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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 22, 1985
(ALAB-801)

SERVED MAR 22 1985

In the Matter of

LOUISIANA POWER & LIGHT COMPANY

(Waterford Steam Electric Station, Unit 3)

Docket No. 50-382 OL

Lynne Bernabei and George Shohet, Washington, D.C., for joint intervenors Oystershell Alliance and Save Our Wetlands, Inc.

Bruce W. Churchill, Dean D. Aulick, and Alan D. Wasserman, Washington, D.C., for applicant Louisiana Power & Light Company.

Bernard M. Bordenick and Sherwin E. Turk for the Nuclear Regulatory Commission staff.

MEMORANDUM AND ORDER

On November 8, 1984, Joint Intervenors filed their fifth motion to reopen the record in this proceeding.[1] By

[1] We ruled on two of these motions in ALAB-753, 18 NRC 1321, 1323-31 (1983), and on another in our Order of February 28, 1984 (unpublished). A fourth, concerning the concrete basemat on which the Waterford facility rests, is still under consideration.

Two additional motions are also pending before us. One is Joint Intervenors' motion for a protective order (filed with the November 8 motion to reopen); the other is Joint

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remaining ones have not been addressed adequately in the responsive pleadings, especially that of the staff.[3] We therefore call for additional information from the staff and LP&L and offer Joint Intervenors the opportunity to respond to these submissions.[4]

I.

As noted above, our preliminary view is that much of Joint Intervenors' motion to reopen falls of its own weight. In some instances, the exhibits submitted in support of a particular charge are incomprehensible (for a variety of reasons), or irrelevant to the charge, or both. In other instances, the arguments have no apparent relation to the point being pressed. Other charges that appear to have at least limited validity have been effectively refuted by LP&L.[5] But broad questions raised principally by Joint

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Nuclear Power Plant, Units 1 and 2), ALAB-598, 11 NRC 876, 879 (1980); id., CLI-82-39, 16 NRC 1712, 1714-15 (1982); and id., ALAB-775, 19 NRC 1361, 1365-67 (1984), for the requirements that must be satisfied for reopening on new issues.

[3] Unfortunately, this is not the first such occasion in the course of this protracted proceeding. See ALAB-786, 20 NRC 1087, 1091-95 (1984).

[4] In ALAB-792, 20 NRC 1585, (1984), clarified, ALAB-797, 21 NRC 6 (1985), we found that we had jurisdiction to consider the entirety of Joint Intervenors' motion.

[5] Our ultimate decision on the motion to reopen, of course, will explain more fully our reasons for accepting or
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they have been satisfactorily resolved, and demonstrate their lack of safety significance. NRC Staff's Response to Joint Intervenors' Motion to Reopen (Dec. 21, 1984) at 8 (hereafter, Staff Brief). But as we show below, these affidavits in large measure neither fully address nor satisfactorily resolve the issues. To the extent the staff's brief relies on the affidavits, it suffers from the same infirmity and is of no value to our consideration.

As a general matter, instead of a readable narrative that addresses in sequence the myriad charges in Joint Intervenors' motion, the staff has provided us with a "matrix" that purports to tell us where to find the staff's response(s) to each of the charges. The matrix is keyed to six subject matter categories (quality assurance, civil/structural, etc.). For example, the answer for charge A(1)(a)(i) can be found in "QA," "Civil/Struct.," and "RIV Insp. Activ." The code for the matrix tells us that team leaders J. Harrison, R. Shewmaker, and W. Crossman are responsible for these categories and that their affidavits can be found in Attachments 2, 3, and 7. After turning to the affidavits, however, it is apparent they are not really affidavits at all, as that term is generally understood in legal parlance. They are signed and notarized but the "substance" of the statements for the most part is more code, such as "A-229, A-48, A-306g," with an occasional accompanying cryptic comment, or a terse memorandum between

satisfactory resolution." Affidavit of Dennis M. Crutchfield (Dec. 21, 1984) at 7. We found this to be a largely futile endeavor. For, apart from problems associated with its form, as discussed above, the staff's submission is of negligible value for at least seven reasons.

First, the matrix and affidavits themselves are inaccurate and sloppy.[6] Second, in many instances no information at all (not even a cross-reference to another source) can be found in the affidavit identified by the matrix.[7] Third, documents (some of which are described as in "draft") that have not been submitted to us and therefore are not part of this record are relied upon and cross-referenced.[8] Fourth, entire, large documents are cited with no reference to any specific page(s).[9] Fifth, the material cited does not always respond directly to the

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[6] See, e.g., A(1)(b), A(1)(m), A(1)(4) [sic], B(1), B(2) - Crossman; A(a)(d) [sic] - Shewmaker.

[7] See, e.g., A(1)(a)(i), A(1)(d), A(3)(b), A(4)(e), A(6)(b), A(6)(c), A(7)(a), D(3), B(3)(e) - Shewmaker; A(1)(p), B(1) - Crossman.

[8] See, e.g., A(1)(m), A(1)(n), A(2)(a), A(2)(d), A(2)(e), A(3)(g), A(7)(a), B(6) - Crossman; B(4), C, D - Staff Brief at 15, 17.

[9] See, e.g., A(2)(d), A(2)(e), A(3)(g), A(7)(a), A(10)(e), A(11)(d) - Crossman; A(1)(b) - Peranich; A(1)(c), B(1) - Harrison.

the staff should communicate that to the Commission and seek to alter its role before us. But for the time being, the staff is a party in this and other adjudicatory proceedings, and its conduct and contribution must conform to the same standards we apply to other parties. Where an applicant or intervenor (particularly, where represented by legal counsel) submits a helter-skelter collection of materials comparable to that served up here by the staff, that party must live with the consequences. See Diablo Canyon, ALAB-775, supra note 2, 19 NRC at 1368 n.22. So too must the staff.

We express this criticism of a party with considerable reluctance. Indeed, had our effort to parse through the staff's filing been more fruitful, any remaining deficiencies perhaps could have been dealt with less severely. But the level of frustration with this submission felt by each member of this Board is so great that we are left with no other choice. We therefore strike the staff's brief and all of the supporting affidavits, except insofar as they respond to Joint Intervenors' charges A(1)(n) (Crossman) and A(6)(b) (Shao).[14]

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[14] To be sure, other portions of the staff's submission -- namely the Shewmaker Affidavit -- contain understandable and, in the abstract, useful information. But such instances mostly involve charges that are without merit on

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But even with the incorporation of SSER-9 into the record for the purpose of deciding the instant motion to reopen, significant gaps remain -- most notably with respect to Joint Intervenors' broad assertion of a serious, systematic breakdown in LP&L's construction quality assurance program. See pp. 13-14, infra. Issue 23 in SSER-9 ("SSER-9/Issue 23") is directed to this matter:

> The results of the NRC task force effort indicate that an overall breakdown of the QA program occurred. Most problems identified by the NRC had been previously identified by the QA programs of LP&L, EBASCO [LP&L's architect-engineer] and Mercury [the instrumentation subcontractor]. But the failure to determine root cause and the lack of corrective action allowed the problem to persist.

SSER-9 at 84.

The genesis of SSER-9/Issue 23 is Allegation A-48, discussed in SSER-7 ("SSER-7/A-48").[15] Although A-48 initially refers to a breakdown in the QA program between Ebasco and Mercury Construction Company, the staff's assessment of that allegation contains the following sweeping indictment of LP&L's QA program:

> (1) LP&L did not thoroughly evaluate, determine the root cause, and take effective corrective action to preclude recurrence of the identified problems; and (2) LP&L did not take action to implement the recommendations of its consultants

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[15] The nearly 350 "allegations" dealt with in SSER-7 are to be distinguished from the specific allegations in Joint Intervenors' motion to reopen, which we term "charges" in order to avoid confusion.

in their motion to reopen. As we have seen, A-48 concludes that the breakdown in LP&L's QA program "has potential safety significance" -- a conclusion squarely at odds with the staff's overall position on the motion to reopen. SSER-7 at 100. And little reliance can be placed on the subsequent favorable staff conclusion on this subject in SSER-9/Issue 23 because that conclusion is not adequately explained.

It is therefore essential that the staff clarify and explain its current position on SSER-7/A-48 and SSER-9/Issue 23. In preparing its comments, the staff should bear in mind the following concerns:

-- Why is the QA breakdown described in SSER-7/A-48 not so "pervasive . . . as to . . . raise legitimate doubt as to the plant's capability of being operated safely?" See Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-756, 18 NRC 1340, 1354-55 (1983).

-- In view of the apparently serious QA deficiencies identified, what is the basis for the staff's conclusion (SSER-9 at 85) that "the As-Built plant was adequately designed, constructed, inspected, and tested and can be operated without undue risk to the public health and safety"?

-- In view of the apparently inadequate implementation of LP&L's QA program during the course of construction, what is the basis for the staff's conclusion (ibid.) that LP&L's corrective actions and the modifications to its QA program, "together with proper management attention and oversight, and attention to detail, provide reasonable assurance that LP&L can safely operate and properly manage" Waterford?

The staff should also focus particular attention on Joint Intervenors' charges A(1)(b), A(1)(h), A(1)(p), A(10)(e),

Joint Intervenors imply that it is necessary to correct misleading statements by LP&L in the latter's reply to the motion to reopen. Joint Intervenors, however, actually seek to correct certain shortcomings, identified by LP&L, in the supporting documentation for their motion to reopen. To this end, they tender four more exhibits, each of which is of dubious value and was available well before they filed their motion to reopen. Joint Intervenors have provided no good cause for permitting this belated attempt to rehabilitate their motion.[18] Moreover, as we said in our Order of March 14, 1985, supra note 1, at 6, "[w]e are capable of reading legal argument, examining exhibits, and deciding the matters before us without the extended volleying of the parties." Accordingly, Joint Intervenors' motion for leave to reply to LP&L is denied.

A large part of Joint Intervenors' tendered reply consists of new argument, critical of the staff's conclusions on certain allegations addressed in SSER-7. Our striking of most of the staff's reply, which relied heavily on SSER-7, renders Joint Intervenors' argument on this point largely academic. In addition, SSER-7 was issued almost a

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[18] Joint Intervenors' motion for leave to reply to LP&L is itself untimely as well: LP&L's response was filed almost two months before Joint Intervenors sought permission to reply to it.

filed in response to Joint Intervenors' January 25 motion, will also be considered insofar as they concern SSER-9.[19]

IV.

Several of the charges in Joint Intervenors' motion to reopen appear to concern matters that are before the NRC's Office of Investigations (OI).[20] The response to these charges provided by the staff and LP&L is minimal. This is understandable, given that LP&L is not in a position to know what OI might be investigating, and the staff, if it knows, might be precluded from disclosing information about such ongoing investigations.

In our Order of December 19, 1984 (unpublished), we noted the possible overlap of matters being investigated by OI and raised in Joint Intervenors' motions to reopen. Invoking the Commission's policy for handling conflicts between the need to protect investigative material from premature public disclosure, and the need for disclosure of information potentially relevant and material to a pending adjudication, we sought information from OI -- in writing and on an ex parte, in camera, basis -- that bears on the motions pending before us. See 49 Fed. Reg. 36,032 (1984).

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[19] We note that the staff's comments in this regard are substantially better and more understandable than its original reply to the motion to reopen.

[20] See, e.g., A(1)(g), B(1).

It is so ORDERED.

FOR THE APPEAL BOARD

C. Jean Shoemaker
Secretary to the
Appeal Board