

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

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

DOCKETED
USNRC

'82 SEP 10 P2:03

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In the Matter of

LOUISIANA POWER AND LIGHT COMPANY,

(Waterford Steam Electric Station,
Unit 3)

Docket No. 50-382-0L

September 10, 1982

MEMORANDUM AND ORDER

(Denying That Part Of Louisiana's Petition Requesting
Leave To Intervene Upon Feed And Bleed Capability;
Deferring Ruling On That Part of Petition
Requesting Leave To Intervene In Light
Of Court Of Appeals Decision)

MEMORANDUM

On July 21, 1982, the State of Louisiana submitted to
this Board a petition for intervention.^{1/} Petitioner seeks
to introduce contentions concerning the environmental impact of

1/ Petition To Participate As An Interested State In Facility
Operating License Proceedings And To Reopen Such Proceedings
To Precipitate Commission Ruling Consistent With Recent Court
Of Appeals Decision And To Request The Nuclear Regulatory
Commission To Cease Issuing Licenses Consistent With The
Court Of Appeals Decision.

radioactive waste^{2/} and the adequacy of the Waterford 3 shutdown heat removal system. Applicant and the NRC Staff respectively filed responses on August 9 and August 10, 1982.

When a State seeks to introduce an issue, pursuant to a petition for party status under 10 C.F.R. § 2.714(a) or subsequent to limited admittance under § 2.715(c),^{3/} the State must observe the procedural requirements applicable to contentions. Gulf States Utilities Co. (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760, 768 (1977), aff'g, LBP-76-32, 4 NRC 293, 299 (1976). If its submittal of contentions is not timely, the State has a substantial burden in justifying the tardiness under § 2.714(a), and the burden of justifying intervention on the basis of the four other factors in the rule is considerably greater where the latecomer has no good excuse. Nuclear Fuel Service, Inc. (West Valley Reprocessing Plant), CLI-75-4, 1 NRC

^{2/} Louisiana requests that it be permitted to intervene in light of a recent Court of Appeals decision. Previously the Joint Intervenors had filed a motion to reopen hearings in order to consider the issues raised by NRDC v. NRC, No. 74-1586 (D.C. Cir., April 27, 1982). That case would invalidate Table S-3, 10 C.F.R. § 51.20, which assesses the environmental effects of the uranium fuel cycle, including the emissions resulting from waste disposal. The mandate of the case, however, has not yet been issued, and this Board has deferred its ruling on Joint Intervenors' motion until after issuance of a Commission Policy Statement on S-3. (Order of July 19, 1982) Similarly, we have decided to defer ruling on the State of Louisiana's petition to intervene and raise S-3 issues.

^{3/} Although it titles its petition "A Petition To Participate As An Interested State. . .," the State of Louisiana indicates its petition is filed pursuant to § 2.714(a).

273, 275 (1975); Project Management Corp., et al. (Clinch River Breeder Reactor Plant), ALAB-354, 4 NRC 383, 389-95 (1976).

Contrary to the express requirement of § 2.714(a)(1)(i), the State of Louisiana has not shown good cause for its failure to file on time. Certainly it is not a stranger to our Rules of Practice. See e.g., Gulf States Utilities Co., supra. Moreover, Louisiana could not be heard to argue that the issue of feed and bleed capability is of recent vintage or is newly discovered evidence. Although not raised sua sponte by this Board until March 18, 1982, in our Memorandum and Order, the issue of feed and bleed capability could have been raised earlier at the construction permit stage of the proceedings. That Louisiana might not have been aware of the problem until the Board raised the issue sua sponte cannot be considered good cause for its late filing - otherwise, any petitioner could tardily raise an issue by simply alleging that it had only recently become aware of a pre-existent problem. Finally, in a conference call on April 16, 1982, we orally granted Applicant's motion for reconsideration and withdrew the sua sponte issue, and advised the State's Assistant Attorney General, Ms. Watkins, that in light of this ruling we would issue an order denying Louisiana's petition for leave to participate in the sua sponte issue because there was no issue to participate in. At that time, we also specifically advised Ms. Watkins that the State could file a petition to intervene or to participate upon the issue of feed and

bleed capability, but that it should show good cause and address the four other factors in § 2.714(a)(1).^{4/}

Further, contrary to § 2.714(a)(1) and the Board's statements during the conference call, Louisiana failed to address the other factors in that section,^{5/} and thus we must independently assess them. The issue the State of Louisiana seeks to raise, in essence the absence of feed and bleed capability in Waterford 3, is an issue under close scrutiny by the NRC Staff and the Advisory Committee on Reactor Safeguards.^{6/} Moreover, the issue is closely related

4/ The background leading to the conference call is as follows: Our Memorandum and Order of March 18, 1982, raised sua sponte the issue of feed and bleed capability. Applicant filed a motion for reconsideration on March 26th and the Staff filed an answer in support thereof on April 12, 1982. Louisiana served an (undated) petition for leave to participate as an interested State and for a hearing of the sua sponte issue, which the Board received on April 16th. Absent objection, the Board permitted Ms. Watkins, not representing a party, to listen to the Applicant's and Staff's discussion and arguments during the conference call. The Board's Order of April 20, 1982 (as corrected by the Order of April 21st), setting forth that which we had orally stated to Ms. Watkins during the April 16th conference call, denied Louisiana's petition for leave to participate. Unfortunately, said Order was not served until July 29, 1982.

5/ The factors are: "(ii) The availability of other means whereby the petitioner's interest will be protected. (iii) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record. (iv) The extent to which the petitioner's interest will be represented by existing parties. (v) The extent to which the petitioner's participation will broaden the issues or delay the proceeding.

6/ Memorandum and Order Granting Applicant's Motion For Reconsideration, April 27, 1982, at 8.

to unresolved generic safety issue A-45, with which this Board is actively concerned.^{7/} Therefore, with respect to factors (ii) and (iv) there are other means whereby the petitioner's interest will be protected and its interest will be actively represented by the NRC Staff. With respect to factor (iii), we again note that the absence of feed and bleed capability is a generic issue common to all system 80 designs.^{8/} Because this issue is actively being investigated by the NRC Staff and the ACRS, not only with regard to Waterford 3 but also on a generic basis, we doubt that the State of Louisiana could significantly assist (and Louisiana does not tell us how it could assist) in developing a sound record. Our assessment of factor (v) also weighs against the petitioner. Louisiana's petition was filed over two months after the evidentiary hearing was closed on May 12, 1982. Granting of the late-filed petition and contention would require a reopening of the record for further hearings and postpone our decision. Such a delay would be unacceptable.^{9/}

Louisiana's petition also requests that the NRC and this Board refrain from issuing a license to Louisiana Power and Light,

^{7/} Memorandum and Order Requesting Staff's Affidavit, August 12, 1982.

^{8/} Memorandum and Order Granting Applicant's Motion For Reconsideration, April 27, 1982, at 2, 6-7.

^{9/} Even if Louisiana had filed its petition immediately after we had withdrawn our sua sponte issue in late April, 1982, its tardiness would have created an unacceptable potential delay.

until the issues Louisiana seeks to raise are resolved. Our authority, however, is limited to resolving matters put into controversy by the parties or raised sua sponte. The Licensing Board does not issue licenses; rather, its resolution of matters in controversy is a condition precedent to issuance of a license by the Director of Nuclear Reactor Regulation. See 10 C.F.R. § 2.760a. Louisiana has not succeeded in injecting new contentions into the Waterford proceeding, and we are without jurisdiction to grant Louisiana's request.

ORDER

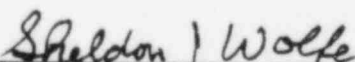
For all of the foregoing reasons, it is, this 10th day of September, 1982

ORDERED

1. That the part of the State of Louisiana's petition requesting leave to intervene upon feed and bleed capability is denied.
2. That a ruling upon that part of Louisiana's petition requesting leave to intervene in light of a Court of Appeals decision is deferred pending the issuance of the Commission's Policy Statement.

Judges Jordan and Foreman concur but were unavailable to sign this issuance.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD


Sheldon J. Wolfe, Chairman
ADMINISTRATIVE JUDGE