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)	)	

APPLICANT'S OPPOSITION TO JOINT INTERVENORS' MOTION TO RECONSIDER AND REOPEN AND OPPOSITION TO LOUISIANA'S PETITION TO INTERVENE

Applicant submits this memorandum in opposition to Joint Intervenors' Motion to Reconsider and to Reopen dated June 12, 1982,[1/] and in opposition to the petition for intervention filed by the State of Louisiana on July 21, 1982. The Licensing Board deferred rulings on both pleadings pending issuance of the Commission's Statement of Policy on the effect of the Court of Appeals' decision invalidating 10 C.F.R. Part 51, Table S-3, in Natural Resources Defense Council, Inc. v. NRC, 685 F.2d 459 (D.C. Cir. 1982) (hereinafter "NRDC v. NRC"). The Commission has now issued its Statement of Policy. 47 Fed. Reg. 50,591 (Nov. 8, 1982).

1/ "Joint Intervenors Motion To Reconsider Atomic Safety and Licensing Board Order of September 13, 1979 and Ruling of May 12, 1982, To Reopen Operating License Hearings and/or Hold New Operating License Hearings," dated June 12, 1982 (served June 15, 1982).

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For the reasons stated below, Applicant submits that Joint Intervenors' motion and the State's petition should both be denied.

I. PROCEDURAL BACKGROUND

On April 27, 1982, the Court of Appeals issued its decision in NRDC v. NRC holding invalid the Commission's Original, Interim and Final Table S-3 rules. The Court summarized the rationale for its holding as follows:

> For the foregoing reasons, we hold that the original, interim and final Table S-3 Rules are invalid due to their failure to allow for proper consideration of the uncertainties that underlie the assumption that solidified high-level and transuranic wastes will not affect the environment once they are sealed in a permanent repository. We also hold that the original Rule and the interim Rule, prior to its amendment, are invalid due to their failure to allow for proper consideration of the health, socioeconomic and cumulative effects of fuel-cycle activities.

685 F.2d at 494.

On May 12, 1982 -- the last day of the evidentiary hearing -- Joint Intervenors orally requested that the record be held open and that hearings be conducted on the issues raised by the NRDC v. NRC decision. The Licensing Board rejected Joint Intervenors' request (Tr. 3930-40).

Joint Intervenors' Motion To Reconsider and To Reopen was served on June 15, 1982. It is based upon NRDC v. NRC and seeks two somewhat different types of relief. First, it seeks reconsideration of the Board's Order of September 12, 1979, insofar

as it rejected Joint Intervenors' contentions 10, 11, 13 and 14. These contentions alleged, in essence, that no facilities for permanent disposal of spent fuel are available and that Applicant has therefore underestimated the amount of spent fuel that will have to be stored on-site, as well as the health effects resulting from such storage. Second, Joint Intervenors' motion requests admission of seven new contentions (Nos. 30-36) parroting the conclusions of NRDC v. NRC as to the inadequacies of Table S-3. Joint Intervenors request that the record be reopened and that hearings be held on these old and new contentions.

On June 30, 1982, Applicant filed a motion to extend its time to respond to Joint Intervenors' motion until 14 days after issuance of the Commission's Statement of Policy on NRDC v. NRC. Applicant's motion was granted by the Board's Order of July 19, 1982. The Statement of Policy having now been issued, Joint Intervenors' motion is ripe for decision.

The State's intervention petition was filed on July 21, 1982, and it sought participation in the proceeding with respect to the issues raised by NRDC v. NRC, and with respect to the adequacy of the Waterford 3 emergency feedwater system ("EFWS"). Applicant filed its response to the State's petition on August 9, 1982, pointing out, among other things, that the Commission had not yet issued its Statement of Policy on NRDC v. NRC. Applicant's Response at 6 n.5. On September 10, 1982, the Licensing Board issued a Memorandum and Order denying the

State's petition as untimely insofar as it sought to raise EFWS issues. The Board deferred ruling on the petition with respect to the Table S-3 matters, pending issuance of the Statement of Policy. This portion of the State's petition is also ripe for decision now.

II. JOINT INTERVENORS' MOTION SHOULD BE DENIED

Joint Intervenors' new contentions (Nos. 30-36) all address matters covered by Table S-3, and they are all phrased in terms of the inadequacies that NRDC v. NRC found in Table S-3. Thus it is plain that in the absence of NRDC v. NRC, these contentions would constitute a challenge to the Commission's regulations that is impermissible under 10 C.F.R. § 2.758. The Commission's Statement of Policy deals directly with this situation. It points out that the Court of Appeals has stayed its mandate in NRDC v. NRC and that the case is on appeal to the Supreme Court. 47 Fed. Reg. at 50,593. The Statement of Policy therefore provides:

> Accordingly, the 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.

Id.

Such policy statements by the Commission are binding upon Licensing Boards and must be followed. Northern States Power Co.

(Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-455, 7 N.R.C. 41, 51 (1978); Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-440, 50-441, Memorandum and Order of Aug. 30, 1982 (policy statement on psychological distress contentions). See also Consolidated Edison Co. of New York (Indian Point, Unit 2), CLI-82-15, slip op. at 11 (July 27, 1982) (Commission has inherent authority to provide guidance on admissibility of contentions). Since the Licensing Board here is bound to proceed in continued reliance upon Table S-3, it must reject Joint Intervenors' new contentions challenging Table S-3.

Joint Intervenors' motion to reconsider the dismissal of contentions 10, 11, 13 and 14 presents a somewhat different issue that is not directly related to Table S-3 or NRDC v. NRC. The Licensing Board's Order of September 12, 1979 rejected these contentions for two reasons. First, insofar as the contentions address the lack of facilities for permanent off-site disposal of spent fuel and high-level waste, they were rejected because they are the subject of the Commission's ongoing "waste confidence" generic rulemaking proceeding. See 44 Fed. Reg. 61,372 (1979). Order, at 4. As the Board pointed out, contentions that are the subject of a general rulemaking should not be accepted in individual licensing cases. Potomac Electric Power Co. (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 A.E.C. 79, 85 (1974). Second, with respect to the capacity and possible need for enlargement of the on-site

spent fuel storage pool, the Board ruled that it had authority only to consider the existing application, which proposed a spent fuel pool with a storage capacity sufficient for approximately 15 years of operation. Order, at 4. The Board also pointed out, however, that any subsequent request to enlarge the spent fuel pool would be the subject of a separate licensing action. Id., at 5.

Nothing has changed since September 12, 1979 that would in any way warrant reconsideration of the Board's Order rejecting contentions 10, 11, 13 and 14. The "waste confidence" proceeding is still going forward, and the Court of Appeals has recently reaffirmed its approval of the Commission's decision to handle this matter in a generic rulemaking. Potomac Alliance v. NRC, 682 F.2d 1030 (D.C. Cir. 1982). Moreover, the Commission's Statement of Policy also discusses the "waste confidence" proceeding and directs that "power reactor licensing may continue" during the pendency of this generic rulemaking. 47 Fed. Reg. at 50,592. Similarly, there has been on change in the proposed design of the Waterford 3 spent fuel pool; it still has the same capacity that was the basis for the Board's 1979 ruling. See FSAR § 9.1.2.1.

In sum, Joint Intervenors' new contentions are an impermissible attack on Table S-3, and no good cause has been shown to reconsider the dismissal of contentions 10, 11, 13 and 14. Accordingly, their motion should be denied.[2/]

2/ An alternate basis for denying the motion would be its untimeliness. In Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), Docket Nos. 50-416/417, the State of

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III. THE STATE'S PETITION SHOULD BE DENIED

The State's petition has already been denied except insofar as it raises issues based on the invalidation of Table S-3 by NRDC v. NRC. Those remaining issues are subject to the same analysis set forth above in connection with Joint Intervenors' motion. The Commission's Statement of Policy requires that Table S-3 be treated as still in full force and effect. The matters that the State seeks to litigate are covered by Table S-3, and its petition is therefore an impermissible challenge to the Commission's regulations. 10 C.F.R. § 2.758. The petition should therefore be denied.3/

IV. CONCLUSION

For all the reasons stated above, Joint Intervenors' Motion To Reconsider and Reopen and the State of Louisiana's

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(Continued)
Louisiana sought to intervene after issuance of a low-power operating license in order to raise issues based on NRDC v. NRC. On October 20, 1982 -- before the Statement of Policy -- the Licensing Board issued a Memorandum and Order denying the State's petition as untimely. A similar analysis could be applied to Joint Intervenors' motion here. In addition, Joint Intervenors have made no attempt to explain why they waited almost three years -- until after the close of the evidentiary hearing -- before seeking reconsideration of the ruling on contentions 10, 11, 13 and 14.

3/ The State's petition could also be denied as untimely. See n.2. supra.

intervention petition should be denied.

Respectfully submitted,

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Dated: November 12, 1982.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing APPLICANT'S OPPOSITION TO JOINT INTERVENORS' MOTION TO RECONSIDER AND REOPEN AND OPPOSITION TO LOUISIANA'S PETITION TO INTERVENE was served this 12th day of November, 1982, by hand delivery to those persons on the attached Service List designated by an asterisk (*) preceding their names; and by deposit in the United States mail, postage prepaid, addressed to each other person on the attached Service List.

James B. Hamlin

Dated: November 12, 1982.

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