

12/2/82

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 APPLICANT'S
MOTION FOR RECONSIDERATION OR CLARIFICATION

On November 12, 1982, the Applicant filed its "Motion for Reconsideration or Clarification" ("Motion"), in which it requests that the Licensing Board reconsider and/or clarify certain aspects of the Partial Initial Decision ("PID") issued on November 3, 1982. For the reasons set forth below, the NRC Staff ("Staff") supports the Applicant's Motion and recommends that it be granted.

DISCUSSION

A. Satisfaction of Conditions Prior to Issuance of An Operating License.

The Applicant seeks clarification that the four conditions imposed by the Licensing Board must be satisfied prior to issuance only of "an operating license authorizing operations of greater than 5% of the rated power" (Motion, at 4; emphasis in original). The Applicant observes that the four conditions "relate exclusively to the State and Parish offsite emergency plans" (*id.*, at 3-4), and that a recent amendment to 10 C.F.R. § 50.47(d) specifically provides that offsite emergency

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preparedness need not be reviewed by the NRC or FEMA "prior to the issuance of an operating license authorizing only fuel loading and/or low power operations (up to 5% of the rated power)" (id., at 3).

The Applicant correctly characterizes 10 C.F.R. § 50.47(d), which eliminates any requirement that a review of offsite emergency preparedness be conducted prior to the issuance of a low power (up to 5%) or fuel load license -- although it requires that such licenses must be preceded by a finding "that the state of onsite emergency preparedness provides reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency"). Inasmuch as the four conditions imposed by the Licensing Board all relate to offsite emergency preparedness, satisfaction of those conditions should not be required prior to issuance of a fuel load or low power (up to 5%) license. Accordingly, the Staff supports the Applicant's request for clarification of this matter.

B. Letters of Agreement With Support Parishes for Vehicles and Drivers.

The Applicant seeks clarification and/or reconsideration of Condition 2 imposed by the Licensing Board (PID, at 71), to the extent that (1) letters of agreement are required to be entered into "with" the support parishes themselves, and (2) letters of agreement are required to be provided for drivers of evacuation vehicles (Motion, at 5). The Applicant observes that as a practical matter, letters of agreement may have to be entered into "with entities other than the parish itself," such as with a school board or school district within the support parish (id.). Further, the Applicant observes that there is no regulatory

requirement that letters of agreement for drivers be obtained, nor is there any evidence in the record which supports the imposition of such a requirement in this proceeding (id., at 5-10); finally, the Applicant asserts that the requirement that letters of agreement for drivers be obtained "may well be impossible to meet" (id., at 10).

1. Agreements With Support Parishes.

An examination of the record in this proceeding discloses scant factual basis for requiring that letters of agreement be entered into "with the support parishes" as distinguished from other entities within those parishes. During cross-examination, Mr. Madere (the Civil Defense Director for St. John the Baptist Parish) indicated that his Parish was talking "with support parishes" for the provision of vans (Tr. 2507), later clarifying that those discussions were with "the Civil Defense Directors in each one of those parishes" (Tr. 2508). Mr. Madere continued as follows (id.):

The Civil Defense Director has gone to individuals, such as Council on Aging, hospitals and everything else in that parish. . . .

If you want to know who is coordinating, and who will coordinate this in the support parishes, it will be the civil defense director of each parish.

Similarly, Mr. Madere testified that he would be able to provide written agreements "with" support parishes (Tr. 2517, 2519), alternatively asserting that those agreements would have the approval of the parish council members (Tr. 2517-18), or that "whoever or whatever is involved, when we are requesting what support from what resource from what Parish, it will be listed down and appropriate signatures will be on that

document" (Tr. 2518; emphasis added). He further testified that he "will have the number of buses we need and letters of agreement with the agencies from where those buses will come from" (Tr. 2563; emphasis added), and that he "will have letters of agreement with the support Parishes and agencies" (Tr. 3045; emphasis added). Similarly, Mr. Lucas (the Director of Emergency Preparedness for St. Charles Parish) stated that he has "verbal commitments from our surrounding support Parishes" for evacuation vehicles (Tr. 3046; emphasis added).

In addition, the Parish emergency plans indicate that letters of agreement will be entered into -- not just for vehicles, but for all purposes -- with support parishes, "transportation providers", support agencies, and support sheriff's departments (App. Ex. 3, at 217-18, 375). The Parish emergency plans further provide that the Transportation Officer in each risk Parish is responsible "to maintain agreements with transportation providers for the use of transportation vehicles in the event of an emergency" (id., at 101, 264), including "public school buses from St. James, Ascension, Lafourche, and Tangipohoa Parishes" (id., at 267). FEMA's interim findings provide this comment on the status of the parish emergency plans: "Need letters of agreement or understanding from non-governmental organizations being relied upon to provide resources" (Staff Ex. 5, at p. F-35; see id., at p. F-34).

This evidence, when read together, indicates that while letters of agreement for evacuation vehicles from support parishes are to be obtained, the entities with whom the agreements will be entered into have not been clearly specified. There is no evidence in the record which supports a requirement that letters of agreement be entered into directly with the support parishes, as distinguished from other legal entities

within those parishes.^{1/} In light of these facts, the Staff believes that the Licensing Board incorrectly specified that letters of agreement should be entered into directly "with" the support parishes. Accordingly, the Staff supports the Applicant's request for clarification and/or reconsideration of this matter.

2. Letters of Agreement for Drivers.

An examination of the record further discloses no evidentiary basis for requiring that letters of agreement be entered into for "drivers" of evacuation vehicles. Rather, as indicated by the Staff in its proposed findings,^{2/} the evidence indicates that drivers will be available:

Buses from the support parishes would be driven by their regular drivers to the extent they are willing to do so, as will be learned during training sessions to be conducted by the State. To the extent they are not willing to drive into the risk parishes, support parish emergency workers might drive, or support parish bus drivers will be asked to drive their buses to the plume EPZ boundary and risk Parish emergency workers will

^{1/} The Licensing Board states that FEMA's witnesses had testified that "the absence of letters of agreement with support parishes prevented a conclusion that the evacuation plans were adequate" (PID, at 56). In fact, FEMA had noted that letters of understanding were to be entered into "with certain transportation providers including bus companies" (FEMA testimony, fol. Tr. 2864, at 10), and that letters of agreement "with . . . ambulance services" were lacking (id., at 14, 15). FEMA's final conclusion was withheld subject to the provision of such letters of agreement, but FEMA did not testify that those letters of agreement must be entered into with the support parishes as distinguished from other entities within those parishes (see id., at 16).

^{2/} "NRC Staff's Proposed Findings of Fact, Conclusions of Law and Form of Order" ("Staff PFF"), filed July 15, 1982.

drive the buses from there. Tr. 2522, 2558-63, 2619-20 (Madere); Tr. 2567-68 (Perry).

Staff PFF at 19, ¶ 102. As indicated by Mr. Madere, agreements with the regular bus drivers are not necessary, since emergency workers would be able to replace those drivers (Tr. 2563).^{3/}

Further, FEMA's witnesses concluded that the emergency plans adequately provided for the evacuation of persons requiring transportation assistance, except for the lack of letters of agreement for evacuation vehicles (Tr. 2870-73; FEMA testimony fol. 2864, at 9-16).^{4/} Inasmuch as FEMA's determinations are to "constitute a rebuttable presumption on questions of adequacy and implementation capability"

^{3/} The Joint Intervenors mischaracterize Mr. Madere's testimony in their "Opposition to Applicant's Motion for Reconsideration and Clarification," filed on November 29, 1982, in claiming that Mr. Madere responded "yes" when asked if he would "require some type of commitment [sic] from these bus drivers to come into his parish" (*id.*, at [unnumbered] 3). In fact, Mr. Madere was asked a different question (Tr. 2561):

Q. And you're going to require some type of commitment from these people to come into your parish. I mean you're going to want to know if they're really going to come in there or not, aren't you?

A. Oh, yes, sir.

Mr. Madere further testified that each of the bus drivers will go through "training sessions," after which "we will know whether they're committed to coming into the area or not" (Tr. 2560); and he testified that agreements with drivers were unnecessary since emergency workers would replace any drivers who didn't want to drive into the risk parishes (Tr. 2560, 2563).

^{4/} In cross-examination of FEMA's witnesses, the cross-examiner occasionally used the term "resources" instead of vehicles. However, he was clearly referring to FEMA's written testimony, which had discussed the lack of agreements for vehicles, and nowhere included any indication that agreements for drivers were necessary. (See FEMA testimony, fol. 2864, at 9-16).

(10 C.F.R. § 50.47(a)) -- as has been recognized by the Licensing Board (PID, at 36) -- and in the absence of any evidence to the contrary,^{5/} FEMA's determination that letters of agreement are necessary only for evacuation vehicles should be presumed to be correct. Accordingly, the Staff supports the Applicant's request for clarification and/or reconsideration of this matter.

CONCLUSION

For the reasons set forth above, the Staff supports the Applicant's Motion and recommends that it be granted.

Respectfully submitted,

Sherwin E Turk

Sherwin E. Turk
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 2nd day of December, 1982.

^{5/} In their proposed findings, the Joint Intervenors relied upon Mr. Madere's testimony that there is "reasonable doubt" that a regular bus driver from a support parish would drive into the risk parish (Tr. 2619). See Joint Intervenors' untitled proposed findings on contention 17/26, filed June 21, 1982, at [unnumbered] 13, 21). The record reflects, however, that Mr. Madere considered such concern to be immaterial, explaining that "if a support bus driver does not want to come into St. John Parish, as long as the resource is available -- the school bus is available -- we will man that bus with St. John the Baptist emergency workers to drive that bus" (Tr. 2620).

