conditions, which would be retained. No physical or operational changes to STPEGS are being proposed, and STPNOC would at all times remain the licensed operator of the facility.

Pursuant to 10 CFR 50.80, no license shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission gives its consent in writing. The Commission will approve an application for the transfer of a license, if the Commission determines that the proposed transferee is qualified to be the holder of the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with

respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By October 18, 2001, any person whose interest may be affected by the Commission's action on the application may request a hearing and, if not the applicant, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, "Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications," of 10 CFR part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)-(2).

Requests for a hearing and petitions for leave to intervene should be served upon George L. Edgar, Morgan, Lewis and Bockius, LLP, 1800 M Street, NW, Washington, DC 20036-5869; telephone: 202-467-7459; fax: 202-467-7176; email: gedgar@morganlewis.com; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer cases only: dgclt@nrc.gov); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by October 29, 2001, persons may submit written comments regarding the license