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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY  
PROTECTING & SERVICE  
BRANCH

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 ANSWER TO JOINT INTERVENORS' MOTION  
TO EXTEND THE TIME OF FILING DIRECT TESTIMONY  
AND TO RESCHEDULE THE HEARING ON THE EMERGENCY BROCHURE

By motion dated November 30, 1982 (without certificate of service), Joint Intervenors have requested that the schedules for filing direct testimony and commencing the hearing in this proceeding on the public information brochure be indefinitely postponed. For the reasons discussed below, Applicant opposes Joint Intervenors' motion.

The testimony and hearing schedules were established during a conference call with the Licensing Board and all parties on October 12, 1982, and memorialized in the Licensing Board's Memorandum and Order of October 18, 1982.<sup>1/</sup> All of the parties, including Joint Intervenors, had extensive input

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<sup>1/</sup> The hearing was not "tentatively" scheduled as stated by Joint Intervenors in their motion.

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into the discussions leading to the establishment of the schedules. Considerable concessions were granted to Joint Intervenors, including granting Joint Intervenors' request for 45 days between filing of the printer's proof of the brochure and filing of testimony, and scheduling the hearing much later than had been requested by Applicant. Applicant had requested the following schedule:

Applicant files brochure	-	October 29, 1982
All parties file testimony	-	November 12, 1982
Hearing begins	-	November 30, 1982

After hearing Joint Intervenors' arguments for more time, the Board established the following schedule:

Applicant files brochure	-	November 12, 1982
All parties file testimony	-	December 27, 1982
Hearing begins	-	January 11, 1983

Now, seven weeks after the schedule was set, Applicant has learned for the first time, without prior telephone call or other notice from Joint Intervenors, that Joint Intervenors desire to indefinitely postpone the hearing schedule which had already been significantly extended at their request.

The procedural context in which the motion was filed and the past conduct of Joint Intervenors is not unimportant. The operating license hearing was completed, and the record closed, on May 12, 1982. All post-hearing pleadings have been filed, and a partial initial decision encompassing most of the issues was issued on November 3, 1982. The Licensing Board, on its own motion, reopened the record by Memorandum and Order dated

August 17, 1982, for the limited purpose of considering the public information brochure.<sup>2/</sup> Thus, the forthcoming hearing involves a single, limited issue which has become the pacing item for the completion of the hearing process.

Applicant has been unsuccessful in its attempts to obtain cooperation from Joint Intervenors. Although not required by the Licensing Board, Applicant provided all parties, at the earliest possible time on October 22, 1982, with a draft of the text of the revised brochure, and solicited their comments. The NRC Staff and FEMA responded, but Joint Intervenors declined to comment. In addition, Applicant on several occasions has expressed a willingness to meet with Joint Intervenors to listen to their comments on the brochure and explore the possibilities of reaching agreement and avoiding the need for a hearing. Joint Intervenors informed Applicant that they were not interested in settlement discussions.

Applicant opposes Joint Intervenors' motion on a number of grounds, not the least of which is the curious untimeliness of the motion. The Joint Intervenors take a scatter-gun approach;

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<sup>2/</sup> The Licensing Board noted in its October 18, 1982 Memorandum and Order at page 10 that the hearing will concern only the "adequacy of Applicant's revised brochure" and will be limited to matters "that could not have been litigated at the earlier hearing because of the non-availability of the brochure."

their motion lists a number of reasons for postponing the hearing, but not once does it give any indication of why Joint Intervenors waited this long to come forward with their request. It is difficult to fathom how so many things could have happened at once with no opportunity to give earlier notice to the Licensing Board and the parties of any of them. A party seeking to postpone a hearing for its convenience should at least do so from a position of cooperativeness and good faith. Joint Intervenors' failure to justify the timeliness of their motion is alone grounds for denial of the motion, particularly in light of their unwillingness to contribute constructively to the development of an effective public information brochure.

Applicant's specific comments on each of Joint Intervenors' stated reasons for delaying the hearing are set forth below.

(1) Unavailability of Earl Duncan. Joint Intervenors' first ground for requesting the delay is the severe health problems of Mr. Earl Duncan. However, Joint Intervenors have not explained Mr. Duncan's intended role in the hearing. Joint Intervenors have not informed us of the specific "basic, fundamental flaws" which they allege to be in the revised brochure, let alone what Mr. Duncan would be testifying about. In a previous affidavit, commenting on the earlier brochure which was transmitted to the parties on August 19, much of Mr. Duncan's testimony was concerned with the adequacy of the Waterford 3 offsite emergency plans and other areas which have previously been litigated in this proceeding and are beyond the

purview of the upcoming hearing on the public information brochure. While Mr. Duncan has been identified as Joint Intervenor's "primary expert on evacuation," nothing has been said about his expertise for evaluating a public information brochure against the requirements of NRC and FEMA. Mr. Duncan's affidavit indicates that he has experience in troop movements under combat conditions, but it is not clear that his training and experience necessarily bear on the adequacy of public information brochures for civilians.

The above notwithstanding, the primary objection Applicant has to postponing testimony submittal and the hearing because of Mr. Duncan's illness is the open-endedness and uncertainty of his availability. Joint Intervenor's have stated that his illness may be serious, and offer no estimate of when he could resume participation. While the unavailability of a witness because of illness is unfortunate, the totality of the circumstances must be fairly balanced, including the legitimate interests of the other parties. The brochure is before the Licensing Board for its consideration. All parties will be free to make their arguments on the adequacy of the brochure, with or without witnesses. It is by no means clear at this juncture that Mr. Duncan's views on the brochure would carry significantly more weight than the arguments of counsel or other non-witness representatives of the parties.

(2) Unavailability of 1980 census data in book form.

Joint Intervenor's argue that the testimony filing and hearing

should be postponed because the 1980 census data dealing with the educational attainment of the populations of St. Charles and St. John the Baptist Parishes are not yet available in book form. Without commenting on the relevance of such data to the subject matter of the hearing, Applicant would simply note that Joint Intervenors have made no showing of why that data is necessary, how it would be used, and why this point could not have been raised much earlier with the Licensing Board and the parties. More importantly, Joint Intervenors have given no explanation of why the available 1970 census data could not be used. One could argue that, for almost any hearing on almost any issue, there will be additional information available at some time in the future. Hearings must proceed on the basis of information available, or the entire NRC licensing process would quickly grind to a halt. If, after the close of the hearing record, new information comes to light which could significantly alter the outcome of the hearing, parties are free to petition to reopen the record for good cause shown. In this case, such good cause would be unlikely to exist; it is not unreasonable to suppose that, consistent with the historic educational trends in this country, the 1980 census data will probably indicate a higher educational attainment level than existed in 1970. In the absence of a compelling reason why the available data would be inadequate, the unavailability of the 1980 census data in book form cannot be considered reasonable justification for delaying the scheduled hearing.



It should also be noted that Joint Intervenors provide no explanation or basis for assuming that the 1980 census data will in fact be available in book form in February as alleged. To the contrary, Joint Intervenors imply the uncertainty of its availability by using this argument as a reason for being unable to propose an alternative schedule for the hearing.

(3) Unavailability of Sharon Duplessis and Luke Fontana.

Joint Intervenors state simply that their expert, Sharon Duplessis, and attorney Luke Fontana will be unavailable at the time of the hearing. No explanations are given. Joint Intervenors have given no reasons why they will be unavailable, why their unavailability was not known until now, or why they would be necessary for the hearing.<sup>3/</sup> Nor did Joint Intervenors indicate that they had made any effort to make alternative arrangements. There is no indication of any good faith efforts -- or efforts of any kind -- to resolve the conflicts of the two individuals. Joint Intervenors have not even attempted to show good cause why the unavailability of these two individuals is grounds for postponing the hearing which has been scheduled -- with Joint Intervenors participating in the scheduling process -- since last October.

For all of the above reasons, Applicant respectfully submits that Joint Intervenors have not shown good cause for

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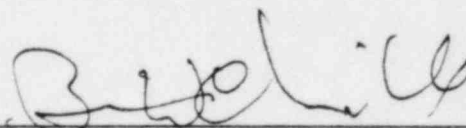
<sup>3/</sup> Ms. Duplessis is not identified as a witness, and Gary L. Groesch, rather than Mr. Fontana, has signed all of Joint Intervenors' filings since the close of the hearing in May, 1982.

the indefinite postponement of the scheduled hearing, and their motion of November 30, 1982, should be denied.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE  
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(202) 822-1000

By:



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Bruce W. Churchill  
Ernest L. Blake, Jr.

Counsel for Applicant

DATED: December 7, 1982.



12/7/82

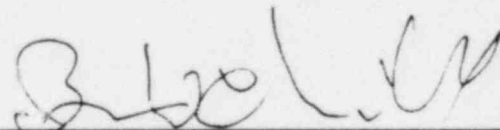
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing APPLICANT'S ANSWER TO JOINT INTERVENORS' MOTION TO EXTEND THE TIME OF FILING DIRECT TESTIMONY AND TO RESCHEDULE THE HEARING ON THE EMERGENCY BROCHURE was served this 7th day of December, 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.

  
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Bruce W. Churchill

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