



motion, and joint intervenors have filed no response to it. For the reasons stated below, we deny the motion.

The appeal boards have discretion whether to grant leave to file an amicus curiae brief. The Commission's regulations call upon the entity that seeks to submit such a brief to identify its interest and state the reasons why an amicus brief is desirable. It must also be prepared to file its amicus brief at the time the party it supports files its own brief. See 10 CFR § 2.715(d).

Louisiana's interest in addressing the feed-and-bleed issue is said to arise from the State's undoubted interest in protecting the general welfare of its citizens, and the asserted seriousness of the need for a reliable means of removing decay heat should the Waterford 3 emergency feedwater system fail and the plant be forced to shut down. Motion (March 11, 1983) at 1-2. The State seeks to excuse its late request for amicus status on the ground that it did not receive, and has not yet received, a copy of joint intervenors' February 4 brief.

Louisiana plainly has an interest in assuring that the Waterford 3 nuclear power plant does not pose a threat to

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(FOOTNOTE CONTINUED FROM PREVIOUS PAGE)

<sup>1</sup> Although joint intervenors excepted to this portion of the Licensing Board's decision, they did not brief the feed-and-bleed issue and, consequently, have waived it. See Public Service Electric & Gas Co. (Salem Nuclear Generating Station, Unit 1), ALAB-650, 14 NRC 43, 49-50 (1981), aff'd sub nom. Township of Lower Alloways Creek v. Public Service Electric & Gas Co., 687 F.2d 732 (3d Cir. 1982).

its citizens.<sup>2</sup> Insofar as amicus participation is concerned, however, 10 CFR § 2.715(d) requires of the prospective participant more than an interest. As noted, it must explain why its brief will be helpful to the appeal board and consistent with the existing briefing schedule. Here, Louisiana's papers are devoid of any explanation of why it thinks its brief will assist us in considering the reliability of the Waterford 3 emergency feedwater system and the need for feed-and-bleed backup. It states simply that, without its brief, "this crucial issue may not be brought to [our] attention." Motion at 4.

Louisiana similarly failed to advise the Licensing Board of what the State could contribute. Prior to the Board's issuance of the partial initial decision before us on appeal, the State sought late intervention on this same issue. Although required by 10 CFR § 2.714(b) and (a)(1)

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<sup>2</sup> Indeed, it is in recognition of the plain interest of any state with regard to the safe operation of a nuclear power plant within its borders, that the Commission's rules explicitly permit a state (or county or municipality) to appear and participate in NRC licensing hearings without meeting the requirement imposed on non-governmental parties of propounding contentions or taking a position on issues. 10 CFR § 2.715(c). But that special status is not open-ended. The state must take the proceeding as it finds it and otherwise comply with the Commission's rules. See generally Gulf States Utilities Co. (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760, 768-69 (1977).

(iii) to do so, Louisiana did not specify for that Board what contribution to the development of the record the State thought it could make. See Licensing Board Memorandum and Order of September 10, 1982, at 4-5.<sup>3</sup> The total absence throughout this proceeding of any explanation of the assistance Louisiana believes it could render on the feed-and-bleed issue constrains us to deny its motion for leave to file an amicus brief.<sup>4</sup>

We also note that Louisiana's request is late and would substantially interfere with our schedule for hearing and deciding this case. Joint intervenors' brief was filed more than a month before the State's motion, the briefs of applicant and the NRC staff were filed March 25, and oral argument will be held April 19.<sup>5</sup> Thus, Louisiana's request would entail a new round of briefs and the

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<sup>3</sup> Louisiana did not appeal the Board's denial of its intervention petition.

<sup>4</sup> Insofar as Louisiana simply seeks to draw our attention to this matter, we point out that our sua sponte review of the Licensing Board's partial initial decision will include an examination of the correctness of the Licensing Board's reading and application of our North Anna opinion to the feed-and-bleed issue (see note 1, supra).

<sup>5</sup> Louisiana seeks to justify its lateness on the ground that it did not receive a copy of joint intervenors' brief. (Because the State is not a party, joint intervenors had no obligation to serve it. See 10 CFR §§ 2.701(b), 2.712(b)). The State, however, was certainly aware of the proceeding and was obliged to inform itself of the schedule for filing briefs.

postponing of oral argument for perhaps two or more months. While we might have been prepared to alter our schedule if Louisiana had advanced a weighty reason in support of its request for amicus participation -- such as detailing important new information on the feed-and-bleed issue not known to any of the parties to this case -- the State has not done so.

Louisiana's motion for leave to file an amicus curiae brief is denied.

It is so ORDERED.

FOR THE APPEAL BOARD

  
C. Jean Shoemaker  
Secretary to the  
Appeal Board