

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

DOCKETED
USNRC

'82 DEC -1 A10:52

Before Administrative Judges:
Sheldon J. Wolfe, Chairman
Dr. Walter H. Jordan
Dr. Harry Foreman

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In the Matter of
LOUISIANA POWER AND LIGHT COMPANY
(Waterford Steam Electric Station,
Unit 3)

Docket No. 50-382-0L
November 30, 1982

MEMORANDUM AND ORDER
(Denying Joint Intervenors' Motion For
Reconsideration, And Denying Louisiana's
Petition For Leave To Intervene)

MEMORANDUM

I. Re Joint Intervenors' Motion For Reconsideration

On June 12, 1982, Joint Intervenors had filed a "Motion To Reconsider Atomic Safety And Licensing Board Order of September 13, 1979^{1/} and Ruling Of May 12, 1979, To Reopen Operating License Hearings And/Or Hold New Operating License Hearings." Pursuant to an extension of time granted in the Order of July 19, 1982, Applicant filed a memorandum in opposition on November 12 and the NRC Staff filed a response on November 16, 1982.

^{1/} The Order, dated September 12, 1979, was served on September 13.

Joint Intervenors request that we reconsider the rulings in the Order of September 12, 1979, which rejected their proposed Contentions 10, 11, 13 and 14. In substance, Contentions 10, 11 and 13 alleged that Applicant has failed to evaluate properly radiation emissions which will be created by the storage, processing and handling of spent fuel and high-level radioactive wastes since there are no acceptable, technologically feasible, reasonable means for permanent off-site storage. Inasmuch as the Commission had stated that it intended to institute a generic rulemaking proceeding with regard to the availability of safe waste disposal methods (44 Fed. Reg. 45,362, 45,369 (1979)), we rejected Contentions 10, 11 and 13 in our order of September 12, 1979; we cited Potomac Electric Power Co. (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79 (1974), for the proposition that licensing boards should not accept in individual licensing proceedings contentions which are (or are about to become) the subject of a general rulemaking by the Commission. See also the Notice of Proposed Rulemaking wherein the Commission directed that, during the "waste confidence" generic rulemaking proceeding, the issues being considered in the rulemaking should not be addressed in individual licensing proceedings. 44 Fed. Reg. 61,372, 61,373 (1979). In their proposed Contention 14, the Joint Intervenors alleged that Applicant had not taken into account that the spent fuel pool would have to be enlarged because of the lack of off-site permanent waste storage facilities. Our Order of September 12, 1979, rejected this contention because we had the authority only to consider the existing

application for an operating license which proposed a spent fuel pool having a storage capacity of approximately fifteen years.

Joint Intervenors have neither shown good cause nor advanced any valid reasons supporting their motion for reconsideration. Indeed, the "waste confidence" proceeding is currently continuing and the Court of Appeals indicated its reaffirmed 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). Further, in its recent Statement of Policy, the Commission concluded that power reactor licensing may continue during the final stages of the "waste confidence" proceeding. 47 Fed. Reg. 50,591, 50,592 (1982). Finally, with respect to Contention 14 there has been no change in the proposed design of the spent fuel pool since the issuance of our September 12, 1979 Order.

The Joint Intervenors also request that we admit seven new contentions (Nos. 30-36) and reopen the evidentiary hearing. These new contentions advert to the health effects and uncertainties associated with the disposal of high-level waste. The new contentions are proffered in response to the recent D.C. Circuit decision, Natural Resources Defense Council, Inc. v. NRC, 685 F.2d 459 (D.C. Cir. 1982). That decision held that the final S-3 rule, which quantifies radioactive releases from the fuel cycle (including high level waste disposal), was invalid because it failed "to allow for proper consideration of the uncertainties that underlie the assumption that

solidified high-level and transuranic waste will not affect the environment once they are sealed in a permanent repository."

To the extent that Joint Intervenors' proposed contentions address uncertainties in the availability of waste disposal (see, e.g., Contentions 31 and 33), NRDC v. NRC is inapplicable, and the contentions are barred by the "waste confidence" rulemaking proceeding. 44 Fed. Reg. 61,372, 61,373 (1979). To the extent that the contentions address uncertainties in the radioactive releases from high-level waste storage (see, e.g., Contentions 31 and 32), NRDC v. NRC is applicable. However, the court has stayed its mandate pending the Supreme Court's review on certiorari, and in the interim, the Commission has directed "its Licensing and Appeal Boards to proceed in continuing 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." 47 Fed. Reg. 50,591, 50,593 (1982). Such policy declarations must be respected by the licensing and appeal boards unless and until rescinded by the Commission or overturned by the courts. Northern States Power Co. (Prairie Island Nuclear Generating Station, Units 1 and 2), ALAB-455, 7 NRC 41, 51 (1978). Therefore, we must treat the S-3 Table as being in effect, and Joint Intervenors are barred from challenging its data. 10 CFR § 2.758.

Joint Intervenors' proposed contentions also assert that the health, socioeconomic, and cumulative effects of waste disposal and the "back end of the fuel cycle" have not been adequately assessed

(Contentions 34, 35, and 36). Assessment of the health effects of the releases tabulated in the S-3 rule is a required part of the NRC Staff's environmental statement, as is an assessment of socioeconomic and cumulative effect if they "reasonably appear significant." 10 CFR § 51.23(c). Litigation of health, socioeconomic, and cumulative effects is not, therefore, precluded by the final S-3 rule, and we must adjudge the admissibility of the contentions (those that assert inadequate assessment of the health, socioeconomic, and cumulative effects of waste storage) by the factors set out in 10 CFR § 2.714(a)(i)-(v). However, the fact that the final S-3 rule does not preclude these contentions also negates any good cause for late filing arising from NRDC v. NRC. Joint Intervenors could have raised these contentions in August, 1979, when the final S-3 rule was issued. 44 Fed. Reg. 45,362 (1979). At this late stage in the proceedings, admission of the new contentions would greatly broaden the issues and drastically delay the proceedings. Moreover, Joint Intervenors failed to provide any specifics in support of their allegation that Applicant and/or Staff have failed to adequately assess the health, socioeconomic and cumulative effects of waste storage. We, therefore, have no reason to doubt the adequacy of the Staff's review as a means to protect both Joint Intervenors' and the public interest, and we have no reason to believe that Joint Intervenors could contribute to a sound record. We conclude that the factors in 10 CFR § 2.714(a)(i)-(v) heavily militate against admitting the contentions as they relate to health, socioeconomic, and cumulative effects.

II. Re The State Of Louisiana's Petition Which, In Part,
Requests Leave To Intervene In Light Of Court Of
Appeals Decision

Our Memorandum and Order of September 10, 1982, denied that part of the State of Louisiana's petition requesting leave to intervene upon the issue of feed and bleed capability. Louisiana's petition filed on July 21, 1982, had also requested leave to intervene in light of the Court of Appeals decision in NRDC v. NRC, 685 F.2d 459 (D.C. Cir. 1982). At page 2, n.2 of our September 10 Memorandum and Order, we deferred ruling on that part of Louisiana's petition seeking to raise Table S-3 issues until after the issuance of the Commission's Policy Statement on S-3.^{2/}

On September 1, 1982, the Court of Appeals for the D.C. Circuit granted a stay of mandate, and on September 27, 1982, a petition for certiorari in NRDC v. NRC was filed with the Supreme Court. Thus, there has been no final disposition of the case. Moreover, as discussed above, in light of the Commission's recent Statement of Policy, 47 Fed. Reg. 50,591 (1982), we must continue to rely on the final S-3 rule until further order from the Commission.

^{2/} In its Memorandum filed on November 12, 1982, Applicant urged that the remainder of Louisiana's petition be denied.

ORDER

For all of the foregoing reasons, it is, this 30th day of November, 1982

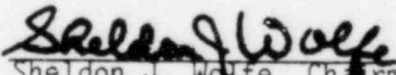
ORDERED

1. That the Joint Intervenors' Motion To Reconsider, To Reopen Operating License Hearings and/or Hold New Operating License Hearings is denied.

2. That the balance of Louisiana's petition requesting leave to intervene in light of the Court of Appeals decision in NRDC v. NRC, 685 F.2d 459 (D.C. Cir. 1982) is denied. Since Louisiana's petition for leave to intervene is now wholly denied, pursuant to 10 CFR § 2.714a, the State of Louisiana may appeal to the Atomic Safety and Licensing Appeal Board within ten (10) days after service of this Memorandum and Order.

Judges Jordan and Foreman concur but were unavailable to sign this issuance.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD


Sheldon J. Wolfe, Chairman
ADMINISTRATIVE JUDGE

Dated at Bethesda, Maryland
this 30th day of November, 1982.