UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD

Administrative Judges:

Christine N. Kohl, Chairman
Dr. W. Reed Johnson
Howard A. Wilber

March 14, 1985

In the Matter of	)	
LOUISIANA POWER & LIGHT COMPANY	)	Docket No. 50-382 OL
(Waterford Steam Electric Station, Unit 3)	)	

MEMORANDUM AND ORDER

On February 25, 1985, Joint Intervenors moved for leave to supplement their pending motion to reopen the record in this proceeding on management competence and integrity issues.[1] Applicant Louisiana Power & Light Company (LP&L) and the NRC staff both opposed the motion to supplement. Now -- in a motion dated March 12, 1985, but assertedly served on March 11 -- Joint Intervenors move for leave to reply to LP&L's answer to their motion to supplement.[2] We deny both Joint Intervenors' motion for leave to supplement and their motion for leave to reply to LP&L.

[1] The motion to reopen also raises quality assurance issues.

[2] This brings the number of motions filed by Joint Intervenors currently pending before us to six.

1. Material submitted as a supplement to a motion to reopen is subject to the same standards as the motion itself. See Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-598, 11 NRC 876, 879 (1980). We have reviewed Joint Intervenors' motion to supplement in accordance with those standards and without regard to the responses of either LP&L or the NRC staff. This supplemental argument is based on four recently reported events that, according to Joint Intervenors, show LP&L's lack of the character and competence required to operate the Waterford nuclear facility safely. On its face, the argument (with accompanying exhibits) proffered as a supplement to Joint Intervenors' pending motion to reopen clearly fails to raise a significant safety matter that would warrant reopening of the record.

First, Joint Intervenors point to the recent filing of a lawsuit by the City of New Orleans against Middle South Utilities, Inc., LP&L's parent company. The suit apparently seeks to halt a proposed stock and bond sale by New Orleans Public Service, Inc. (NOPSI, another Middle South subsidiary); the suit also involves the interpretation of a 1923 franchise agreement between the City and NOPSI. According to Joint Intervenors, Middle South failed to disclose certain financial risks to its investors, casting doubt on its (Middle South's) honesty and integrity and, by implication, that of LP&L. As should be obvious, however,

the mere filing of a lawsuit cannot serve as a reasonable basis upon which to reopen a closed record. Further, the suit appears to involve complex financial issues that are not our function to resolve. Even if the City were to prevail in its claims, it is not apparent what, if any, relevance that would have to the NRC's consideration of LP&L's character and ability to operate a nuclear plant.[3]

Second, Joint Intervenors contend that recent comments of LP&L's Senior Vice President at a Rotary luncheon, as reported in the newspaper, show LP&L's "disrespect" for the NRC and its regulations. We have read the article and find no basis for Joint Intervenors' interpretation of the comments in question.

Third, Joint Intervenors claim that a power blackout in a large portion of New Orleans this past January

---

[3] Although an applicant's character and competence to operate a nuclear power plant can be appropriate issues for consideration in NRC licensing proceedings, that consideration is necessarily in the context of the obligations imposed on a would-be licensee by the Atomic Energy Act. Thus, in the NRC proceedings where management competence and integrity have been at issue, the focus has been on the utility's ability to operate the plant safely and to deal honestly with the NRC. See, e.g., Houston Lighting & Power Co. (South Texas Project, Units 1 and 2), ALAB-799, 21 NRC __, __ (Feb. 6, 1985) (slip opinion at 10-11); Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-772, 19 NRC 1193, 1206-08 (1984). Shareholders' suits and proceedings before local public service authorities are the proper avenues from which to explore overall company management.

demonstrates LP&L's lack of management competence or, potentially, "intentional misconduct." They refer to criticism leveled at LP&L by local politicians and the commencement of an investigation by the City Council into the causes of the blackout. But, as in the case of the filing of a lawsuit, the mere initiation of an investigation into LP&L's actions with regard to the blackout cannot provide a legitimate basis for reopening of the record. See pp. 2-3, supra. We also note that, according to the newspaper articles upon which Joint Intervenors rely, the blackout occurred during a period of unusually cold weather in New Orleans. Power failures are not unexpected in such circumstances; nor is criticism of utilities by local political figures and consumers. Even if such criticism were later found to be justified, the relevance of such a finding to LP&L's competence and integrity to operate Waterford is not apparent from Joint Intervenors' arguments here. See note 3, supra.

Fourth, according to Joint Intervenors, LP&L is "subservien[t]" to Middle South, as shown by recent articles on corporate infighting. If LP&L can bow to pressure from Middle South on financial matters, Joint Intervenors argue, it is "even more probable" that LP&L will subordinate safety concerns at Waterford to the unspecified demands of Middle South. Assuming arguendo that the charges of corporate "control" by Middle South are true, we are nonetheless

unable to make the quantum leap suggested by Joint Intervenors' theory to a subordination of safety concerns at the Waterford facility. There is simply no substantiation put forth for such a charge.

In sum, the material offered as a supplement to Joint Intervenors' motion is so lacking in probative value that it could not possibly support a motion to reopen, either standing alone or in conjunction with the arguments on management competence and integrity in the motion to reopen itself. We therefore deny Joint Intervenors' motion for leave to supplement.

2. Likewise, Joint Intervenors' motion for leave to reply to LP&L's response to their motion to supplement is denied. The Commission's Rules of Practice clearly preclude such replies, except where expressly permitted by the presiding board. 10 C.F.R. § 2.730(c). Joint Intervenors have failed to provide any basis for granting such permission here. They contend that leave to reply is necessary to correct "outright misrepresentations" by LP&L. But given that we have found no merit to Joint Intervenors' motion to supplement <u>without regard to the replies of either</u>

LP&L or the staff, there is no need for Joint Intervenors to reply to matter to which we have given no weight.[4]

In this connection, we advise the parties that pleadings similar in nature to the two motions disposed of by this order will be rejected in the future. The fact that an opposing party's reply to a motion disagrees with that motion neither is surprising nor constitutes a "misrepresentation" of the movant's position. Similarly, the fact that a motion and the replies to it do not agree does not establish a basis for another round of submittals. We are capable of reading legal argument, examining exhibits, and deciding the matters before us without the extended volleying of the parties. If additional information is necessary before we rule on a matter, we will request it -- as we have done in the past. And if our ultimate ruling on the record before us is not to a party's liking, it is free to seek further review by the Commission and the courts.

---

[4] Joint Intervenors' motion for leave to reply to applicant's response to their motion to supplement is itself somewhat misleading. Though labeled as just described, the pleading also contains argument directed to a staff reply to an earlier motion for leave to reply filed by Joint Intervenors in connection with quality assurance issues. Joint Intervenors provide no reasonable basis for granting permission to file this reply to a reply to a reply to a reply. 10 C.F.R. § 2.730(c). See p. 6, infra.

We are also compelled to note that much of the material submitted to us in this proceeding (not solely by Joint Intervenors) is poor in quality, limited in value, and frivolous. This is counterproductive to our resolution of the serious charges raised concerning the safety of the Waterford facility. See generally Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc., 435 U.S. 519, 553-54 (1978).

Joint Intervenors' February 25, 1985, "Motion for Leave to File Supplemental Memorandum in Support of Motion to Reopen," and March 11/12, 1985, "Motion for Leave to File Reply to Applicant's Answer to Joint Intervenors' Motion for Leave to File Supplemental Memorandum and Applicant's Response to Supplemental Memorandum" are denied.

It is so ORDERED.

FOR THE APPEAL BOARD

C. Jean Shoemaker
C. Jean Shoemaker
Secretary to the
Appeal Board