

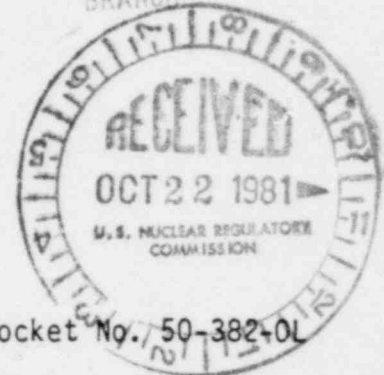
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

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USNRC

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Before Administrative Judges:
Sheldon J. Wolfe, Chairman
Dr. Walter H. Jordan
Dr. Harry Foreman

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH



In the Matter of
LOUISIANA POWER AND LIGHT COMPANY
(Waterford Steam Electric Station,
Unit 3)

Docket No. 50-382-OL

October 20, 1981

MEMORANDUM AND ORDER
(Granting Applicant's Motion For Summary Disposition
of Joint Intervenor's Contention 22)

On August 21, 1981, pursuant to 10 C.F.R. §2.749, Applicant filed a Motion For Summary Disposition of Joint Intervenor's Contention 22 (Safety-Related Concrete). The NRC Staff filed an Answer In Support thereof on September 15, 1981. The Joint Intervenor (Save Our Wetlands, Inc. and Oystershell Alliance, Inc.) neither responded to Applicant's Motion for Summary Disposition nor responded to any new facts and arguments presented in Staff's supporting answer.

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MEMORANDUM

I. Background

With respect to Joint Intervenors' Contention 22, ^{1/} our Order dated September 12, 1979 reflects the following:

During the Special Prehearing Conference [held on April 26, 1979], 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).

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

^{1/} As originally submitted Contention 22 read:

It is contended that Applicant has failed to discover, acknowledge, report or remedy defects in materials, 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.

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 concern. 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."

II. Discussion

In support of its Motion, Applicant appended the affidavit of Thomas Gerrets, who is its Quality Assurance Manager for the Waterford 3 nuclear generating plant. Applicant also appended Exhibits A through G. Applicant's statement of material facts, as to which it asserts there is no genuine issue to be heard, reflects the following:

1. Applicant's architect-engineer for the Waterford 3 project is Ebasco Services, Inc., which has general supervisory responsibility for construction, including the placement of all safety-related concrete. Most of the concrete was actually placed by an Ebasco subcontractor, J. A. Jones Construction Company. Some of the specialized concrete placements were performed by

another subcontractor, Fegles Power Service. At present, more than 99% of safety-related concrete construction at Waterford 3 has been complete. (Gerrets' affid., par. 2)

2. Applicant has implemented a Quality Assurance (QA) and Quality Control (QC) program for Waterford 3 in compliance with 10 C.F.R. Part 50, Appendix B. This program is described in Section 1.8 of the Waterford 3 Preliminary Safety Analysis Report and in Chapter 17 of the Final Safety Analysis Report. In addition, Ebasco independently implements its own QA/QC program, which has been generically approved by the NRC. Both concrete construction subcontractors also have detailed QA/QC programs, which have been reviewed and approved by Ebasco. (Gerrets' affid., par. 3)

3. The cement, aggregate, admixtures and other materials used in batching concrete for Waterford 3 are all obtained from supply sources with QA programs that have been reviewed and approved by Ebasco, and are inspected by the concrete batch contractor upon receipt. In addition, an independent testing laboratory, Peabody Testing Services, Inc., performs physical and chemical tests on the cement, aggregates and water. (Gerrets' affid., par. 4)

4. All concrete is batched in accordance with mix designs that meet industry standards and have been approved by Ebasco, and thereafter Ebasco and Peabody Testing Service perform appropriate tests and inspections to ensure that the concrete has been properly mixed and is acceptable before it leaves the batch plant. (Gerrets' affid., par. 5)

5. Before any safety-related placement begins, tests upon the first truckload of concrete of the day are conducted by Peabody Testing Services for air content, slump, unit weight, ambient temperature, and concrete temperature. These tests are repeated approximately every 50 cubic yards of concrete after the first batch of the day and every batch is checked for proper water/cement ratio and the number of drum revolutions on the delivery truck. Additionally, a set of four compression cylinders is made from the first batch of the day and every 150 cubic yards thereafter. If a concrete placement is less than 150 cubic yards, but more than 50 cubic yards, a minimum of two sets of cylinders must be molded. The cylinders are then tested for compressive strength at the Peabody Concrete Testing Laboratory with one cylinder being broken at 7 days of age; two at 28 days and one which is used as a spare should problems be encountered with the 28-day breaks. Cylinders are molded, cured and broken in accordance with ASTM C-31. (Gerrets' Affid., par. 6)

6. Before each concrete placement, the placement location is subjected to a pre-placement inspection by representatives of Ebasco and the concrete subcontractor. The actual placement of concrete is performed in strict compliance with Ebasco's Detailed Specifications for Concrete Placement, Curing and Finishing. The placement must also be carried out in accordance with the detailed concrete placement procedures of the concrete subcontractor. All concrete placements are observed and inspected by QC inspectors of the concrete subcontractor to ensure that the concrete is

properly placed and cured in accordance with the established procedures and specifications. In addition, most of the concrete placements have been independently observed and inspected by Ebasco QC inspectors. (Gerrets' affid., pars. 7, 8)

7. All inspections and QA/QC functions concerning safety-related concrete are documented in accordance with 10 C.F.R. Part 50, Appendix B, and the documentation is retained by Applicant. In addition, Applicant's QA auditors periodically observe the work at Waterford 3 and audit the QA/QC programs of Ebasco and the concrete subcontractors to ensure that proper QA/QC procedures are followed. Ebasco also independently audits the concrete subcontractors' QA/QC procedures, and Ebasco's QA/QC program at the Waterford 3 site is in turn audited by representatives from Ebasco's headquarters in New York. Applicant's QA/QC program is audited by Middle South Services, Inc., a subsidiary of the holding company that owns Applicant. Finally, the NRC performs its own on-site inspections of the construction at Waterford 3 and audits of the QA/QC program. (Gerrets' affid., par. 9)

8. During the course of construction, the placement of safety-related concrete has resulted in only four Construction Deficiency Reports. Each deficiency was duly reported to the NRC, corrected by Applicant, and closed out through an NRC inspection. ^{2/} (Gerrets' affid., par. 11)

^{2/} These facts were confirmed in NRC Inspector Joseph Tapia's affidavit (par. 3) which was appended to the NRC Staff's supporting answer.

9. During the course of construction, the NRC made a number of unannounced visits to the Waterford 3 site to inspect the construction, including the placement of safety-related concrete. None of the NRC inspections revealed any significant defect in the safety-related concrete placed at Waterford 3 of such seriousness that it should have been reported to the NRC under 10 C.F.R. § 50.55 (e) because of its effect on safety. All of the deficiencies concerning safety-related concrete identified by NRC inspections have been relatively minor, mostly involving problems with QA/QC procedures and documentation. In each case, the problem discovered has been corrected by Applicant, and the matter has been closed following a reinspection by the NRC. ^{3/} (Gerrets' affid., par. 12)

10. With regard to the New Orleans States-Item newspaper article, Applicant investigated the allegations contained therein, including numerous interviews with construction workers, but was unable to locate the three concrete workers in question, and was

^{3/} In his affidavit, NRC Inspector Tapia attested that, during the past five years, the NRC Office of Inspection and Enforcement had conducted seven inspections of concrete construction activities, and that, while two notices of items of non-compliance were issued, all such items have been satisfactorily resolved. (pars. 4, 5)

unable to discover any factual basis for the questions they had reportedly raised. ^{4/} (Gerrets' affid., par. 13)

We note again that the Joint Intervenors neither responded to Applicant's Motion for Summary Disposition nor responded to any new facts and arguments presented in the Staff's supporting Answer. Except for the circumstances herein, these failures to respond would not necessarily be fatal because, in Adickes v. Kress and Company, 398 U.S. 144 (1970), the Supreme Court held that it is the party seeking summary judgment, not the party opposing it, which has the burden of showing the absence of a genuine issue as to any material fact, and that, where the moving party's evidentiary matter in support of the motion does not establish the absence of a genuine issue, summary judgment must be denied even if no opposing evidentiary matter is presented. Herein, however, the movant supported by the Staff's answer, has sustained its burden of establishing the absence of a genuine issue of material fact via the affidavit of its quality assurance manager and via supporting exhibits which show that detailed specifications and

^{4/} In an affidavit appended to the Staff's supporting answer, Ramon Hall, Acting Chief, Engineering and Materials Section, Office of Inspection and Enforcement, attested that, after interviewing the newspaper's staff writer who had written the article, he had prepared the memorandum dated April 4, 1979, and that, since that conversation, he had received no further communication from the staff writer or from any other person which provided any elaboration, substantiation, or further allegation concerning the subject matter of that article. (pars. 4-6)

the test and inspection procedures were followed by Applicant and by its architect-engineer and subcontractors, and that any deficiencies were corrected and/or resolved. Where, as here, the movant had properly supported its motion for summary disposition, it was incumbent upon the Joint Intervenors to answer, setting forth specific facts showing that there is a genuine issue of fact. Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 and 2), ALAB-584, 11 NRC 451, 453 (1980). A party cannot avoid summary disposition on the mere hope that at trial he will be able to discredit movant's evidence nor can he be permitted to go to trial on the vague supposition that something may turn up. ^{5/} Gulf States Utilities Company (River Bend Station, Units 1 & 2), LBP-75-10, 1 NRC 246, 248 (1975). In sum, the safety-related concrete issue is one of those "demonstrably insubstantial issues" that should be decided pursuant to summary disposition procedures in order to avoid unnecessary and possibly

^{5/} In their answers to Staff's Interrogatories and Response To Request For Documents served on January 18, 1980, while stating that they were in the process of identifying appropriate witnesses in support of Contention 22 and would seasonably disclose this information, the Joint Intervenors thereafter did not furnish this information. Further, with respect to other interrogatories regarding this contention, the Joint Intervenors stated that they were unanswerable until such time as the Board granted their Motion To Compel Applicant to answer certain interrogatories. In an Order of January 11, 1980, the Board denied the motion to compel because the information sought was not related to the issue placed into controversy by Contention 22.

time-consuming hearings. See Houston Lighting and Power Company
(Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11
NRC 542, 550 (1980).

ORDER

For the foregoing reasons, it is this 20th day of October
1981

ORDERED

That Applicant's Motion For Summary Disposition Of Joint
Intervenors' Contention 22 is granted, and the Contention is
dismissed.

Judges Jordan and Foreman concur.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD

Sheldon J. Wolfe
Sheldon J. Wolfe
ADMINISTRATIVE JUDGE