

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 TO RECONSIDER AND REOPEN

On June 15, 1982, the Joint Intervenors filed their "Motion to Reconsider Atomic Safety and Licensing Board Order of September 13 [sic], 1979 and Ruling of May 12, 1982, to Reopen Operating License Hearings and/or Hold New Operating License Hearings" ("Motion"). In their Motion, the Joint Intervenors request that the Licensing Board reconsider its ruling of September 12, 1979, which had excluded from litigation their proposed Contentions 10, 11, 13 and 14. In addition, the Joint Intervenors request that the Licensing Board reconsider its ruling of May 12, 1982, which had denied their motion to hold open the record to consider the health effects of nuclear waste (see Tr. 3930-39 and 3976-78). Finally, the Joint Intervenors request that seven new contentions be admitted for litigation in this proceeding, based upon the Court of Appeals' decision in Natural Resources Defense Council, Inc. v. NRC, Civ. Action No. 74-1586 (D.C. Cir., April 27, 1982).

For the reasons set forth below, the NRC Staff ("Staff") opposes

Joint Intervenors' Motion and recommends that it be denied.^{1/}

A. The Admissibility of Contentions 10, 11, 13 and 14.

The Licensing Board's Order of September 12, 1979, held that Contentions 10, 11, 13 and 14 were inadmissible on the grounds that (1) they raised a subject which is being addressed by the Commission's ongoing "waste confidence" generic rulemaking proceeding (Order at 3-4),^{2/} and (2) they raised an issue (the possible future need to enlarge the facility's spent fuel pool) which was beyond the scope of the pending license application and was outside the Licensing Board's jurisdiction (id., at 4-5). These rulings were entirely correct when made and continue to be valid at this time; the Joint Intervenors have not demonstrated any reason why reconsideration as to the admissibility of these contentions is now appropriate. Accordingly, the Staff opposes the admission of proposed Contentions 10, 11, 13 and 14.

B. The Admissibility of Contentions 30-36.

On May 12, 1982, the Joint Intervenors orally requested that the record be allowed to remain open to permit litigation of the health effects of nuclear waste, based upon the Court of Appeals' decision in NRDC v. NRC, supra. In denying the Joint Intervenors' request, the Licensing Board observed that the Joint Intervenors had been unable to

^{1/} This response is filed pursuant to the extension of time granted by the Licensing Board in its Order of July 19, 1982.

^{2/} "Notice of Proposed Rulemaking on Storage and Disposal of Nuclear Waste," 44 Fed. Reg. 61,372 (Oct. 25, 1979).

explain the holding and significance of the decision in NRDC v. NRC (Tr. 3939), but noted that the Licensing Board might be receptive to a motion to reopen once counsel for Joint Intervenors had read that decision and could advise the Board as to its significance (id.).

The Joint Intervenors' Motion responds to the Licensing Board's comments, and raises seven new contentions concerning the health effects and uncertainties associated with the disposal of high level waste. Those contentions again raise an issue which is the subject of the Commission's waste confidence generic rulemaking proceeding, which the Commission has specifically directed should not be litigated in individual license proceedings. 44 Fed. Reg. 61,372. See generally, Potomac Electric Power Co. (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79, 85 (1974). In addition, the contentions seek to raise Table S-3 issues in reliance upon NRDC v. NRC, which the Commission has now directed should not be litigated:

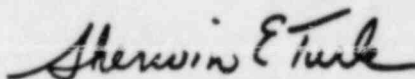
[T]he Commission directs its Licensing and Appeal Boards to proceed in continued reliance on the Final S-3 rule until further order from the Commission, provided that any license authorizations or other decisions issued in reliance on the rule are conditioned on the final outcome of the judicial proceedings.

Statement of Policy, "Licensing and Regulatory Policy and Procedures for Environmental Protection; Uranium Fuel Cycle Impacts," 47 Fed. Reg. 50,591, 50,593 (Nov. 8, 1982). Accordingly, litigation of these contentions should not be permitted at this time.

CONCLUSION

For the reasons set forth above, the Staff opposes the Joint
Intervenors' Motion and recommends that it be denied.

Respectfully submitted,

A handwritten signature in cursive script that reads "Sherwin E. Turk".

Sherwin E. Turk
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 16th day of November, 1982.

