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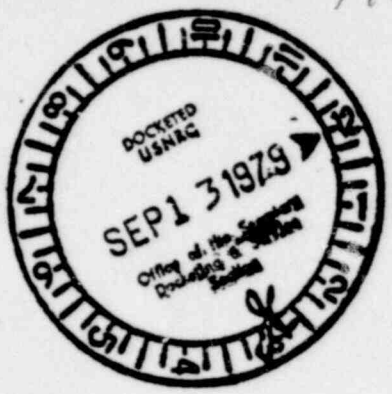

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
LOUISIANA POWER AND LIGHT COMPANY	)	Docket No. 50-382 OL
	)	
(Waterford Steam Electric Station, Unit 3)	)	

ORDER

In the Special Prehearing Conference on April 26, 1979, the Board directed that Applicant, Staff and the Joint Petitioners (Save Our Wetlands, Inc. and the Oystershell Alliance, Inc.) should file a submission stating those contentions which they agreed were admissible as issues in controversy and, where there were disagreements, each should file a submission indicating the reasons as to why the particular contention should or should not be admitted. (The Joint Petitioners' list of contentions had been filed on April 11, 1979). Thereafter, on May 31, 1979, a submission captioned Joint Positions was filed setting forth those contentions upon which agreement had been reached, and on June 1, 1979, each of the aforementioned filed separate responses discussing the admissibility or inadmissibility of those contentions upon which agreement had not been reached. We rule upon the Joint Petitioners' contentions in Part I, infra, and, in light thereof, SOW and OA are admitted and consolidated as a party.

During the Special Prehearing Conference, Petitioner Louisiana Consumers' League, Inc., Staff and Applicant agreed to the admissibility of the Petitioner's Contentions 2, 3, 4 and 6 which had been filed on April 4, 1979. We rule upon these contentions in Part II, infra, and, in light thereof, LCL is admitted as a party.

Parts III and IV respectively relate to discovery and to TMI-2 related contentions.

I - Joint Petitioners' Contentions

- Contention 1.a., b. and c. Admitted in the modified form reflected in the submission of May 31, 1979.

- Contention 2.a., b, c. and d. Admitted in the modified form reflected in the submission of May 31, 1979.

- Contentions 3, 4 and 5. Rejected by the Board during the Special Prehearing Conference for the reasons stated at Tr. 47-48. See our Order of May 9, 1979.

- Contention 6. The Board accepts the stipulation set forth at page 6 of the May 31, 1979 submission. This contention is withdrawn subject to the terms and reservations in said stipulation. The stipulation is the best evidence of its contents.

- Contention 7. The Board accepts the stipulation set forth at page 8 of the May 31, 1979 submission. This contention is withdrawn subject to the terms and reservations in said stipulation. The stipulation is the best evidence of its contents.

- Contentions 8. and 9. These two contentions have been consolidated by the Board. Renumbered Contention 8 and as rephrased by the Board, this contention is admitted as an issue in controversy. It reads as follows: "Applicant has failed to properly evaluate the cumulative and/or synergistic effects of low level radiation with environmental pollutants, known or suspected to be carcinogens." Both Applicant and Staff opposed admissibility on the ground that the contentions lacked specificity and failed to provide bases. However, the Joint Petitioners'

submission of June 1, 1979 furnished the necessary reasonable specificity and bases - e.g. they identify halogenated hydrocarbons as being carcinogens and cite studies that demonstrate synergistic effects of radiation and carcinogens. In addition, Applicant argues that, because of 10 C.F.R. Part 50, Appendix I, it has no obligation to make such an analysis and that the issue raised by the Joint Petitioners constitutes a challenge to said regulation which establishes numerical guides for the release of radioactive effluents based solely on dose levels from such releases. We do not understand that the Joint Petitioners are challenging the Appendix I dose limits. It appears that their concern for the welfare of the public in the immediate environs of the plant stems from their belief that low level radiactive releases, within the regulatory limits, may have cumulative and/or synergistic effects with environmental carcinogens. 10 C.F.R. Part 50 does not preclude the Board from assessing the cumulative and/or synergistic effects of radioactive releases with environmental pollutants, and, in fact, the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et. seq., mandates that we weigh these effects in the cost-benefit analysis for a particular nuclear plant.

Contentions 10, 11, 13 and 14. In substance Contentions 10, 11 and 13 allege that Applicant has failed to properly evaluate radiation emissions which will be created by the storage, processing and handling of spent fuel and high level radioactive wastes since there are no acceptable, technologically feasible, reasonable means for permanent off-site storage. Contention 14 asserts that Applicant has not taken into account that, because of the lack of off-site permanent waste storage facilities, the spent fuel pool will have to be enlarged. These contentions are rejected. In the first place, such matters cannot be the

subject of an adjudicatory proceeding. We are governed by the Commission's policy declaration that there is "reasonable assurance that methods of safe permanent disposal of high-level wastes can be available when they are needed" (42 Fed. Reg. 34391, 34393, July 5, 1977). In Northern States Power Company, et. al. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-455, 7 NRC 41, 51 (1978), in light of the Commission's policy declaration, the Appeal Board stated that it both can and should be presumed that there will be spent fuel repositories available when needed, and that this policy declaration must be respected by it and the licensing boards. In State of Minnesota v. USNRC, _____ F.2d _____ (D.C. Cir. 1979), while remanding the ALAB-455 decision to the Commission for clarification and consideration in light of a related proceeding and other current developments, the Court of Appeals rejected the need for an adjudicatory proceeding and agreed that the Commission could properly consider the complex issue of nuclear waste disposal in a "generic" proceeding such as rule making, and then apply its determinations in subsequent adjudicatory proceedings. As a result of the Court of Appeals decision, the Commission has stated that it intends to institute a generic rule making proceeding with regard to the availability of safe waste disposal methods. 44 Fed. Reg. 45362, 45369 (1979). Licensing boards should not accept in individual licensing proceedings contentions which are (or are about to become) the subject of a general rule making by the Commission. Potomac Electric Power Co. (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79, 85 (1974). Second, we are authorized only to consider the existing application for an operating license which proposes to install a spent fuel storage pool having a capacity of 1088 spent fuel assemblies (FSAR § 9.1.2), i.e., a storage capacity of approximately fifteen years. Should the Applicant at some later date desire

to enlarge the spent fuel pool, it would have to request a modification to its operating license which would be the subject of a licensing action separate from the instant proceeding.

Contention 12. In substance, it is contended that Applicant has failed to properly evaluate risks to humans caused by the transportation of spent fuel and radioactive nuclear wastes into and through the New Orleans area because the details regarding such transportation are inadequate and because radioactive releases resulting from this transportation have not been accurately evaluated. To the extent this contention questions the environmental impact of the transportation of fuel and wastes to and from the proposed plant, it challenges the Commission regulation (10 C.F.R. § 51.20, Table S-4) which sets forth the environmental impacts of such transportation. The Commission's regulations cannot be subject to attack in any adjudicatory proceeding involving initial licensing. 10 C.F.R. § 2.758; Metropolitan Edison Co., et. al. (Three Mile Island Nuclear Station, Unit No. 2), ALAB-456, 7 NRC 63, 67 n. 3 (1978); Southern California Edison Co., et. al. (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-268, 1 NRC 383, 500 (1975); Vermont Yankee Nuclear Power Corporation (Vermont Yankee Nuclear Power Station), ALAB-194, 7 AEC 431, 443-4 (1974). Moreover, the Joint Petitioners have not followed the procedures set forth in 10 C.F.R. § 2.758(b), which, among other things, requires setting forth special circumstances which would show how the values in Table S-4 would not serve the purpose for which they were adopted. Accordingly, this portion of the contention is inadmissible and is rejected.

However, to the extent this contention raises a safety issue in questioning whether the details of Applicant's proposal to transport spent fuel

are adequate to meet the requirements of the Commission's interim final rule which amends 10 C.F.R. Part 73 (44 Fed. Reg. 34466, June 15, 1979), this portion of the contention is admissible as an issue in controversy. Accordingly, as rephrased by the Board, Contention 12 asserts that"Applicant has failed to properly evaluate risks to humans caused by the transportation of spent fuel and radioactive nuclear wastes into and through the New Orleans area because the details of Applicant's proposal for such transportation do not meet the requirements of the Commission's interim final rule which amends 10 C.F.R. Part 73 (44 Fed. Reg. 34466, June 15, 1979)."

- Contention 15. The Board accepts the stipulation at page 12 of the May 31, 1979 submission. This contention is withdrawn, subject to the terms and reservations in said stipulation. The stipulation speaks for itself.

- Contentions 16 and 18. The Board accepts the stipulations at pages 12 and 14 of the May 31, 1979 submission which had been agreed to during the Special Prehearing Conference at page 94 of the transcript. These contentions are withdrawn, subject to the terms and reservations in the stipulations. The stipulations are the best evidence of their contents.

- Contention 17. Pursuant to the agreement in the submission of May 31, 1979, admitted in the form proposed by the Joint Petitioners in their submission of April 11, 1979, except that, upon its own motion, the Board corrects the word "iodine" to read "iodide" in 17c, and deletes the words "low- and middle-income" in 17d because the evacuation of all persons, regardless of socio-economic background, should be considered.

- Contentions 19 and 20. Pursuant to the agreement in the submission of May 31, 1979, admitted in the forms proposed by the Joint Petitioners in their submission of April 11, 1979.

- Contention 21. Admitted in the modified form reflected in the submission of May 31, 1979.

- Contention 22. It is contended that Applicant has failed to discover, acknowledge, report or remedy defects in material, construction and workmanship such as improperly poured and set concrete and concrete poured without required reinforcement during the fabrication of the containment vessel (reactor vessel) and/or related integral systems.

During the Special Prehearing Conference, the Joint Petitioners' counsel, Mr. Jones, acknowledged that, when drafted, there was no specific basis for this contention, and that it had been predicated upon reports by several members of the Joint Petitioners concerning conversations with various construction employees who were unidentified and unknown to him. He was reluctant to file such a contention in the absence of a specific allegation or affidavits. However, counsel stated that he decided to file the contention after a local newspaper article appeared, which reported that three concrete masons, who declined to give their names or to provide detailed explanations to the newspaper reporter, stated that they had witnessed numerous mistakes being made in the concrete work at Waterford. (A copy of the New Orleans States-Item article, dated April 3, 1979, was appended to the Joint Petitioners' submission of June 1, 1979.) Mr. Jones urged that this contention be admitted in order that discovery could be initiated, and represented to the Board that the Joint Petitioners would abandon this contention should discovery fail to disclose facts proving the allegations in the contention (Tr. 102-105).

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At the request of the Board, under date of May 30, 1979, the Staff furnished a copy of a memorandum prepared by a member of the Office of Inspection

and Enforcement on April 4, 1979. The memorandum reflected that, upon being interviewed, the staff writer for the States-Item newspaper indicated that he had no further information than that presented in the article. The memorandum also reflected that the staff writer stated that the three concrete workers were working on the intake structure, a non-safety related structure, but that these workers did say that their comments also applied to previous work. The staff writer was unaware whether these three workers were employed by a subcontractor who performed safety related work or by another subcontractor who performed non-safety related work. The memorandum concluded that "Based on the vagueness of the allegation and the reported employees' relationship to previous safety related work activities, it is not considered practical to pursue this matter further".

We are loathe to admit any contention founded on purported allegations of unidentified individuals. On the other hand, however, a portion of the contention relating to safety related concrete construction is reasonably specific and perhaps may be fleshed out upon use of the discovery procedure. Further, after discovery has been concluded, in the event the Joint Petitioners do not withdraw this contention, Applicant and/or Staff may move for summary disposition pursuant to 10 C.F.R. § 2.749. In sum, the contention is specific enough to evoke our consideration. The contention, as rephrased by the Board, is admitted and reads as follows: "Applicant has failed to discover, acknowledge, report or remedy defects in safety related concrete construction."

- Contention 23. Admitted in the modified form reflected in the submission of May 31, 1979.

II - Louisiana Consumers' League, Inc. Contentions

- Contention 1. Withdrawn during the Special Prehearing Conference (Tr. 62-64). See our Order of May 9, 1979.

Contentions 2, 3, 4 and 6. Admitted. During the Special Prehearing Conference, Applicant, Staff and LCL stipulated to the admissibility of these contentions (Tr. 62-64). See our Order of May 9, 1979.

III - Discovery

Pursuant to an agreement between the parties reflected in Applicant's letter dated July 26, 1979, discovery shall be initiated and concluded upon the contentions admitted in Parts I and II, supra, within sixty (60) days after the service of the instant Order.

IV - TMI-2 Related Contentions

Pursuant to an agreement between the parties reflected in Applicant's letter of July 26, 1979, the time for the filing of contentions arising from events at Three Mile Island Nuclear Plant 2 shall be extended until thirty (30) days after the issuance of the final report of the NRC Lessons Learned Task Force. Thereafter, non-timely filings may be entertained by the

Board after a balancing of the five factors set forth in 10 C.F.R. § 2.714(a)(1).

IT IS SO ORDERED.

THE ATOMIC SAFETY AND
LICENSING BOARD

Dr. Harry Foreman, Member

Dr. Walter H. Jordan, Member

Sheldon J. Wolfe, Esquire
Chairman

Dated at Bethesda, Maryland

this 12th day of September, 1979.