

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

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

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USNRC

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In the Matter of

LOUISIANA POWER AND LIGHT COMPANY,

(Waterford Steam Electric Station,
Unit 3)

ASLB Docket No. 79-417-06 OL

(NRC Docket No. 50-382-OL)

December 22, 1982

MEMORANDUM

(Memorializing Conference Call)

On December 21, 1982, at 3:00 p.m., the Board initiated a conference call which is memorialized herein. Participants were Judges Jordan, Foreman, and Wolfe; Bruce Churchill, Esq., Ernest Blake, Esq., and Delissa Ridgway, Esq., for the Applicant; Sherwin Turk, Esq., for the Staff; Gary Groesch for the Joint Intervenors; and Brian Cassidy, Esq. for the Federal Emergency Management Agency.

Mr. Groesch advised that he was authorized to speak for Mr. Fontana.

The Chairman inquired whether counsel for Applicant and the Staff had any objections to Joint Intervenors' Motion Of Partial Reconsideration of Board Order of December 13, 1982, Based On

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Previously Unavailable Information. (This Motion, dated December 17, 1982, as well as the medical statement of Dr. Stapleton, dated December 15, 1982, and the affidavit of Earl Duncan, dated December 17, 1982, had been received and reviewed by Applicant's and Staff's counsel. These submissions addressed the illness of Joint Intervenors' witness, Mr. Duncan.) After a discussion and agreement by all parties, the Board granted Joint Intervenors' request for a thirty (30) day extension of time within which to file direct written testimony. The Board ruled that the time for the filing by express mail of written direct testimonies was extended from December 27, 1982 to January 26, 1983. After a discussion and upon the consent of all parties, the Board ruled that the hearing dates of January 11-14, 1983 were changed to February 8 through 11, 1983. The Board will issue an Order designating the time and place of the reopened hearing commencing on February 8, 1983.

In response to the Chairman's inquiry, Mr. Groesch advised that, within the next month, Mr. Fontana would be filing a motion to reopen the record in light of a chemical fire and evacuation that had occurred in/or about Taft, Louisiana on December 11, 1982. After bringing to Mr. Groesch's attention the Order of December 15, 1982 (Re Joint Intervenors' Mailgram), which stated that a motion to reopen must be timely filed, the Chairman cautioned Mr. Groesch that, if, indeed, Mr. Fontana waited a month before filing such a motion, the Board would have to give serious consideration to an objection that the motion should have been filed earlier. The Chairman stated that the

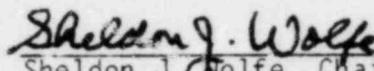
Board would consider Joint intervenors' motion to reopen the record pursuant to the procedures set forth in Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-138, 6 AEC 520, 523-524 (1973).*/ The Board ruled that, after service of the Joint Intervenor's motion to reopen the record, Applicant would have ten (10) days within which to respond and the Staff would have fifteen (15) days within which to respond. The Board also ruled that, after service of the Staff's response, the Joint Intervenor would have ten (10) days within which to file a response to Applicant's and Staff's filings. Any party must show good cause in support of a motion for an extension of time within which to file a response.

*/ At the Chairman's request, Mr. Churchill stated that he would send to Mr. Groesch via express mail two xerox copies of the Vermont Yankee memorandum and order.

Further, in an effort to assist Mr. Fontana, the Board notes that Vermont Yankee, supra, provides for a two stage procedure. First, the Board must consider (a) the timeliness of Joint Intervenor's motion to reopen the record and (b) the significance or gravity of the chemical fire-evacuation issue - i.e., whether the events are of such major significance as to affect the outcome of the proceeding. Second, if these two questions are resolved in (movants') Joint Intervenor's favor, then the Board must proceed to consider whether the issue requires the receipt of further evidence for its resolution. In other words, at this second stage, if the responses of the Applicant and/or the Staff are accompanied by affidavits, letters or other materials which demonstrate that there is no genuine triable issue of fact, the motion to reopen must be denied pursuant to principles involved in summary disposition procedures. See 10 C.F.R. § 2.749. Thus, Joint Intervenor's moving papers, as well as their response to Applicant's and Staff's submissions, must also show that there is a genuine unresolved issue of material fact - if there is no such showing, there is no need to reopen the record for an additional evidentiary hearing.

A copy of this Memorandum is being served by express mail upon Mr. Groesch and Mr. Fontana.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD


Sheldon J. Wolfe, Chairman
ADMINISTRATIVE JUDGE

Dated at Bethesda, Maryland
this 22nd day of December, 1982.