

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

DOCKETED
USNRC

'82 DEC 14 P2:23

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

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

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

Docket No. 50-382-OL

December 13, 1982

MEMORANDUM AND ORDER
(Denying Joint Intervenors'
Motion of November 30, 1982)

MEMORANDUM

A. Background

In a motion dated November 30, 1982, Joint Intervenors request an indefinite extension of time within which to file direct testimony and request a rescheduling of the hearing on the emergency brochure to an indeterminate date. On December 7, 1982, Applicant filed an answer in opposition and Staff filed a response in opposition.

Previously, in the Memorandum and Order of August 17, 1982, the Board had reopened the record insofar as Contention 17/26(1)(a) was concerned. In substance, this portion of the contention asserted that Applicant's pre-emergency public information program (the informational brochure) was inadequate. On September 23, Applicant filed a

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submission which the Board treated as a motion and, on September 29, 1982, the Joint Intervenors filed a submission which the Board treated as a cross-motion. In a conference call on October 12, 1982, 1/ the Board, inter alia, denied Joint Intervenors' cross-motion of September 29, and partially granted Applicant's motion of September 23. Among other things, the Board extended dates proposed in Applicant's schedule and ruled that:

Applicant's revised brochure shall be submitted and will be served by express mail upon all parties, ~~EEMA~~, and the Board by no later than November 12, 1982;^{2/}

Applicant's, Staff's, and the Joint Intervenors' written direct testimony will be served by express mail by no later than December 27, 1982; and

The hearing will commence on January 11, 1983 and be completed by January 14, 1983. A subsequent Order will designate the time and place of the reopened hearing.

The Memorandum and Order of October 18, 1982, set forth the Board's rulings orally rendered during the conference call and set forth the reasons for the rulings. Subsequently, the Board's Order of December 1, 1982, among other things, identified the location of hearing room facilities and designated the local times for the sessions of the reopened hearings.

1/ Prior to the conference call the parties had been advised that in order to expedite the proceedings the Board would rule on the two outstanding submissions and that subsequently a Memorandum and Order would be issued setting forth the reasons for the rulings.

2/ On November 12, 1982, Applicant served copies of the printer's proof of the revised brochure and copies of a color sketch.

In a conference call on December 6, 1982, the Board's secretary notified the parties that (a) Applicant and Staff should file their answers to the instant motion by no later than December 10, and that (b) by December 13, in a conference call, the Board would orally rule upon the instant motion, with a written order to follow explaining the Board's rulings. Applicant's and Staff's Counsel advised that their answers would be filed before December 10, and suggested that the Board might desire to advance the date for the conference call. In a conference call on December 13, 1982, the Chairman notified the parties that the Board denied Joint Intervenors' instant motion, with Judge Jordan dissenting, and advised Mr. Groesch that, if Joint Intervenors did not serve written direct testimony by express mail by no later than December 27, 1982, the Joint Intervenors, of course, could proceed to cross-examine.

B. Discussion

The Joint Intervenors present four reasons in support of their requests for an indefinite extension of time within which to file direct testimony and for a rescheduling of the reopened hearing to some indeterminate date. First, they assert that their primary evacuation witness, a Mr. Duncan, has become seriously ill, that "it is impossible for him to devote more than a limited attention to the brochure," and that they "hope the Board will allow sufficient time for recovery and participation of this key witness." While ordinarily we would make adjustments in scheduling to accommodate an indisposed witness, the

Joint Intervenors failed to furnish a doctor's affidavit indicating his prognostication as to Mr. Duncan's future availability. At the very least, the Joint Intervenors should have made sufficient inquiry in order to give their best estimate as to when Mr. Duncan would be sufficiently recovered in order to participate. We are not disposed to grant such an open-ended request.

Second, Joint Intervenors state that the 1980 census data in bound (book) form will not be available until the scheduled issuance in February, 1983. They argue in substance that the 1970 census figures are now outdated and the 1980 census data would bear upon the key issue of the educational attainment and ability of the population of the two risk parishes to understand the contents of the revised brochure. No explanation is given why the Joint Intervenors must await the census data being issued in bound form. If the data are available in other form, and this would seem to be so, then no good cause has been shown in support of the requests for extension and for rescheduling. Further, it is now too late to raise this matter - it should have been brought to our attention earlier. However, Joint Intervenors are not without recourse. After the close of reopened hearing record, they may file a timely motion to reopen the record which must show that the 1980 census data sought to be presented are of such major significance as to affect the outcome of the proceedings.^{3/}

^{3/} Apparently, and it is by no means clear, the Joint Intervenors believe that the 1980 census data will indicate a lower educational attainment level than existed in 1970.

Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-138, 6 AEC 520, 523 (1973); see also cases cited in Memorandum and Order of October 18, 1982, at 6 and 7.

Joint Intervenors' third and fourth reasons are that their expert, Ms. Sharon Duplessis, has an unavoidable conflict with the January 11-14 hearing dates, and their attorney, Mr. Fontana, will be unavailable in the month of January. No explanations were given as to why these individuals will be unavailable and there is no indication that any effort has been made to resolve the conflicts of Ms. Duplessis and Mr. Fontana.^{4/} Moreover, these barren excuses are untimely presented. Since mid-October 1982, the Joint Intervenors have known that written testimonies must be served by December 27, 1982 and that the hearing was scheduled to commence on January 11 and continue through January 14, 1983.

In sum, it is clear that the Joint Intervenors have failed to show good cause in support of their motion. Pursuant to the Commission's guidance, we are dedicated to seeing that the process moves along at an expeditious pace, consistent with the demands of fairness. Statement Of Policy On Conduct Of Licensing Proceedings,

^{4/} In passing, we note that Mr. Groesch, rather than Mr. Fontana, has signed all of the Joint Intervenors' filings since the close of the hearing in May, 1982.

CLI-81-8, 13 NRC 452, 453 (1981). As the Commission further stated:

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).

ORDER

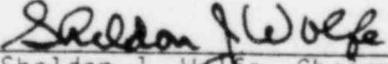
For all the foregoing reasons, it is this 13th day of December, 1982

ORDERED

That Joint Intervenors' Motion To Extend The Time Of Filing Direct Testimony And To Reschedule The Hearing On The Emergency Brochure of November 30, 1982, is denied.

Judge Foreman concurs, but was unavailable to sign this issuance. Judge Jordan dissents - he would have granted an extension of time to the Joint Intervenors which would have extended by thirty days the dates for the filing of testimony and for the commencement of the reopened hearing. Judge Jordan was also unavailable to sign this issuance.

THE ATOMIC SAFETY AND
LICENSING BOARD


Sheldon J. Wolfe, Chairman
ADMINISTRATIVE JUDGE

Dated at Bethesda, Maryland
this 13th day of December, 1982.