

GOVERNMENT ACCOUNTABILITY PROJECT

1555 Connecticut Avenue, N.W., Suite 202
Washington, D.C. 20036

(202) 232-8550

August 29, 1984

HAND DELIVERED

Nunzio J. Palladino, Chairman
U.S. Nuclear Regulatory Commission
Washington DC 20555

DOCKETED
USNRC

'84 AGO 30 A9:50

Thomas M. Roberts, Commissioner
U.S. Nuclear Regulatory Commission
Washington, DC 20555

OFFICE OF PUBLIC
DOCKETING & SERVICE
BRANCH

James K. Asselstine, Commissioner
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Frederick M. Bernthal, Commissioner
U.S. Nuclear Regulatory Commission
Washington, DC 20555

50-382 OL

Lando W. Zech, Jr., Commissioner
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dear Commissioners:

I am writing on behalf of Citizens for Safe Energy, the Sierra Club, Delta Chapter, and the Government Accountability Project to request that you exercise your oversight authority over the Office of Investigations ("OI") to preserve the integrity of the ongoing investigation into potential criminal activity at the Waterford Three nuclear plant.

I understand that the Nuclear Regulatory Commission ("NRC" or "Commission") is currently considering, or perhaps has already granted, a request by the Louisiana Power & Light Company ("LP&L") that the names of the targets of the OI investigation be disclosed to top management of the company. We believe that any such disclosure would violate OI policy statements, which serve as the framework within which OI conducts its investigations. Moreover we believe that given the current status of the investigation, any disclosure of the names of targets at this time will irreparably harm the investigation, especially any inquiry into potential management involvement.

We request that the Commission immediately direct OI not to disclose the names of any of the potential targets of its investigation to LP&L, or the substance or nature of its investigation. If OI has already disclosed the names we request the Commission to remove those currently responsible for the investigation and place in their stead investigators from outside the NRC to commence a new investigation. Only in this way can the damage done by any such disclosure be stemmed by objective, outside investigators.

It is critical that the Commission move expeditiously to prevent any further disclosure of information about the investigation or the targets. Both OI and the Commission itself will be acting in clear derogation of NRC rules if they do not preserve the investigation's confidentiality. Unless the Commission

8408310106 840829
PDR ADOCK 05000382
G PDR

DS03

acts quickly, the public will lose faith in the objectivity and thoroughness of the Commission's investigations as well as its ability adequately to handle the increasing number of potential criminal cases OI is ready to refer to the Department of Justice.

I. BACKGROUND

OI commenced an investigation last spring into a series of allegations about falsification of records and harassment of quality assurance/quality control personnel at the Waterford site. The investigation was begun, as was the special investigative effort headed by NRR, as a result of the revelations brought forward in a series of articles appearing in the New Orleans newspaper Gambit.

We understand that up to this point OI has prepared more than four cases for referral to the Department of Justice for potential criminal prosecution. Recently, in response to inquiries from Congressman Morris Udall's Committee on the Interior and Insular Affairs, the NRC has stated the OI investigation is expected to take several additional months to complete.

On August 9, 1984 pursuant to a direction from Commissioner Asselstine a transcript of his conversation of July 16, 1984 with LP&L Chief Executive Officer James Cain and LP&L counsel Gerald Charnoff was served on all the parties to the Waterford proceeding. The transcript of that discussion reveals the following:

- (1) Mr. Cain and Mr. Charnoff met with Darrell Eisenhut and Ben Hayes to request that they disclose to LP&L the names of the targets of the OI investigation. Mr. Cain and Mr. Charnoff's stated reason for requesting the names was so that LP&L management could remove these individuals from positions of responsibility in the reform program LP&L is currently proposing to resolve the 23 problem areas outlined by the NRC in its letter of June 13, 1984 to LP&L.
- (2) According to Mr. Charnoff, Mr. Hayes raised no objection to disclosing the names of the targets to LP&L management, if the Commissioners agreed to the disclosure.
- (3) Mr. Cain and Mr. Charnoff argued that since Mr. Cain was in no way implicated in the OI investigation he should be given access to the names so that he might remove those individuals under a "cloud" from any position of responsibility in the reform program. However, LP&L management still wished to keep such individuals available to provide the "corporate memory" of the allegations if the need arose and to provide information needed to resolve the 23 problems.
- (4) Mr Cain and Mr. Charnoff stated that they learned, apparently from Mr. Hayes, Mr. Eisenhut or Mr. Crutchfield that the OI investigation had focused on falsification of records and harassment of QA/QC personnel. They also stated that they believed the investigation possibly implicated individuals in key roles in LP&L's review program.

- (5) Mr. Cain and Mr. Charnoff intended to meet, or perhaps already had met by July 16, with all the Commissioners to discuss disclosure of names of the targets of the OI investigation.

Mr. Hayes has consistently refused to disclose any information about the status of the ongoing OI investigations to the intervenors, even to the extent of refusing to answer questions about potential referrals to the Department of Justice.

II OI POLICY STATEMENTS

OI Policy Statements appear to prohibit the disclosure of the names of targets of the OI investigation to LP&L. The relevant Policies are the following:

Policy 18

With the exception of significant safety issues, information regarding an ongoing OI investigation will not be disclosed by any NRC employee outside NRC without the specific approval of the Director, OI, or his designee.

Policy 19

Investigators and others assigned to an OI investigation or inquiry will normally not discuss the substance of ongoing OI inquiries and investigations with licensees or other non-NRC personnel in entrance or exit interviews, except safety items requiring immediate corrective action.

It is clear that these policy statements are intended to preserve the strict confidentiality of OI investigations except when a significant safety issue arises which could affect the public health and safety. Mr. Cain and Mr. Charnoff have not argued that any significant safety issue OI is currently investigating mandates the disclosure of the names of the targets.

Secondly, the policy statements safeguarding the integrity of the OI investigations are intended precisely to inhibit the utility from learning of the direction and scope of the investigation. Armed with knowledge of the focus of the investigation the utility is able to limit the evidence which flows to investigators.

Policy Statements No. 23 and 24 also reflect a concern that the substance of OI investigations be maintained as confidential, so that the utility is not given the opportunity to influence the free flow of information to the investigators.

The Report of the Advisory Committee for Review of Investigation Policy on Rights of Licensee Employees Under Investigation, or the so-called "Silbert Committee" Report recommends strongly that the substance of the details and direction of an OI investigation not be disclosed to the utility. Mr. Charnoff, of course, was pivotal in the institution of the Silbert Committee. He also advocated before the Committee that utility attorneys routinely be given notice of all interviews conducted by OI so that they could be present, either as participants or observers. See Report at 9. The Committee wisely rejected Mr. Charnoff's suggestion, stating that it was "unaware of any precedent for such a policy and disfavors its adoption

by the NRC." The Committee stated clearly that the presence of utility representatives at interviews would alter their investigative character and effectively¹ hinder the use of investigative interviews as enforcement and oversight tools.

As this Commission well knows, Mr. Charnoff lost this bid to inject company management and attorneys into the NRC investigative process. At the time of formation of the Silbert Committee, even the idea of forming such a committee, composed largely of utility attorneys, was roundly criticized by Julian Greenspun, Deputy Chief for Litigation, General Litigation and Legal Advice Section, Criminal Division, Department of Justice. His perceptive analysis of the situation is as follows:

As experience from many corporate investigations has shown and basic common sense dictates, because only the employees and management would know about shortcutting of laws and regulations, those in charge when this has occurred become preoccupied about what their operational employees may report without management looking over their shoulder, about practices, procedures and orders given. As a matter of human nature and as numerous investigations and cases have shown...the greater the basis for concern by those in charge, the more aggressive the efforts to inject themselves into positions to dampen disclosure of the truth by those over whom they have any economic power of influence.

See Greenspun Letter, March 25, 1983, at 6.

It is clear that the Commission cannot permit LP&L management to inject itself into the OI investigation without destroying the integrity of the investigation, including OI investigators' ability to develop additional leads, perhaps even ones which may lead to top LP&L management.

At this point it is unknown whether or not OI has completed, or in fact even begun, any investigation into involvement of upper LP&L and Ebasco management in potential criminal conduct. Given the critical stage of the investigation, and OI's estimate that it will not be completed for several months, any disclosure of names to LP&L at this point will undermine the investigation's look into involvement of upper management. What assurances do we have that Mr. Cain and Mr. Leddick, LP&L Senior Vice President, Nuclear Operations, are not under investigation for either wrongdoing or a subsequent cover up?

III. LP&L PROGRAM PLAN

The asserted reason LP&L is requesting disclosure of the names of the targets of the investigation is to remove all such individuals with a "cloud" over them from positions of responsibility in LP&L's reform program intended to address the NRC's 23 problem areas.

¹ The Committee also noted the concern of OI investigators that company counsel, charged with the responsibility of reporting back to the company what was said during the interviews they attended, would reveal the direction and scope of the investigation and potentially prejudice the investigation by advising the company as to how harmful information might be directed away from the investigators to the company's benefit. See Report at 12, n.1.

We too are concerned that LP&L management who are potentially under investigation for criminal conduct are heading up the reform program to ensure the safe construction and future safe operation of the Waterford 3 plant. This is why we requested that Mr. Eisenhut, who is heading the NRC's special investigative effort at Waterford, impose a third party to resolve the 23 problem areas of potential safety significance and to carry out a legitimate third-party review of the plant. See July 25, 1984 Letter, attached and incorporated herein as Exhibit 1. Apparently the NRC Staff seriously considered imposing such an independent third party on LP&L, but reconsidered in favor of allowing the utility itself to develop its own review plan.

LP&L's seriatim responses to the NRC Staff's June 13, 1984 letter and its refusal, even as late as August 17, to commit itself to an independent review program, demonstrate that it does not intend to comply with the NRC Staff's directives.

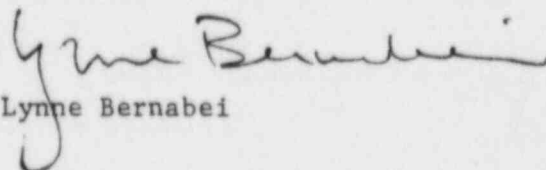
Mr. Charnoff indicated in his comments to Commissioner Asselstine that Mr. Eisenhut was concerned about the legitimacy of LP&L's reform program if individuals in key positions of responsibility were implicated in criminal conduct being investigated by OI. We share Mr. Eisenhut's concern. That is why we request that he, or alternatively, the Commission itself, impose a truly independent third party on LP&L to resolve the problems laid out in the NRC's June 13 letter.

IV. CONCLUSION

In conclusion, we request the Commission act immediately, in its oversight of the Office of Investigations, to ensure that no further disclosure of information about the targets or substance of the OI investigation be released to LP&L. If OI has already released the names, in violation of its rules and policies, we request that the Commission order a new investigation to be commenced, conducted by a group of investigators brought from outside the agency, with no prior interest in this case. In this manner, if the investigation has been compromised by disclosure of the names, and concomitant disclosure of information about the investigation, independent investigators may attempt to salvage what can be salvaged of the probe.

Your immediate attention to this matter is appreciated.

Sincerely yours,


Lynne Bernabei

cc: Ben B. Hayes (hand-delivered copy)
Darrell Eisenhut (hand-delivered copy)
Dennis Crutchfield (hand-delivered copy)
Service List

GOVERNMENT ACCOUNTABILITY PROJECT

Exhibit 1

Institute for Policy Studies
1901 Que Street, N.W., Washington, D.C. 20009

(202) 234-9382

DOCKETED
HAND-DELIVERED

'84 AGO 30 A9:50
July 25, 1984

Mr. Darrell G. Eisenhut
Director
Division of Licensing
Office of Nuclear Reactor Regulation
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Re: NRC Letter Dated June 13, 1984, Docket No. 50-382

Louisiana Power and Light Company Dated June 28, 1984
Waterford 3 Review

Dear Mr. Eisenhut:

On behalf of Citizens for Safe Energy, the Sierra Club (Delta Chapter), and the Government Accountability Project ("GAP"), we are writing to you to urge you to reject the proposed plan of the Louisiana Power and Light Company ("LP&L"), as set forth in its letter of June 28, 1984, to correct the problems found by the NRC Special Review Team at the Waterford 3 nuclear plant.

LP&L has a history of putting its schedule for completion of Waterford ahead of concern for ensuring that construction of the plant is adequate to protect the public's health and safety. Its proposal demonstrates that history is repeating itself.

We ask that the Nuclear Regulatory Commission ("NRC") Staff require nomination of an independent third party to conduct a thorough review of the problems laid out in your letter of June 13, 1984, and to develop a plan and methodology to resolve those issues.

Our demand is based in part on the fact that the NRC's investigation into construction and quality assurance deficiencies at Waterford has substantiated allegations of falsification of quality assurance records. It is our understanding further that the NRC's Office of Investigations is preparing to refer a number of these cases to the Department of Justice for possible criminal prosecution. Given the substantiation of serious charges and the long history of LP&L's failures to correct the quality assurance breakdowns at Waterford, LP&L cannot be trusted now to carry out a thorough, honest and complete reform program to correct past mistakes and verify the adequacy of construction of Waterford.

LP&L's letter of June 28, 1984, proposing a reform plan, is fresh evidence of the company's complete disregard and disrespect for NRC regulations and the NRC Staff's directives.

Throughout its response, the utility disputes the NRC Staff's evaluation of the problems at Waterford and presents solutions so woefully inadequate that they barely deserve comment. The Review Team has clearly stated that the items it listed in its June 13, 1984, letter are concerns which need to be adequately addressed before issuance of an operating license for Waterford because they present potential safety problems. Yet LP&L presents in its response a plan by which many of the items will not be resolved prior to fuel load or low-power operation. The company's failure to read the clear words of your letter and the clear warnings you expressed to them in many meetings, both public and private, is irrefutable evidence, we believe, that LP&L does not have sufficient integrity to carry out an honest reform program at Waterford.

We also request that the NRC provide greater opportunity for public input and comment on LP&L's resolution of the quality assurance breakdown at Waterford. The NRC Staff should hold public meetings in New Orleans with the intervenors and other interested members of the public to receive comments on any third party LP&L proposals, as well as any proposed plan and methodology to deal with the problems. The NRC Staff has instituted similar channels for public comment at both the Zimmer and Midland plants where it found QA breakdowns of equivalent magnitude. In both cases we believe public comment led to improved third party reviews of the quality of construction and design of those plants. In both cases, allowing the public to scrutinize the utilities' resolution of the problems aided the NRC Staff in its monitoring of the utilities' performance.

The public is growing increasingly skeptical about whether the NRC has the problems at Waterford under control. Therefore, if the NRC wishes to regain public confidence, it is imperative at this junction that it open its enforcement efforts and meetings with utility officials to public scrutiny.

I. BACKGROUND

The NRC Special Review Team discussed with LP&L on June 8, 1984, the problems of safety significance it had uncovered at the Waterford plant. It emphasized, somewhat to LP&L's surprise, that these problems were serious enough that they needed to be resolved prior to fuel load.

On June 13, 1984, the Team set forth in a detailed letter, similar to an inspection report, these same problems and asked LP&L to propose a program to resolve them. Apparently the NRC Staff originally intended to demand that LP&L nominate an independent third party to propose and implement this reform. The NRC Staff removed this requirement for a third party in its final letter to LP&L.

It appears to GAP that the Staff's initial instincts were right -- a third party program is needed at Waterford. As you know, third party reviews have been ordered at the Diablo Canyon, Zimmer and Midland nuclear plants. In all these cases, the NRC Staff or the Commission ordered independent assessments of the quality of the design and construction of these plants after they lost faith in the utilities' trustworthiness and commitment to quality work.

The wisdom of requiring an independent third party review at Waterford is becoming increasingly apparent. On June 28, 1984, LP&L submitted a response suggesting that a Task Force of individuals well-known in the nuclear field, and a Special Review Committee with a former NRC commissioner and chairman, could solve Waterford's problems. However, LP&L's "proposal" presents little hint of what its plan to resolve the problems will actually be. What is absolutely clear from the proposal is that LP&L is gearing its strategy to load fuel at the earliest possible time and does not intend to resolve all the problems prior to fuel load. This letter demonstrates LP&L's arrogance and near defiance of NRC directives.

According to Mr. James Gagliardo of the NRC Staff, to whom I have spoken over the last few weeks, the NRC Staff has told LP&L to propose a new approach to resolution of the problems laid out in the NRC's letter of June 13. Although Mr. Gagliardo informed me that LP&L's response was to be submitted last Friday, July 20, 1984, to our knowledge it has not yet been filed. In addition, I learned from him at that time that the NRC Staff was no longer discussing whether to require LP&L to nominate a third party to assess the significance of and develop solutions to the safety-significant problems the Staff has uncovered. Mr. Gagliardo also told me the NRC Staff had held several closed meetings with LP&L officials to inform them of the inadequacy of their response.

Further, we have learned that the NRC's Office of Investigations has substantiated some allegations of falsification of quality assurance records, and is preparing to refer several cases to the Department of Justice for potential criminal prosecution.

The recent history of quality assurance failures at the Waterford plant provides ample evidence of LP&L's grossly negligent or apparently intentional disregard of documentation and quality assurance requirements. In December, 1982, the Nuclear Regulatory Commission fined LP&L \$20,000 for its failure to adequately control the activities of its construction manager, Ebasco Services, Inc. ("Ebasco"). The most serious problems it found were with the work of the Mercury Company of Norwood, Inc., the contractor which installed the instrumentation and control systems at Waterford. These deficiencies included: the as-built configuration of the systems did not match the "as-built" drawings; reversed slope of tubing runs; incorrect seismic support designations; missing supports; improper bolting; and deformed tubing.

These inspection findings mirrored similar reports by LP&L in July of 1982 concerning the work of subcontractor Tompkins-Beckwith ("T&B"). In inspecting 20 hangers in the low pressure safety injection system, LP&L found 16 of the 20 hangers had quality problems needing engineering evaluation, which led to a requirement that T&B do 100 percent reinspection of all installed hangers to be followed by a 100 percent reinspection by Ebasco of the same work.

A special document review team at Waterford found in the Spring of 1983 missing or faulty documentation for 30 percent of the work of American Bridge. An inspection of the hardware installed by American Bridge found that 30 percent had deficiencies, primarily that the as-built condition did not match the approved design.

The document review team found similar problems with the J.A. Jones documentation for the foundation and cadwelding work. Documentation was missing concerning the certification of QC inspectors responsible for safety-related work. Because

no extensive reinspection of J.A. Jones work has yet been done, one can only assume that hardware deficiencies similar to those found for T&B, Mercury and American Bridge work would be discovered if an intensive inspection were done.

In June, 1983, the NRC formed a Special Inquiry Team to investigate the increasing number of allegations by former workers of missing, faulty or falsified QA documents, a cracking foundation mat, and a lack of QA coverage for Combustion Engineering equipment supplied to Waterford. Many of these allegations first surfaced in news reports in the local newspaper Gambit.

In September, the Special Inquiry Team asked LP&L to find answers for the same sort of QA deficiencies the NRC had documented the year before.

In February, 1984, the NRC Staff did an intensive CAT inspection of Waterford, reviewing hardware in seven major areas. The Staff at that time found the following:

- (a) Eighty instances in which FSAR commitments were not met for installation of electrical raceway;
- (b) Seventeen out of 20 safety-related cable tray supports not shown on design drawings;
- (c) Loads on cable trays which were 50 percent over the permitted load;
- (d) Three out of 20 pipe hangers and/or restraints had problems of safety significance;
- (e) Documentation problems with concrete pours, cadwelding, backfilling, and masonry walls;
- (f) Welds in the HVAC system which did not meet requirements and a significant deficiency in the main steam line penetration;
- (g) Twenty-one out of 37 fasteners included the wrong bolting material and lack of markings which indicated material traceability problems;
- (h) Failure to incorporate design and field changes in approved design drawings and documents; and
- (i) Deficiency notices which were not upgraded to nonconformance reports.

Of greater significance was the CAT Team's conclusion that LP&L had failed to carry out prior commitments to the NRC to take corrective action. Further, LP&L still, the NRC stated, was unable to look beyond the specific deficiencies to the programmatic problems at Waterford and the causes of those problems.

The results of the NRC's current Review Team, begun in April, 1984, offer a bleak assessment of LP&L's ability to take control of the situation at Waterford.

In following up on its 1982 inspection, the Team found LP&L, Ebasco and Mercury had failed to carry out LP&L's promises of reform, including an audit of its entire QA program; correction of problems uncovered in the audits and management reviews which were conducted; and identification and analysis of

of the root cause of the QA breakdown at the plant.

Similarly, LP&L failed to fulfill its commitment to interview current and past QA employees to draw out their potentially serious concerns about the quality of Waterford's construction. Although it conducted 407 interviews in January, 1984, the NRC found that LP&L had not followed up on incomplete interviews or responses, and never did any meaningful evaluation of the interviews and data collected. Again in June, the NRC directed LP&L to develop a program to assess the problems raised in those interviews.

What has become increasingly clear over the last two years is that LP&L is institutionally incapable or unwilling to determine the root cause of the QA breakdown at Waterford and make decisive and programatic changes to correct these problems. That is why we urge the NRC Staff to require a third party, chosen and approved according to the so-called Palladino criteria, to develop and implement the corrective action program for Waterford. 1/

1/ Chairman Palladino, in a letter of February 1, 1982, to Congressmen Dingell and Ottinger set out the criteria by which an independent auditor would be chosen to conduct an independent seismic design review of Diablo Canyon. Since that time these criteria have been used for nomination and approval of a third party to conduct a management audit at the Zimmer plant, the third parties who reviewed the ongoing soils and construction work at the Midland plant, and the third party conducting a design review of Midland.

The three criteria are:

(1) Competence: Competence must be based on knowledge of and experience with the matters under review.

(2) Independence: "Independence means that the individuals or companies selected must be able to provide an objective, dispassionate technical judgment provided solely on the basis of technical merit. Independence also means that the design verification program must be conducted by companies or individuals not previously involved with the activities . . . they will now be reviewing."

(3) Integrity: "Their integrity must be such that they are regarded as respectable companies or individuals."

The Commission considered five factors in evaluating the most important requirement, independence:

(1) Whether the individuals or companies involved had been previously hired by PG&E to do similar seismic design work;

(2) Whether any individual involved had been previously employed by PG&E, and the nature of any such employment;

(3) Whether the individual owns or controls significant amounts of PG&E stock;

(4) Whether members of the present household of individuals involved are employed by PG&E; and

(5) Whether any relatives are employed by PG&E in a management capacity.

(continued)

II. MANAGEMENT STRUCTURE FOR LP&L PROGRAM

LP&L proposes essentially three overlapping organizations to manage its proposed program.

First, the LP&L Project Manager for nuclear projects is responsible for the overall management of the plan, including:

- (1) determining how to resolve the 23 issues of potential safety significance;
- (2) determining the "collective significance" of the outlined problems; and
- (3) recommending programmatic changes to prevent recurrence of the types of problems outlined.

Second, a "Safety Review Committee" has been established, composed of top management personnel reporting directly to Mr. Leddick, Senior Vice-President in charge of Waterford. A subcommittee of the SRC is composed of three Waterford licensing, construction and quality assurance managers and two outside consultants. One consultant LP&L has hired is Joseph M. Hendrie, former member of the NRC's Advisory Committee on Reactor Safeguards and former chairman of the Nuclear Regulatory Commission.

The subcommittee reports to the management committee, which in turn reports through Mr. Leddick to Mr. Cain, LP&L President and Chief Executive Officer. The subcommittee reviews the company's resolution of the NRC's 23 stated concerns.

Third, LP&L has established a Task Force staffed by officers and employees of UNC Nuclear Industries, Inc., and the NUS Corporation. The Task Force will report directly to Mr. Cain. It is responsible for developing a program and implementation of a schedule for dealing with NRC concerns, as well as reviewing SRC's recommended solution to the 23 items.

LP&L's recommended management structure cannot do an honest and thorough job of evaluating the root cause of the NRC's concerns or resolving these problems for a number of reasons.

(A) Conflict-of-Interest

The SRC subcommittee is composed of individuals who are essentially responsible for a portion of the QA problems at Waterford. Certainly Mr. Gerrets, Corporate QA Manager, cannot be expected to make an objective assessment of his and his staff's past failings.

(continued) In addition, the Commission allowed the Joint Intervenor and Governor Brown 15 days to comment on the proposed independent third party auditor and the proposed verification program, and to present their views at public meetings before the Commission and NRC senior management. The intervenors, together with the NRC Staff, received all status reports for the independent verification program, as well as transcripts of all meetings held between the third party, PG&E, NRC Staff and the public. Additionally, the Commission ordered that PG&E was to have no editorial control over the third party's final report.

Moreover, the SRC itself is composed largely of construction managers who are responsible for the pressure to cut corners in the QA program throughout Waterford's construction history. Certainly they are unlikely to target themselves or their organizations as the root cause of the QA breakdown.

Task Force member Hendrie as former NRC Chairman and Commissioner was ultimately responsible for adequate NRC oversight of Waterford's construction. He has a conflict of interest in that he has a stake in demonstrating that the NRC provided adequate oversight and regulation of the Waterford project throughout its construction, and that problems now being discovered are not of a nature that the NRC should have discovered and documented them years ago. It is becoming more evident daily that Region IV has defaulted in its responsibility to maintain adequate oversight over Waterford. The NRC's December, 1982, inspection report and the civil penalty imposed upon LP&L only scratched the surface of the QA problems at the site. It appears that the NRC in its report and in imposition of a civil penalty attempted to downplay to some extent the severity of the QA problems at Waterford. Certainly, Mr. Hendrie will not feel secure in making a judgment that LP&L's problems are serious enough that the NRC should have uncovered them long before completion of the plant, when he would have to take personal responsibility for that failure as Chairman of the Commission during Waterford's construction.

B. Lack of Independence

Neither the SRC subcommittee nor the Task Force has independence of LP&L management. It is clear that the SRC, which reports through Mr. Leddick and Mr. Cain to the NRC, and the Task Force, which reports through Mr. Cain, are both ultimately bound by LP&L management. LP&L's managers, their attitude toward the NRC and the safety concerns outlined by the NRC Staff, and their eagerness to rush Waterford to completion, may easily prejudice whatever findings the SRC subcommittee and the Task Force make. It appears that Mr. Cain has ultimate editorial and substantive control over the Task Force's conclusions so that it can hardly be labeled independent. Similarly, the subcommittee's findings must make their way up through at least three management levels of review before reaching the NRC.

C. Rejection of the Most Basic of Quality Assurance Principles -- Independence from Construction

LP&L has established two teams to assess the problems at Waterford. Both are composed of construction and QA personnel. This violates the primary principle of quality assurance that QA should serve as an independent check -- free from the time and financial pressures of construction -- of the quality of nuclear plant construction. The NRC has already found that construction and engineering's attempts to rush completion of Waterford led to serious quality problems, including premature turnover and testing of systems.

The inherent strains between quality assurance and construction at Waterford, between rapid completion of the plant and verification that the plant is constructed in a safe manner, have been replicated in the two teams. The NRC cannot by any stretch of the QA criteria approve a re-review of documentation and reinspection of safety-related work at Waterford necessitated by a QA breakdown to be controlled by teams primarily composed of LP&L construction and licensing officials.

D. Inadequate Staff

LP&L has not provided the number or qualifications of individuals who will be resolving the 23 concerns laid out in the NRC's June 13 letter. LP&L has not provided any information on their educational background, prior work experience, or experience at any other nuclear plants, including Waterford. Further, to allow any meaningful evaluation of these individuals, one would need to review their work at other nuclear plants to determine whether they were in any way responsible for or involved in similar QA breakdowns.

III. LP&L PROGRAM AND METHODOLOGY

LP&L, in its bare-bones proposal, has failed to outline its methodology for evaluating the problems at Waterford. 2/

The approach it suggests is aimed toward loading fuel at Waterford at the earliest possible date, not to resolving the construction and QA deficiencies which place the quality of Waterford's construction in doubt.

The NRC Staff stated in clear terms at the June 8 public meeting in Bethesda and in its June 13 letter that LP&L had to resolve 23 problems before the NRC would issue a license for the plant. In spite of this clear direction, LP&L presented to the NRC only two weeks later a matrix which suggested that a large number of these problems were not of safety significance and could be resolved after fuel load and low-power operation.

Yesterday, LP&L issued a press release indicating it believed it could place Waterford in commercial operation by early 1985.

As will be described in greater detail below, LP&L has taken an argumentative tone in its response and refuses to acknowledge that many of the problems outlined by the NRC are in fact of potential safety significance, or, in some cases, are problems at all.

The history of QA breakdowns at Waterford; LP&L's inability or unwillingness to take corrective action, even when the NRC orders it to do so, and its current recalcitrance, show an uppermanagement which cannot be trusted to verify Waterford complies with NRC requirements and protects the public health and safety.

LP&L proposes no methodology to review the problems at Waterford, determine their root cause, or determine their generic implications.

At a minimum, any program must include the following:

2/ LP&L promised by July 6, 1984, to provide target dates for developing assessments and recommended changes for the 23 problem areas. It appears that LP&L has not met that schedule. LP&L's continuing establishment of unrealistic schedules indicates its inability to recognize the serious nature of the QA problems it must resolve.

- (1) Definition of a sample size of the documents to be reviewed and the hardware to be inspected and justification for that sample size;
- (2) Definition of the criteria for the selection of the sample;
- (3) Hold points for NRC review in inspection and document review plans;
- (4) A realistic schedule to allow appropriate NRC review and public review and comment on both the overall plan and on the particular methodologies contained within the plan;
- (5) A system of regular reports, made simultaneously to the NRC and the public, of the reviewers' findings and recommended corrective actions;
- (6) A system to ensure the independence of the review. A minimum requirement is that LP&L maintain no editorial or other control over the reviewer's findings and conclusions;
- (7) Financial independence of the reviewer from LP&L. The reviewer must be permitted to complete its review and be able to expand the scope of its assessment if necessary. This means LP&L cannot terminate the reviewer at will but only after approval from or consultation with the NRC. Further, any contract between LP&L and the reviewer must be carefully scrutinized to ensure it does not allow LP&L to exert subtle control over the reviewer's activities or conclusions.
- (8) Public scrutiny. The reviewer's activities must be open to public scrutiny. As at Zimmer and Midland, the NRC should mandate regular public meetings to ensure public oversight of the reviewer's activities and findings, and LP&L's adherence to the approved program.
- (9) Consultation with knowledgeable NRC officials, and current and former workers alleging QA and construction deficiencies. The reviewer should speak to the former and current construction and QA workers and document reviewers who have brought to the NRC's attention many of the deficiencies LP&L is not forced to resolve. These workers could provide valuable information about the programmatic problems at Waterford and the root cause of the problems.
- (10) Incorporating as a main objective of the program determination of the root cause of the problems. Although the words "root cause" and "generic concern" are mentioned at various points throughout the LP&L proposal, nowhere does the company outline a method to determine the "root causes" of the problems.

Any serious inquiry into the causes of the QA breakdown requires research into the history of NRC inspections at Waterford; a review of LP&L audits; and a review of LP&L's corrective action to answer the concerns raised in those audits. It should also make an independent audit of current management, focusing on their attitude toward QA principles and NRC regulation.

IV. LP&L'S APPROACH TO RESOLVING THE TWENTY-THREE PROBLEM AREAS

LP&L's approach to resolving the problems outlined in the NRC's letter of June 8 barely deserves comment. It is heartening that the NRC Staff has rejected

the approach and asked for a broader and deeper scope for assessment of the problems.

However, review of LP&L's initial proposal does demonstrate its attitude toward the NRC and its directives. The response is argumentative, misleading and presents no clear plan for ensuring that Waterford has been built to protect the public safety. Analysis of a few portions of that response will aptly demonstrate this point.

Item 1. Inspection Personnel Issues.

The NRC found the certification and qualifications of 30 to 40 percent of QC inspectors for Mercury and Tompkins-Beckwith in question. It required LP&L to verify the credentials of 100 percent of QA/QC personnel and to do 100 percent reinspection of the work of those inspectors found unqualified.

LP&L refuses to carry out the NRC's directive and has agreed to verify the certification of only 20 percent of QC inspectors. It states its preliminary evaluation of its inspectors indicated they were qualified to perform their assigned work function.

The lack of an adequate number of adequately trained and qualified QC personnel has been a major cause of the QA breakdown at the Waterford site. As the NRC found in July, 1982, a document review team found in the Spring, 1983, and the Review Team found only last month, a large percentage of QC inspectors working for contractors who did safety-related work at the plant were not qualified. Inspections of the work of the unqualified inspectors has uncovered significant problems. It is therefore hard to understand how LP&L can at this late date justify anything less than verification of the certification of 100 percent of the QC inspectors and 100 percent inspection of unqualified inspectors' work.

In addition, it appears that LP&L will not verify the certification of QC inspectors to ANSI N45.2.6-1977, but only to contractors' lower standards. Part of the problem with Tompkins-Beckwith QC inspectors, however, was that although they met the T&B qualification requirements they did not meet ANSI requirements and were not in fact performing their inspections properly. Therefore, LP&L must verify certification of all QC inspectors to the ANSI standards or reinspect their work.

Item 2. Missing N1 Instrument Line Documentation.

LP&L did not provide QA coverage for installations of this instrumentation on the basis that the equipment was not ASME Class I, II or III. However, the NRC found that in fact QA coverage should have been provided for instrumentation for local mounted instruments and demanded documentation of such coverage. It is clear from LP&L's response that it cannot meet this requirement since it has not represented that it can assure full compliance for any of the 90 locally mounted instruments in question. Instead, LP&L indicates it has reclassified the installations for which it cannot produce QA documentation or claims an exemption from the requirement on some other basis.

Item 4. Failure to Upgrade Lower-Tier Documents.

The NRC found that up to 70 percent of "lower-tier" corrective action reports

examined, including Field Change Requests ("FCR's"), Design Change Notices ("DCN's"), Engineering Discrepancy Notices ("EDN's") and Discrepancy Notices ("DN's") were not properly upgraded to nonconformance reports and thereby reported to LP&L and dispositioned in accordance with the strict requirements of NRC's.

Improper use of lower-tier documentation systems can lead to design control problems and improper dispositioning of serious nonconforming conditions. LP&L refuses in its response to do any review of the actual lower-tier documentation beyond the review the NRC has already carried out. Instead, it proposes to look merely at the lower-tier document reporting "paper program" to see if it is properly structured.

LP&L refuses even to recognize the problem pointed out by the NRC. The problem is not the paper program but the implementation and abuse of the lower-tier reporting system. A paper review of the structure of the system will do little to allay NRC concerns.

Item 5. Vendor Documentation -- Conditional Releases.

The NRC found deficiencies in the handling of conditional certification of equipment supplied by Combustion Engineering. The underlying problem in this instance is not only the lack of receipt inspection documentation, but in addition, lack of adequate manufacturing documentation. LP&L addresses only the first portion of the problem and fails to address the latter.

The manufacturing documentation should be available and checked to ensure the vendor order meets all applicable codes, standards, and project specifications, and that all manufacturer QA program procedures were followed.

Item 8. Visual Examination of Shop Welds During Hydrostatic Testing.

LP&L refuses to acknowledge the problem documented by the NRC. Instead of providing documentation that the shop welds were properly inspected during hydrotests, LP&L states that inspections performed by Authorized Nuclear Inspectors ("ANI's") fulfill the NRC requirement. However, ANI's only review the welds for code compliance and do not review whether proper documentation has been completed.

LP&L also states that the ASME N-5 Code data reports confirm that the welds were properly inspected. However, this report in fact confirms only that the system of which the shop welds form a part was inspected.

Finally, LP&L has artfully promised the NRC to verify inspection by "qualified", not certified inspectors. As noted above, the inspectors may very well meet the qualification requirements of their employers but not nuclear industry standards.

Item 14. Improper Use of J.A. Jones Speed Letters and EIR's.

The NRC concern was in part that design changes were being made through informal lower-tier reporting documents. This can cause, and has in fact caused, a breakdown in design or configuration control at Waterford. LP&L has refused to acknowledge any problem in their use of Speed Letters and EIR's to make design changes, and further failed to examine the programmatic failure of their design control program.

In this case, the NRC has already documented numerous instances of significant differences between the as-built condition of the plant and the approved as-built drawings.

It is also unclear from the review LP&L has conducted what the period of time for the sample review was. The earlier period from 1974 to 1982 should be the relevant sampling period.

Item 21. Failure to Properly Disposition Construction Deficiencies During Transfer/Turnover of Systems to LP&L.

The NRC concern expressed first in July, 1982, is that construction deficiencies have not been properly dispositioned after transfer and turnover of systems to LP&L because of pressure to turnover systems for testing. LP&L completely misinterprets the NRC's concern and states that the NRC need not worry about lack of proper QA documentation because it will not impact on testing. Presumably, LP&L is referring to the testing schedule.

The NRC's concern, however, is not LP&L's testing schedule but the failure of LP&L to resolve significant problems identified prior to or during turnover because of missing or faulty documentation. If significant nonconforming conditions are not corrected on important safety systems they could potentially impair the proper functioning of those systems.

VI. CONCLUSION

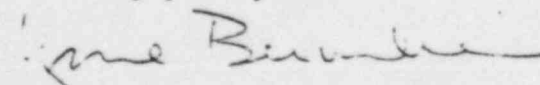
Many factors point toward the need to appoint an independent third party to resolve the problems at Waterford:

- The abysmal history of QA failures at Waterford;
- The inability and unwillingness of LP&L to resolve the problems even at this late hour;
- The NRC investigations' substantiation that records have been falsified at Waterford and the current consideration of referring these cases to the Department of Justice for criminal prosecution; and
- The utility's recent defiance of NRC directions to develop a sound program to ensure the quality of Waterford's construction.

We urge you to require an independent third party to review and present a plan to verify the quality of Waterford's construction and address the 23 concerns outlined by the NRC Staff in its letter of June 13. We urge you also to incorporate public participation and scrutiny into the process through public meetings, public comment, and public consultation.

Already we have lost faith in LP&L's ability to put aside construction and schedule pressures to construct Waterford safely. The public is now judging the NRC's seriousness in ensuring the adequacy of the plant's construction.

Sincerely yours,



Lynne Bernabei
General Counsel

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

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

Docket No. 50-382

Service List

Christine N. Kohl, Chairman Atomic Safety and Licensing Appeal Board U.S. Nuclear Regulatory Commission Washington, DC 20555*	Dr. Harry Foreman, Director Administrative Judge University of Minnesota Box 395, Mayo Minneapolis, MN 55455
Dr. W. Reed Johnson Atomic Safety and Licensing Appeal Board U.S. Nuclear Regulatory Commission Washington, DC 20555*	E. Blake, Esq. B. Churchill, Esq. Shaw, Pittman, Potts & Trowbridge 1800 M Street, N.W. Washington, DC 20036
Howard A. Wilber Atomic Safety and Licensing Appeal Board U.S. Nuclear Regulatory Commission Washington, DC 20555*	Luke B. Fontana, Esq. 824 Esplanade Avenue New Orleans, LA 70116
Sheldon J. Wolfe, Esq., Chairman Administrative Judge Atomic Safety and Licensing Board U.S. Nuclear Regulatory Commission Washington, DC 20555*	Malcolm Stevenson, Esq. Monroe & Lemann 1424 Whitney Building New Orleans, LA 70130
Dr. Walter H. Jordan Administrative Judge 881 West Outer Drive Oak Ridge, TN 37830	Mr. Gary L. Groesch 2257 Bayou Road New Orleans, LA 70119
Brian P. Cassidy Regional Counsel FEMA John W. McCormack Post Office and Courthouse Boston, MA 02109	Ian Douglas Lindsey, Esq. 7434 Perkins Road Suite C Baton Rouge, LA 70808
William J. Guste, Jr., Esq. Attorney General for the State of Louisiana 234 Loyola Avenue, 7th Floor New Orleans, LA 70112	Atomic Safety and Licensing Appeal Board Panel U.S. Nuclear Regulatory Commission Washington, DC 20555*
Atomic Safety and Licensing Board Panel U.S. Nuclear Regulatory Commission Washington, DC 20555*	Docketing and Service Section Office of the Secretary U.S. Nuclear Regulatory Commission Washington, DC 20555*
	Carole H. Burstein, Esq. 445 Walnut Street New Orleans, LA 70118