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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF'S RESPONSE TO JOINT INTERVENORS' MOTION CONCERNING
APPLICANT'S EMERGENCY INFORMATION BROCHURE AND REOPENED HEARINGS

On September 29, 1982, the Joint Intervenors filed their "Motion to Disallow the Introduction of a Second Evacuation Brochure, Grant Judgement on the First Evacuation Brochure, Include Unverified Parts of the Evacuation Plan as Part of Any New Hearings and Allow New Evidence and Testimony to be Presented on Synergism and Evacuation Contentions" ("Motion").^{1/} For the reasons set forth below, the NRC Staff ("Staff") opposes Joint Intervenors' Motion and recommends that it be denied, except insofar as it relates to the admissibility of evidence concerning the adequacy of Applicant's emergency information brochure; with respect

1/ Joint Intervenors' Motion was filed in accordance with the representations made during the telephone conference call held among the parties and Licensing Board members on September 28, 1982. See Letter from Sherwin E. Turk to the Licensing Board, dated September 29, 1982.

On September 29, 1982, Joint Intervenors filed two other pleadings concerning discovery matters: "Request for the Production and Copying of Documents" and "Motion to Dismiss for Failure to Make Discovery." Responses thereto are scheduled to be filed by October 6, 1982, pursuant to a further conference call held among the parties and the Licensing Board Chairman on October 1, 1982.

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to the latter, the Staff suggests that a ruling should be deferred for the present time, as more fully set forth herein.

BACKGROUND

On May 12, 1982, evidentiary hearings on Joint Intervenors' Contention 8/9 (synergism) and Contention 17/26 (emergency planning) were concluded, and proposed findings were filed by all parties by July 26, 1982. On July 19, 1982, Applicant mailed to the Joint Intervenors and Licensing Board its proposed emergency information brochure.^{2/} By Order dated August 17, 1982, the Licensing Board reopened the record, ordered the parties and FEMA to submit their comments concerning the adequacy of the brochure, and indicated that following its receipt of the parties' comments, it "will determine whether the record has been reopened only to admit into evidence as exhibits the brochure and the comments or, in addition, whether cross-examination will be necessary."^{3/} Pursuant to the Licensing Board's Order, comments were filed by the Staff and FEMA

^{2/} See Letter from Bruce W. Churchill, Esq., to Gary Groesch, dated July 19, 1982. Also enclosed with that letter was "Revision 4" of the Waterford Unit 3 on-site emergency plan; both the proposed brochure and Revision 4 to the on-site plan had been submitted to the NRC Staff for review shortly prior to their being mailed to the Licensing Board and Joint Intervenors.

^{3/} "Memorandum and Order (Reopening the Record - Requesting Submissions" ("Order"), dated August 17, 1982, at 4.

on September 1, 1982,^{4/} by the Joint Intervenors on September 15, 1982,^{5/} and by the Applicant on September 23, 1982.^{6/}

On September 23, 1982, Mr. Churchill, Counsel for Applicant, requested that a telephone conference call be held to discuss the hearing schedule proposed by the Applicant in its filing of that date.^{7/} Following discussions among the parties and Licensing Board members, that conference call was scheduled to be held on September 29, 1982. One day prior thereto, on September 28, 1982, the Licensing Board Chairman placed a telephone conference call to the parties in which he informed them that the Joint Intervenors sought to defer the conference call scheduled for the next day until after they had filed certain pleadings then in preparation.^{8/}

4/ See Letter from Geary S. Mizuno, Esq., to the Licensing Board, dated September 1, 1982, enclosing the "Affidavit of Donald J. Perrotti on Public Information Brochure," dated September 1, 1982, and the unexecuted "Affidavit of John W. Benton and Albert L. Lookabaugh Concerning the Emergency Information Brochure"; an executed copy of the latter will be forwarded shortly.

5/ See Letter from Gary L. Groesch to the Licensing Board, dated September 15, 1982, enclosing the "Affidavit of Earl L. Duncan Concerning the Emergency Information Brochure," "Affidavit of Peter Winograd Concerning the Emergency Information Brochure," and "Affidavit of Sharon Duplessis."

6/ "Applicant's Response to Comments of Parties on Emergency Public Information Brochure," dated September 23, 1982.

7/ See Letter from Bruce W. Churchill, Esq., to Sheldon J. Wolfe, Esq., dated September 23, 1982.

8/ See Letter from Sherwin E. Turk, Esq., to the Licensing Board, dated September 29, 1982.

The parties and Licensing Board members agreed to defer the scheduled conference call until after the Joint Intervenors had filed their pleadings and the parties had filed written responses thereto, which were agreed to be filed on an expedited basis.^{9/} On September 29, 1982, the Joint Intervenors filed the motion which they had mentioned in the conference call of September 28, 1982, as well as two additional motions concerning discovery matters.^{10/}

DISCUSSION

A. Motion to Disallow the Introduction of a Second Brochure

In their Motion, the Joint Intervenors assert that the Applicant's announced intention to revise its emergency information brochure, to take into consideration the comment^r submitted by the parties and FEMA, will result in a "second" brochure being filed "two months untimely to the Board Order of August 17" (Motion, at 2), and they argue that the Applicant should be prohibited from filing such a "second" brochure.

The Staff believes this argument is meritless and should be rejected. The Applicant timely complied with the Licensing Board's Order directing it to file its proposed emergency information brochure as a numbered exhibit in this proceeding.^{11/} That brochure, even then, was only in draft form, having been submitted shortly prior thereto for review by the Staff and FEMA. Joint Intervenors apparently would seek to preclude the Applicant

^{9/} Id.

^{10/} See n. 1, supra.

^{11/} See Order, at 3.

from revising its draft brochure--and thereby preclude the Applicant from incorporating therein any of the modifications suggested or required by the Staff and FEMA. Such a result would directly conflict with the Commission's function of regulating nuclear power reactor operation, pursuant to which operating license applicants are required to modify their applications and proposed procedures in accordance with Commission requirements. See, e.g., 10 CFR §§ 50.47 and 50.50. Further, inasmuch as the Applicant has indicated that its revised brochure will take account of Joint Intervenors' comments, as well, the action urged by the Joint Intervenors appears to be self-defeating. For these reasons, the Staff opposes this aspect of Joint Intervenors' Motion.

B. Motion for Summary Judgement on the First Brochure

The Joint Intervenors further urge that summary judgement be granted against the Applicant, "excluding LP&L's first evacuation brochure from the evidence and a judgement that LP&L's evacuation plan is inadequate and insufficient as a matter of law" (Motion, at 5). In support thereof, the Joint Intervenors rely upon the affidavits which they submitted on September 15, 1982. ^{12/}

^{12/} Joint Intervenors also appear to contend that the first brochure should be excluded from evidence on the grounds that it is "without a proper sponsor or proper predicate being laid" (Motion, at 2). The Staff believes that these arguments are premature, and should properly be raised only upon the introduction of evidence at any reopened evidentiary hearings--although we recognize that these arguments would be timely now if they had been raised in connection with a motion seeking to defer any Licensing Board ruling on the adequacy of the brochure without holding reopened evidentiary hearings; no such motion was filed by the Joint Intervenors.

The success of this motion logically depends upon the success of Joint Intervenors' attempt to preclude the submittal of a revised brochure, discussed supra. Thus, if the Applicant is permitted to submit a revised brochure, as we believe is appropriate, then summary disposition on the first brochure would be premature and may well have a result different than that which would be reached upon a review of any revised brochure. As indicated above, the Staff believes that the Licensing Board should permit the Applicant to revise its draft brochure, consistent with the Commission's established procedures for regulation.^{13/} Accordingly, for the reasons set forth above, summary disposition on the initial brochure is inappropriate and should be denied.

C. Motion to Reopen Hearings on Other Matters

The Joint Intervenors contend that if hearings are reopened to consider the emergency information brochure, further hearings should also be held to consider numerous other matters relating to emergency planning and synergism. The Staff believes that these matters do not warrant a reopening of the record (except as they relate to the Applicant's emergency information brochure), for the following reasons.

1. Evidence Previously Withdrawn or Excluded from the Record

Among the matters which Joint Intervenors seek to introduce into any reopened hearings are "the sworn testimony of Samuel Epstein and Exhibits, and Joint Intervenors' Exhibits previously excluded from evidence by ruling

^{13/} Even if the Licensing Board bars the submittal of a revised brochure, it should afford the parties an opportunity to submit affidavits in response to the motion for summary disposition, which has not been possible in the brief time permitted for the filing of Staff and Applicant's responses.

of this Board" (Motion, at 2). The Licensing Board is well aware of the facts surrounding Joint Intervenors' withdrawal of proposed exhibits upon stipulation, and of the Board's own rulings concerning the admissibility of evidence. Similarly, the Licensing Board is aware of Joint Intervenors' repeated attempts seeking to negate their stipulation and the Board's decisions. The Joint Intervenors have provided no further facts in support of their motion concerning these matters, and the Staff believes that this aspect of the Motion is meritless and no further response thereto is required.

2. Further Developments Concerning Synergism

Joint Intervenors further move that in the event the record is reopened to admit into evidence the Applicant's revised emergency information brochure, the record should also be reopened to enable the Joint Intervenors to present further testimony on synergism, "including, inter alia," the following:

further developments concerning research relevant to synergism including but not limited to additional evidence concerning the introduction of even more carcinogens into the south Louisiana environment. This includes (1) an Exxon study done at a Baton Rouge refinery that shows high infant mortality among workers and (2) the release of previously secret documents from a federal lawsuit outlining extremely high levels of carcinogenic, mutagenic, and teratogenic compounds in the Petro Processor facility near Baton Rouge. This facility has been called "another Love Canal" by the State Attorney General William Guste.

(Motion, at 2-3).

While it is difficult to assess the significance of these matters in the absence of further information, the Staff believes that the Joint Intervenors have failed to satisfy the legal requirements applicable to requests to reopen the record. Pursuant to the Appeal Board's decision

in Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit No. 1), ALAB-462, 7 NRC 320, 338 (1978), "the proponent of a motion to reopen the record has a heavy burden." The movant must demonstrate (1) that the motion is timely; (2) that the motion is directed to a significant safety or environmental issue; and (3) that a different result would have been reached initially had the material submitted in support of the motion been considered.

Here, no information has been provided as to when the Joint Intervenors became aware of these additional matters or why they did not raise them sooner. Further, no information has been provided as to the significance of these matters as they relate to the Waterford application, nor has any information been provided which would suggest that a different result might be reached in this proceeding if these additional matters were to be considered. For these reasons, the Staff submits that the Joint Intervenors have failed to demonstrate satisfactorily that the record should be reopened to consider these matters, and their motion concerning these matters should be denied.

3. Additional Matters Concerning Emergency Planning

The Joint Intervenors request further that hearings should be held to consider other matters concerning emergency planning, namely "all documents and plans which have not been verified" (Motion, at 5-6). The Joint Intervenors describe these "documents and plans" as the documents "which have not been furnished by LP&L" and which "constitute the heart of the evacuation plan," including the following:

- (1) The siren warning system
- (2) Agreements with surrounding parishes for buses
- (3) All standard operating procedures
- (4) All evacuation evaluation procedures

(Id., at 5).

It is not altogether clear as to which documents the Joint Intervenors are concerned. However, it appears that they seek to urge the Licensing Board not to issue a decision which employs predictive findings as to whether "reasonable assurance" exists concerning the adequacy of Applicant's emergency preparedness, but rather, that the Licensing Board must have all the facts in hand prior to issuing a decision.

This issue has previously been raised before the Licensing Board in the oral arguments held on May 12, 1982, as well as in the proposed findings and conclusions of law which were submitted by the parties. The Staff's position in this regard remains as stated previously,^{14/} and while it is unclear what documents are referred to by Joint Intervenors (or whether such documents, in fact, exist), we believe that predictive findings may be made and that the record need not be reopened. Further, the Joint Intervenors have altogether failed to identify or describe these documents or their significance and, accordingly, they have failed to satisfy the legal requirements applicable to a reopening of the record as set forth in the Wolf Creek decision, supra. For these reasons, the Staff opposes this aspect of the Motion.

4. Matters Concerning Applicant's Brochure

To the extent that Joint Intervenors seek to reopen the record to admit evidence as to the adequacy or inadequacy of Applicant's brochure, the Staff does not oppose their request--and, further, we note that the Licensing Board has already indicated its intention to reopen the record for that purpose.^{15/} At this time, however, the Staff believes it would be premature for the Licensing Board to rule upon the admissibility of

^{14/} See e.g., Tr. at 3948-62.

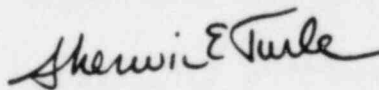
^{15/} Order, at 4.

evidence related to the brochure, in view of Applicant's stated intention to revise the brochure to take account of the parties and FEMA's comments. Thus, whatever may be the relevance of the Joint Intervenors' comments on the initial brochure submitted by the Applicant, those comments may have no relevance whatsoever to the revised brochure which the Applicant now intends to file. Accordingly, the Staff suggests that a ruling on the admissibility of the parties' comments be withheld until after the revised brochure has been submitted and the parties have had an opportunity to review and formulate comments upon that revised brochure.^{16/}

CONCLUSION

For the reasons set forth above, the Staff opposes each of the requests contained in Joint Intervenors' Motion, except insofar as they relate to the admissibility of evidence concerning the adequacy of Applicant's emergency information brochure. Further, with respect to the latter, the Staff suggests that any ruling on the admissibility of evidence be deferred until after the parties have received the revised brochure and have had an opportunity to review and comment upon the adequacy of that document.

Respectfully submitted,



Sherwin E. Turk
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 4th day of October, 1982

^{16/} Similarly, further hearings may prove to be unnecessary if the revised brochure gives appropriate consideration to the parties and FEMA's comments, and provides the Licensing Board with the basis it seeks upon which to issue a decision as to the adequacy of the brochure.

