

The consequences flowing to Applicant from these portions of the Order are potentially severe. Because the record does not support or justify the imposition of such consequences, Applicant believes that they may have been unintended, and that the Licensing Board's Partial Initial Decision can be easily clarified by minor modifications.

Section 2.762 of the Commission's Rules of Practice, 10 CFR § 2.762, as cited by the Licensing Board at pages 71-72 of the Partial Initial Decision, requires that exceptions must be filed with the Atomic Safety and Licensing Appeal Board within ten days after service of the Decision. Consequently, Applicant is concurrently filing with the Appeal Board exceptions with respect to the matters raised in this motion. However, the Appeal Board has held that in certain cases it may be more appropriate to first bring the matter to the attention of the Licensing Board for relief. Power Authority of the State of New York, et al. (James A. FitzPatrick Nuclear Power Plant, Unit 1), ALAB-169, 6 A.E.C. 1157, 1158, n.2 (1973). We are therefore requesting the Appeal Board to toll the time for filing the brief in support of the exceptions pending the Licensing Board's ruling on this motion.

I. TIME FOR SATISFYING CONDITIONS IMPOSED BY THE LICENSING BOARD

The Order, at page 71 of the Partial Initial Decision, specifies that four conditions related to the offsite emergency plans "shall be met prior to issuance of an operating license." Since fuel cannot be loaded, and low power testing cannot be accomplished, prior to the issuance of an operating license, the effect of the condition, interpreted literally, is to prevent fuel loading and low power testing prior to satisfaction of all four conditions. This consequence is, we believe, an inadvertent accident of the wording of the Order, and contrary to a recent amendment of the Commission's regulations at 10 CFR § 50.47(d).

Section 50.47(d), added effective as of July 13, 1982, 47 Fed. Reg. 30232 (July 13, 1982), specifies that:

... no NRC or FEMA review, findings, or determinations concerning the state of offsite emergency preparedness or the adequacy of and capability to implement State and local offsite emergency plans are required prior to issuance of an operating license authorizing only fuel loading and/or low power operations (up to 5% of the rated power).^{1/} (emphasis added.)

All four of the conditions imposed by the Order relate exclusively to the State and Parish offsite emergency

^{1/} This provision does not apply to onsite emergency preparedness.

plans. Accordingly, Applicant requests that the first sentence of the Licensing Board's Order be modified to read as follows, the proposed change being indicated by the underlining:

In the event that Joint Interveners' contention 17/26(1)(a) is resolved in favor of plant operation, the following conditions shall be met prior to issuance of an operating license authorizing operations of greater than 5% of the rated power.^{2/}

II. LICENSING BOARD CONDITION 2

Condition 2 of the Licensing Board's Order states:

(2) Letters of agreement with the support parishes for vehicles and drivers necessary to implement the evacuation plans shall be completed and submitted to the NRC Staff. (underlining added).

Applicant does not take issue with the general intent of the condition. In fact, Applicant itself proposed a similar condition in its Proposed Findings of Fact and Conclusions of Law.^{3/} Applicant's concerns are with the underlined words of

^{2/} This change is likely to have practical significance to Applicant because of a recent amendment to the Commission's immediate effectiveness rule at 10 CFR § 2.764 which provides, in effect, that an operating license will be issued immediately upon issuance of an initial decision, but that the license will be conditioned to authorize only fuel loading and low power operations until completion of the Commission's review pursuant to section 2.764(f)(2).

^{3/} Applicant, in consideration of the record in this proceeding, proposed that issuance of the full power operating license be conditioned, inter alia, as follows:

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the condition as stated above, which, in fact, may render the condition impossible to be fulfilled.

The first concern is that the letters of agreement are to be with the support parishes. The local governments in southeastern Louisiana are structured such that agreements for transportation resources may have to be reached with entities other than the parish itself. In some cases, for example, a letter of agreement for the supply of school buses would be with the school board or the school district within the support parish. Thus, Applicant requests that the condition not be restricted to letters of agreement with the support parishes.

Applicant's second concern with Condition 2, as stated by the Licensing Board, involves the requirement that letters of agreement be provided for drivers as well as for the vehicles. Such agreements for drivers are not required by NRC or FEMA regulations, are not necessary, and, as a legal or practical matter, may be impossible to obtain.

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3. Signed letters of agreement shall be provided to the Staff for the supply of support parish buses and ambulances for the evacuation from the plume EPZ of school children, persons without transportation, the aged and handicapped, and persons in nursing homes and hospitals.

Applicant's Proposed Findings of Fact, Conclusions of Law, and Brief in the Form of a Proposed Initial Decision, at 126-7, June 11, 1982. The NRC Staff proposed a similar condition. NRC Staff's Proposed Findings of Fact, Conclusions of Law and Form of Order, at 30, July 15, 1982.

A. Agreements for Drivers Are Not Required by Applicable Regulations

The Commission's requirements with respect to offsite emergency plans are found in 10 C.F.R. § 50.47 and Appendix E. Equivalent requirements are found in section 350.5 of FEMA's proposed regulations, 44 C.F.R. Part 350, 47 Fed. Reg. 36386 (August 19, 1982). Both the NRC and FEMA requirements are supplemented with the more specific criteria set out in "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants, NUREG-0654/FEMA-REP-1, Rev. 1, November 1980 ("NUREG-0654"), which was developed jointly by NRC and FEMA. Neither the NRC regulations nor the FEMA proposed regulations, including NUREG-0654, requires letters of agreement for the availability of drivers. Moreover, Applicant knows of no other licensing board decision which has imposed such a requirement, no operating license which is conditioned with such a requirement, and no instance where NRC or FEMA has imposed such a requirement.

Section 50.47(a)(2) of 10 C.F.R. Part 50 provides that the NRC's findings on the adequacy of State and local (offsite) emergency plans and their capability of being implemented will be based on the findings and determinations of FEMA. As the Licensing Board noted at page 36 of the Partial Initial Decision, the FEMA findings are presumed to be

correct.^{4/} In this proceeding, the FEMA witnesses testified that the evacuation plans were adequate, subject to the existence of letters of agreement for providing necessary vehicles. FEMA testimony of John W. Benton and Albert L. Lookabaugh Regarding Emergency Planning (Contention 17/26), ff. Tr. 2864; Tr. 2870-73. FEMA did not condition its findings of adequacy on a requirement for letters of agreement for the provision of drivers or any other personnel. No party provided testimony rebutting this presumption of adequacy. As discussed in Section D, the record does not support the need for such a condition; indeed, as discussed in Section B below, nothing in the evidentiary record or the pleadings even addresses the subject of such letters of agreement for drivers.

B. The Need for Letters of Agreements for Drivers Was Not Raised in This Proceeding

The subject matter of this operating license proceeding consists solely of the matters which have been placed into controversy by the Joint Intervenors. See Partial Initial Decision at 1-2. The question of letters of agreement for the availability of vehicles for evacuation purposes arose, as a result of the testimony by FEMA witnesses, within the context

^{4/} 10 CFR § 50.47(a)(2) provides that, "In any NRC licensing proceeding, a FEMA finding will constitute a rebuttable presumption on questions of adequacy and implementation capability."

of Joint Intervenors' Contention 17/26(1)(f) which alleged that:

Applicant has failed to adequately make provision, according to the Emergency Plan contained in Chapter 13.3 of the FSAR, for evacuation of individuals located within the 10-mile plume exposure pathway emergency planning zone for the Waterford 3 site in the event of a serious reactor incident, as required by applicable NRC regulations, in that:

- (f) procedures are inadequate for evacuating people who are:
 - (i) without vehicles;
 - (ii) school children;
 - (iii) aged or crippled;
 - (iv) sick and hospitalized;
 - (v) imprisoned;
 - (vi) transient workers.

At no time during the course of the prehearing activities, the hearing, or the post-hearing pleadings did Joint Intervenors allege the need for letters of agreement with respect to drivers of evacuation vehicles, or did they even raise the subject. Further, during the course of prehearing discovery, when Applicant propounded interrogatories to Joint Intervenors to elicit their specific allegations of inadequacy of the evacuation procedures within the scope of Contention 17/26(1)(f), Joint Intervenors gave no indication of concern about the availability of any personnel, let alone an allegation that letters of agreement would be required.

Because of the FEMA testimony, filed shortly before the hearing commenced, the availability of buses and other

vehicles, and the need for letters of agreement to assure the availability of such vehicles, was extensively litigated. However, at no time during the hearing did any party allege the need for, or even mention, letters of agreement for drivers. In the proposed findings and conclusions filed at the conclusion of the hearing by Applicant and the NRC Staff (which embraced the FEMA positions), both parties proposed a condition requiring letters of agreement for the availability of vehicles; consistent with the hearing record, neither Applicant nor the NRC Staff proposed a condition for letters of agreement for drivers. Joint Intervenors' proposed findings and conclusions neither asserted that such a requirement be imposed, nor proposed such a condition.

Thus, with the issuance of the Partial Initial Decision, Applicant learned for the first time that such a requirement was even being considered. Because Applicant had no notice of such an issue, it had no opportunity to address the issue in prehearing motions (e.g., motion for summary disposition), at the hearing itself, or in post-hearing pleadings. The need for letters of agreement for drivers not having been raised in these proceedings, it is both inappropriate and severely prejudicial to Applicant to now impose such a condition.

C. Condition 2 May Be Impossible to Fulfill

It is unlikely that a support parish or other governmental organization would have the authority to execute letters of agreement which bind individual drivers, whether they are employees or individual contractors, to act in accordance with the Licensing Board's Condition 2. Even if such authority were to exist, Applicant has no indication that such support parishes or other organizations would be willing to do so. Thus, this unexpected condition may well be impossible to meet, resulting in extreme prejudice and disadvantage to Applicant.

D. The Record Does Not Support the Need for Condition 2

Although the topic of written letters of agreement for the availability of bus drivers was not raised at the hearing, Joint Intervenors conducted cross-examination on the question of whether bus drivers from support parishes would be willing to drive their buses into the EPZ within the two risk parishes. The record clearly shows that the bus drivers will be given special training, but, if in spite of the training they elect not to drive into the EPZ, the buses would be driven by support parish or risk parish emergency workers. Tr. 2509-10, 2558-63, 2567-8, 2619-20, 2992-3001. No party provided evidence to the contrary.

Accordingly, for all of the foregoing reasons, Applicant requests that the Licensing Board reconsider or clarify the intent of Condition 2 of its Order. Applicant would suggest that if Condition 2 were to be reworded as follows, Applicant's concerns would be allayed and the Licensing Board's basic intent would be preserved:

(2) Letters of agreement for vehicles from support parishes necessary to implement the evacuation plans shall be completed and submitted to the NRC Staff.

III. CONCLUSION

In light of the foregoing discussions, Applicant respectfully requests that the Licensing Board reconsider or clarify the introduction and Condition 2 of the Order at page 71 of the November 3, 1982 Partial Initial Decision as suggested by Applicant in Sections I and II above.^{5/} Such modifications would eliminate the potential for severe and

^{5/} Changes to the Order might also involve minor changes at pages 22 and 56 of the Partial Initial Decision.

unnecessary consequences which, Applicant believes, were not intended by the Licensing Board.

Respectfully submitted,

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Dated: November 12, 1982

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))

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