

September 23, 1982

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
DOCKETING & 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 RESPONSE TO COMMENTS OF PARTIES
ON EMERGENCY PUBLIC INFORMATION BROCHURE

I. INTRODUCTION

By "Memorandum and Order (Reopening The Record -- Requesting Submissions)," dated August 17, 1982, the Board directed Applicant to serve copies of the Waterford 3 emergency public information brochure on the parties to this proceeding. The Board further directed the NRC Staff and FEMA, and the Joint Interveners, to file comments on the adequacy of the brochure no later than September 1 and September 15, respectively, with an opportunity for Applicant to reply to the comments of the other parties.

Applicant responds herein to the "Affidavit of Donald J. Perrotti On Public Information Brochure" and the "Affidavit of John W. Benton and Albert L. Lookabaugh Concerning The Emergency Information Brochure," filed by the Staff on

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September 1, as well as Joint Intervenors' "Clarification of Board Order and Conference Call of August 17, 1982" (undated), and the "Affidavit of Earl L. Duncan Concerning The Emergency Information Brochure," the "Affidavit of Peter Winograd Concerning The Emergency Information Brochure," and the "Affidavit of Sharon Duplessis" (all filed by Joint Intervenors on September 15, 1982).^{1/}

Applicant observes that many of Joint Intervenors' comments are beyond the scope of the reopened record. Applicant further notes that it is in the process of editing the brochure to attain a lower readability level and to address certain of the NRC Staff/FEMA comments. In addition, Applicant requests that an evidentiary hearing be promptly scheduled to expeditiously resolve the limited issue of the adequacy of the brochure (as edited in light of the parties' comments to date, to the extent those comments are within the scope of the Board's Order). Finally, Applicant requests the issuance of a Partial Initial Decision on synergism and all emergency planning issues except the content of the brochure, pending litigation of the brochure issue.

^{1/} By a filing captioned "Joint Intervenors Request The Right To Cross Examine" (dated August 10, 1982; sic; September 10, 1982), Joint Intervenors requested cross-examination on the Staff's September 1 filings.

II. DISCUSSION

A. Many Comments Are Beyond Scope of Board Order Reopening Record

The Board's August 17, 1982 Order reopening the record in this proceeding was expressly limited to a review of the content of the Waterford 3 emergency public information brochure.^{2/} Many of Joint Intervenors' comments go beyond the limited purpose for which the record has been reopened.

A number of Joint Intervenors' comments go far beyond the Board's Order, and attack the substantive provisions of the emergency plans for Waterford 3 as they are reflected in the brochure, rather than commenting on the brochure itself. For example, Joint Intervenors challenge the adequacy of the 10 mile plume EPZ (Duncan Affidavit at 7^{3/}), assert the need for maintenance of a current list of persons needing transportation in an evacuation (Duncan Affidavit at 7), argue the

^{2/} See, e.g., "Memorandum and Order (Reopening The Record -- Requesting Submissions)" (August 17, 1982), at 2-3, focusing on "form and content" and criteria such as readability and the extent to which brochures might engender public complacency, and noting the Board's perceived obligation to "see and evaluate the provisions of the [Waterford 3] brochure" [emphasis supplied].

^{3/} Though the pages of the affidavits submitted by Joint Intervenors were not numbered, Applicant has -- for the sake of clarity -- referred to each affidavit as though its pages were numbered separately, beginning with page one.

importance of evacuating all persons from an area to the same location and of evacuating school children to the same location as their parents (Duncan Affidavit at 7-8), and allege the need for a "practice evacuation" of the public (Duncan Affidavit at 9).

Such comments are untimely. The substantive provisions for the evacuation of the population within the Waterford 3 plume EPZ were litigated nearly five months ago, and were not the subject of the Board's Order reopening the record. Nor have Joint Intervenors made any attempt to meet the heavy burden which would be imposed on one seeking to reopen the record on such issues. See, e.g., Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-81-05, 13 N.R.C. 361, 362-63 (1981). Thus, the Board should disregard all Joint Intervenors' comments on the substantive provisions for the evacuation of the population within the plume EPZ.

Others of Joint Intervenors' comments have some bearing on the Waterford 3 public information/education program, but are nevertheless beyond the scope of the Board's order reopening the record. For example, Joint Intervenors criticize the means of distribution of the brochure (Duncan Affidavit at 6, JI "Clarification"), and imply that the brochure should be printed in some unspecified language other than English (Duncan Affidavit at 8, JI "Clarification"). Neither comment

is addressed to the precise content of the brochure -- the subject of the Board's August 17 Order. Moreover, again, Joint Intervenors' concerns are untimely. The mechanism for distributing the brochure actually was litigated in the early May hearings in this proceeding, (see Applicant PF 19), and the language in which the brochure is being printed could have been litigated in those hearings had the issue been timely raised. Plainly, Joint Intervenors need not have waited to see the actual content of the brochure in English to assert that it should be printed in some other language as well. Indeed, Joint Intervenors gave no indication -- either in discovery, or in the course of the hearings, or even in their proposed findings -- that they contended that the brochure should be printed in some language other than English. Accordingly, the Board should disregard Joint Intervenors' comments on the means of distribution of the brochure and the language in which the brochure is to be printed.

Joint Intervenors further seek to litigate the "type and content of the radio or television broadcasts associated with the brochure" and the "type and scope of possible educational exhibits or classroom instruction associated with the brochure" (JI "Clarification"). These issues are also clearly beyond the scope of the Board's August 17 order, which focuses on the content of the brochure alone. Nor are the issues timely raised. The emergency broadcast messages were in evidence at the early May hearings, and Joint

Intervenors could have litigated the "type and content" of those messages at that time, but failed to do so.^{4/}

Similarly, Joint Intervenors have never before asserted a need for "educational exhibits or classroom instruction associated with the brochure." The emergency plans in evidence reflect no provisions for such exhibits or instruction, nor are they required by the Commission's regulations or NUREG-0654, and it is far too late for Joint Intervenors to assert that such provisions are necessary. The Board should therefore reject Joint Intervenors' attempts to belatedly litigate the content of the emergency broadcast messages and any asserted need for "educational exhibits or

^{4/} It is simply disingenuous for Joint Intervenors to assert that they considered it "a fruitless endeavor to attempt to question * * * witnesses on the relationship between the wording of a radio broadcast * * * [and] the wording of the brochure since the brochure did not [yet] exist." In truth, Joint Intervenors did not consider cross-examination on the content of the broadcast messages because, as their proposed findings clearly demonstrate, Joint Intervenors were so unfamiliar with the emergency plans at the time of the hearings that they did not realize that the emergency broadcast messages were included in the plans in evidence. See, e.g., JI PF 7; JI Memorandum at 6. Applicant, in turn, pointed out that the broadcast messages were included in the plans and could have been the subject of Joint Intervenors' cross-examination at the hearing. See Applicant Reply PF 17. Particularly in this context, it would be unfair to permit Joint Intervenors to now litigate the content of the broadcast messages on the pretense of relating the content of those messages to the content of the brochure. Comments on the broadcast messages, if permitted at all, should be narrowly confined to asserted direct inconsistencies between the content of the brochure and that of the broadcast messages. See, e.g., Affidavit of Benton and Lookabaugh at 5.

classroom instruction."

B. Brochure Is Being Edited To Reflect
Valid Comments of Parties

Applicant is currently in the process of editing the brochure provided to the parties (proposed Applicant Exhibits 11 and 12) as necessary to reflect the comments of the NRC Staff/FEMA as well as Joint Intervenors' concerns about the "readability" of the brochure. See Winograd Affidavit; Duplessis Affidavit. Specifically, the brochure is being edited to a lower level of educational attainment.

C. Hearing Should Be Promptly Convened On
Adequacy of Revised Brochure

Applicant does not believe that an evidentiary hearing on the brochure is required, particularly in light of the revision of the brochure to make it more "readable" and to reflect the other valid comments of the parties. Nevertheless, under the circumstances, a hearing may be the most expeditious means of resolving the brochure issue.^{5/} Accordingly, Applicant requests that an evidentiary hearing be convened to resolve the limited issue of the adequacy of the brochure (as edited in light of the parties' comments to date, to the

^{5/} Applicant's submittal of the revised brochure text would obviate the need for a Board ruling admitting proposed Applicant Exhibits 11 and 12 (the brochure and the color overlay for the brochure map). Similarly, the Board need not rule on the admissibility of the affidavits filed to date.

extent those comments are within the scope of the Board's order).

Applicant proposes the following schedule for a hearing on the revised brochure.

Submittal of text of revised brochure (served by Federal Express)	October 15, 1982
Submittal of prefiled testimony by all parties	November 1, 1982
Commencement of evidentiary hearing	November 15, 1982

Applicant does not anticipate an evidentiary hearing of longer than two or three days duration assuming that such a hearing would be of limited scope in accordance with the Board's Order and the discussion above.

D. Issuance of Decision On Other Issues Need Not Await Resolution of Brochure Issue

The issuance of a Partial Initial Decision on synergism and all emergency planning issues except the content of the brochure need not await resolution of the brochure issue. The record on the synergism issue has long been closed, and plainly is in no way affected by the Board's August 17 order reopening the record. Similarly, as discussed above, the Board reopened the record on emergency planning matters only as to a very discrete issue. The vast majority of the record on emergency planning matters is ripe for decision. Moreover, given the breadth of the emergency planning issues before the Board, the Board's decision is of great importance to the

extensive training of large numbers of personnel on the emergency plan by Applicant, the State and the Parishes, which must be completed over the next few months. Accordingly, Applicant respectfully requests the issuance of a Partial Initial Decision on synergism and all emergency planning issues except the content of the brochure, pending litigation of the brochure issue.

III. CONCLUSION

For all the reasons stated above, Applicant requests that the Board (1) adopt the schedule set forth herein for the filing of the revised brochure, the submittal of prefiled testimony, and the commencement of an evidentiary hearing and (2) further define the limited scope of the evidentiary hearing in accordance with the Board's August 17 order and the arguments above. In addition, Applicant respectfully requests the issuance of a Partial Initial Decision on synergism and all emergency planning issues other than the content of the brochure, pending litigation of the brochure issue.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

By



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Dated: September 23, 1982

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicant's Response To Comments Of Parties On Emergency Public Information Brochure" were or will be served: by hand-delivery to Sheldon J. Wolfe, Administrative Judge and Sherwin E. Turk, Staff Counsel on September 24, 1982; by deposit with Federal Express to Dr. Walter H. Jordan, Administrative Judge on September 23, 1982; and by deposit with Express Mail to Dr. Harry Foreman, Administrative Judge and to Joint Intervenor Gary Groesch on September 23, 1982; and that one true and correct copy of same was served by deposit in the United States mail, First Class, postage prepaid, addressed to each of the other persons on the attached service list, this 23rd day of September, 1982.


Bruce W. Churchill

Dated: September 23, 1982

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