

12/7/82

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 JOINT INTERVENORS'  
MOTION TO EXTEND FILING DATE AND RESCHEDULE HEARING

INTRODUCTION

On November 30, 1982, the Joint Intervenors filed their "Motion to Extend the Time of Filing Direct Testimony and to Reschedule the Hearing on the Emergency Brochure" ("Motion"). In support of their Motion, the Joint Intervenors assert that one of their experts (Mr. Duncan) has a medical condition "that has recently become acute" (Motion, at 1-2); that they are awaiting the publication of 1980 census data "in bound form" (id.); that another of their experts (Ms. Duplessis) has an "unavoidable conflict" on the scheduled hearing dates; and that their attorney (Mr. Fontana) "will be unavailable" in January, 1983.

This response is being filed on an expedited basis, in accordance with the telephone conference call held among the parties and the Licensing Board Chairman's secretary on December 6, 1982. For the reasons set forth below, the NRC Staff ("Staff") opposes the Joint Intervenors' Motion and recommends that it be denied.

DESIGNATED ORIGINAL

SEARCHED BY *John Smith*  
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DISCUSSION

The current schedule for filing testimony and for reconvening the hearing was agreed to by the parties and Licensing Board members in a telephone conference call held on October 12, 1982. In the many weeks that have elapsed since the scheduling agreement was reached, the Joint Intervenors have never indicated until now that either Mr. Fontana or Ms. Duplessis would be unable to attend the January hearing sessions. Moreover, the Joint Intervenors do not satisfactorily explain why Mr. Fontana "will be unavailable" or why Ms. Duplessis has "an unavoidable conflict," nor do they demonstrate that these facts could not have been discovered sooner or that these two individuals could not have rearranged their schedules to give priority to their hearing obligations. Similarly, there is no explanation as to why the 1970 census data presently available to the Joint Intervenors have suddenly become "stale" and "out of date",<sup>1/</sup> or as to why the Joint Intervenors have not attempted to obtain 1980 census data from a state or federal agency in some form other than the bound volume to be published by the U.S. Bureau of the Census.<sup>2/</sup>

In addition, while the Joint Intervenors assert that Mr. Duncan's medical condition "has recently become acute" and that he is suffering from "unknown complications," they do not contend that he is unable to assist them in the preparation of their case; rather, they state that he is able to devote "limited attention to the brochure" (Motion, at 2). In

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<sup>1/</sup> The Joint Intervenors previously placed heavy reliance upon the 1970 census data. See "Affidavit of Sharon Duplessis," filed on September 15, 1982.

<sup>2/</sup> The Staff has been informed that such data are currently available from a Louisiana state agency.

view of the relative brevity of the brochure, the Joint Intervenors have failed to demonstrate that Mr. Duncan will be unable to devote adequate time in the coming weeks to assist in preparing testimony.

Finally, the Joint Intervenors offer no indication as to when they might be ready to develop testimony and attend a hearing. While they state that the 1980 census data are scheduled to be published in February 1980 (presumably intending to state "1983"), they do not indicate whether Mr. Duncan, Ms. Duplessis or Mr. Fontana will be available for a hearing in February 1983 or at any specific time thereafter. Rather, they state that their filing of testimony "is hinged on the health of Mr. Duncan and the publishing of the 1980 census in book form," and for that reason, they assert that they "can give no alternative dates for rescheduling."

Joint Intervenors' unwillingness to commit themselves to an alternative schedule precludes the Licensing Board and parties from being able to proceed in a reasonable and orderly fashion, contrary to the Commission's guidance that the hearing "process move[] along at an expeditious pace, consistent with the demands of fairness." Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 453 (1981). As the Commission further clarified:

Fairness to all involved in NRC's adjudicatory procedures requires that every participant fulfill the obligations imposed by and in accordance with applicable law and Commission regulations. While a Board should endeavor to conduct the proceeding in a manner that takes account of the special circumstances faced by any participant, the fact that a party may have personal or other obligations or possess fewer resources than others to devote to the proceeding does not relieve that party of its hearing obligations.

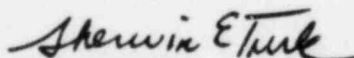
(Id., at 454; emphasis added).

When viewed in light of the Commission's Statement of Policy, the Joint Intervenors' demonstration of "good cause" in support of their request for an indefinite delay to this proceeding appears to be altogether inadequate. The parties and Licensing Board must be able to proceed in an expeditious manner, and the Joint Intervenors accordingly should be required to satisfy their hearing obligations consistent with the previously agreed upon schedule.

CONCLUSION

For the reasons set forth above, the Staff opposes the Joint Intervenors' Motion and recommends that it be denied.

Respectfully submitted,



Sherwin E. Turk  
Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 7th day of December, 1982.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO JOINT INTERVENORS' MOTION TO EXTEND FILING DATE AND RESCHEDULE HEARING" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 7th day of December, 1982.

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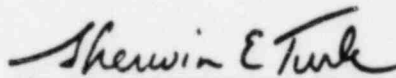
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