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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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

APPLICANT'S RESPONSE TO THE  
STATE OF LOUISIANA'S PETITION  
TO INTERVENE PURSUANT TO  
10 C.F.R. §2.714(a)(1)

On July 21, 1982,1/ the State of Louisiana ("Louisiana")  
filed a petition to intervene at a very late stage in the  
above-captioned matter pursuant to 10 C.F.R. §2.714(a)(1) of  
the Commission's Rules of Practice.2/

1/ Applicant was not served, and did not obtain a copy of the  
petition until the following week.

2/ Louisiana has clearly indicated that it is seeking leave  
to intervene pursuant to 10 C.F.R. §2.714(a)(1), rather than to  
participate as a non-party pursuant to 10 C.F.R. §2.715(c).  
See Petition, Part I: "Identification of Petitioner."

Louisiana is seeking to intervene on two sets of issues. The first set of issues concerns the Waterford 3 emergency feedwater system ("EFWS")<sup>3/</sup> Louisiana sought to intervene on the EFWS issues earlier in this proceeding, but the Licensing Board denied Louisiana's petition. See Order (Denying Louisiana's Petition for Leave to Intervene) dated April 20, 1982.

The second set of issues that Louisiana wishes to litigate concerns the environmental effects of emissions from the radioactive waste that will be produced at Waterford 3. As the sole basis for asserting this set of issues, Louisiana cites the recent decision of the District of Columbia Court of Appeals in Natural Resources Defense Council v. NRC, No. 74-1586 (April 27, 1982) (hereinafter "NRDC").

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<sup>3/</sup> Specifically, the EFWS issues Louisiana is attempting to raise are:

1. The reliability of one Shutdown Heat Removal System on the System 80 design as evaluated in the Sua Sponte Motion of March 18, 1982.

2. Whether in the broader view, the feed and bleed system to (EFWS) should be evaluated to provide back up for the Emergency Feedwater System is adequate.

3. Whether there are other back up systems to EFWS to provide back up in the event of EFWS failure.

4. Whether the issues of a Shutdown Heat Removal System is merely generic or is sufficiently at issue in this proceeding to be handled at this licensing state.

5. The risk assessment reasonably determined for all EFWS.

For the reasons set out below, Applicant respectfully submits that Louisiana's untimely petition should be denied.

Emergency Feedwater System Issues

In raising the EFWS issues, Louisiana is now seeking to intervene on precisely the same issues it sought to raise in a petition for leave to intervene in this proceeding filed (undated) in mid-April 1982, almost four months ago. That petition was denied orally by the Board during a telephone conference call on April 16, 1982. The ruling was confirmed by Board Order dated April 20, 1982. Louisiana has appealed that Order to the Atomic Safety and Licensing Appeal Board by Notice of Appeal dated August 6, 1982.

Louisiana has provided to this Board no new information upon which to base reconsideration of the April 20 Order. In any event, Louisiana has already taken the more appropriate tack of filing a Notice of Appeal with the Appeal Board. For these reasons alone, Louisiana's petition should be denied with respect to the EFWS issues.

In addition, Louisiana's attempt to raise EFWS issues should be denied on the grounds of timeliness. When Louisiana first attempted to raise those issues in April 1982, after the hearing had already begun, Louisiana did not attempt to show good cause for its untimely filing, and did not attempt to otherwise meet the requirements of 10 C.F.R. §2.714(a)(1) for

untimely filings. Because the petition was denied for other reasons (i.e., Louisiana had requested to participate in the litigation of a sua sponte issue which was subsequently dropped by the Board), the timeliness issue was not addressed at that time. However, the Board made a special effort to point out to Louisiana, both during the April 16, 1982 conference call, in which Louisiana was a participant, and in the April 20, 1982 Order, that if Louisiana were to attempt to participate by raising its own issues, it must show good cause for failure to file in a timely manner.

Louisiana's attempt to intervene on the basis of EFWS issues was untimely back in April, and is particularly untimely now. The hearing ended May 12, 1982, the record has been closed, and post-hearing findings and conclusions have been filed by all parties. Applicant would be severely prejudiced by the granting of Louisiana's petition, since a reopening of the record at this late date to consider new evidentiary issues would in all likelihood delay a decision on the issuance of an operating license for the Waterford 3 facility.

The only statement made in Louisiana's petition that might arguably be an attempt to show good cause is the allegation that Louisiana had not been served a copy of the Board's April 20, 1982 Order denying Louisiana's petition. That argument is of little moment since the Louisiana Attorney General's Office had actual notice of the denial at the time the petition was

denied. Linda B. Watkins, Assistant Attorney General and one of the signatories to the instant petition, was a participant in the April 16, 1982 conference call during which the Board denied Louisiana's petition. Counsel for Applicant were also present at the conference call and can attest that nothing is contained in the April 20 Order which was not related to the Assistant Attorney General during the conference call. In any event, Louisiana has not attempted, either in the original petition or the current petition, to show good cause or otherwise meet the requirements of section 2.714(a)(1) for its untimely attempt to raise the EFWS issues.4/

#### Waste Storage Issues

The only reason stated for raising the waste disposal issues is the issuance of the NRDC decision. However, the Board cannot consider the effects of that decision on this proceeding because the mandate has not yet issued, and the decision has no force and effect. Accordingly, Louisiana's petition must be denied, because the waste disposal issues it

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4/ The NRDC decision provides no basis for raising EFWS issues, by analogy or otherwise. The EFWS issues bear no relationship to the waste disposal issues in the NRDC case, either substantively or procedurally. There are no NRC regulations which treat the EFWS issues generically. In any event, as discussed infra, the NRDC decision is not yet effective.

seeks to raise have been considered generically in accordance with currently valid regulations in 10 C.F.R. Part 51.5/

Conclusion

For all of the above reasons, Louisiana's untimely petition should be denied in its entirety.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

By



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5/ See Cleveland Electric Illuminating Company (Perry Nuclear Plant, Units 1 & 2), Docket Nos. 50-440-OL and 50-441-OL, Memorandum and Order, July 12, 1982, Slip Op. at 11, in which the Licensing Board rejected a waste disposal issue on the grounds that the NRDC case was not yet effective, and the Commission's regulations at issue therefore remained in effect. The Commission has indicated that it intends to provide policy guidance on the treatment of relevant waste disposal issues in light of the NRDC case. That policy statement has not yet issued, obviously for the reason that the mandate has not yet been issued by the Court. Until the mandate issues and the Commission has issued its policy statement, attempts to raise issues in individual licensing proceedings are premature and should be denied.



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