

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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USING

'84 DEC 27 P3:11

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD BOARD OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

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

Docket No. 50-382

NRC STAFF'S RESPONSE TO "JOINT INTERVENORS' MOTION TO  
REOPEN THE RECORD AND TO ADMIT FOR LITIGATION THREE  
CONTENTIONS CONCERNING APPLICANT'S QUALITY ASSURANCE  
BREAKDOWN AND LACK OF CHARACTER AND COMPETENCE TO  
OPERATE THE WATERFORD 3 STEAM ELECTRIC PLANT" AND  
"JOINT INTERVENORS' MOTION FOR A PROTECTIVE ORDER"

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December 21, 1984

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## II. BACKGROUND

Joint Intervenors have previously moved to reopen the record in this proceeding on several occasions. <sup>3/</sup> In a motion filed on February 20, 1984, Joint Intervenors sought to litigate a quality assurance contention and primarily relied on newspaper articles describing "whistleblower" allegations of a quality assurance ("QA") breakdown at Waterford. The Appeal Board, on February 28, 1984, denied the motion but granted the Joint Intervenors until March 30, 1984, "to perfect" their motion by submitting adequate documentation and by complying in all other respects with the Commission's rules and precedents. On March 28, 1984, the Joint Intervenors requested an extension of time of six months within which to file their motion to reopen. On April 11, 1984, the Appeal Board denied Joint Intervenors' motion for extension of time but indicated that if the proceeding had been reopened on other grounds and an operating license had not yet been issued, Joint Intervenors could seek to reopen the record on QA matters at a later date.

Joint Intervenors, in seeking to reopen the record now, principally argue that litigation of their three broad contentions will demonstrate Applicant's failure to maintain an adequate quality assurance program over the life of the construction of Waterford 3. Joint Intervenors also argue that Applicant over the life of construction of Waterford, and

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<sup>3/</sup> Motion to Open Quality Assurance Contention, dated February 20, 1984; Amended and Supplemental Motion to Reopen Contention 22, dated December 12, 1983; Motion to Reopen Contention, dated November 7, 1983; and Motion to Reopen Contention, dated July 22, 1983.

currently, has demonstrated that it lacks the basic character and competence to operate Waterford safely and that the Staff, through its inspection and investigation efforts and the review and reinspection program it has instituted, has not provided the necessary degree of confidence that Waterford has been constructed and may be operated in a manner which protects the public health and safety. The pending motion contains a large assortment of allegations, many of a vague, unsupported or repetitive nature. The motion is also accompanied by 62 exhibits, many of which are NRC staff documents.

### III. DISCUSSION

#### A. Jurisdiction

Applicant argues, at pages 4-6 of its Answer to the Joint Intervenor's motion to reopen, that the Appeal Board is without jurisdiction to grant the instant motion. <sup>4/</sup> In a Memorandum issued on December 12, 1984 (ALAB-792), the Appeal Board concluded that it has jurisdiction over the November 8, 1984, Motion to reopen filed by Joint Intervenor. The NRC staff is filing, under separate cover, a motion seeking clarification and/or reconsideration of the Appeal Board's jurisdictional determination. <sup>5/</sup> Therein, the Staff seeks clarification that the Appeal Board's jurisdiction over the QA motion extends only to those

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<sup>4/</sup> Joint Intervenor's motion is silent on the express matter of the Appeal Board's jurisdiction to decide the motion in question.

<sup>5/</sup> See "NRC Staff's Motion for Clarification and/or Reconsideration of Appeal Board's Memorandum Dated December 12, 1984 (ALAB-792)."

particular matters embraced therein which bear a reasonable nexus to the pending basemat motion.

B. The Legal Standards Governing Motions to Reopen the Record

The legal standards governing the consideration of motions to reopen are well defined by Commission case law. The Staff has previously addressed those standards in this proceeding, inter alia, at pages 7-9 of the "NRC Staff's Answer to Joint Intervenors' Motions to Reopen Contentions 8/9 and 22" dated November 28, 1983 and further addresses them below.

In sum, as previously set out in this proceeding at 18 NRC 1321, 1324 (1983), the case law holds that movants have a heavy burden in demonstrating that (1) the motion is timely, (2) the motion is directed to a significant safety or environmental issue and (3) a different result might have been reached initially had the material in support of the motion been considered. Both Joint Intervenors and Applicant have addressed these standards but, in applying the facts relied on by Joint Intervenors, reach opposite results.

In Pacific Gas and Electric Company, CLI-82-39, 16 NRC 1712, at 1714-15 (1982), the Commission has held that both the case law criteria for reopening the record and the standards set forth in 10 C.F.R. § 2.714(a)(1) for late filed contentions must be met "[w]here a motion relates to a previously uncontested issue." These criteria are as follows:

- (i) Good cause, if any, for failure to file on time.

- (ii) The availability of other means whereby the petitioner's interest will be protected.
- (iii) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.
- (iv) The extent to which the petitioner's interest will be represented by existing parties.
- (v) The extent to which the petitioner's participation will broaden the issues or delay the proceeding.

It is the Staff's view that while Joint Intervenors have addressed all of the above standards, they have failed to carry their burden with regard to the instant motion.

C. The Motion to Reopen the Record is Untimely

In order for a movant to show that a motion to reopen is timely, it must be established that the issue sought to be raised could not have been raised earlier. Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-775, 19 NRC 1361, 1366 (1984). This test places a "heavy burden" on the movant. Kansas Gas & Electric Company (Wolf Creek Generating Station No. 1), ALAB-462, 7 NRC 320 (1978). An examination of the motion here indicates that Joint Intervenors' Motion is untimely in the extreme, in that they present information which, in most cases, could have been presented over a year ago.

With respect to Joint Intervenors' proposed quality assurance contention, they have submitted three anonymous affidavits, attached to their motion as Exhibits 8, 12, and 27. These affidavits are cited in the Motion to Reopen as support for approximately 22 separate allega-

tions. In addition, some of the affidavits raise additional concerns which are not mentioned in the body of the motion. These affidavits were executed in September and October of 1984. However, the Legal Director for the Government Accountability Project (GAP) (which now represents Joint Intervenors) states in his affidavit that he drafted the three affidavits in July, 1983 following interviews held with the affiants. See Affidavit of Thomas M. Devine, November 5th, 1984, attached to Joint Intervenors' Motion for Protective Order dated November 6, 1984. Thus, it appears that GAP possessed certain of the information upon which it now relies for almost one and one-half years before it filed its pending motion to introduce a quality assurance contention.

No reason is advanced by Joint Intervenors as to why the information upon which they now rely, as regards the proposed quality assurance contention, was not presented earlier. Additionally, no reason is advanced by Joint Intervenors as to why they did not come forward after having been expressly requested to do so by the Staff and Applicant. In May, 1984, Gary Groesch (the then lead representative of Joint Intervenors) notified the Staff that he had information allegedly relating to the "completeness and/or truthfulness. . ." of items in the Applicant's April 27, 1984 letter to the Staff which responded to various concerns previously identified by the Staff. See Letter, Darrell G. Eisenhut to Gary Groesch, August 17, 1984 attached as Exhibit 1 to Applicant's Answer to the motion to reopen. Mr. Groesch failed to provide that information either to the Staff or the Appeal Board, despite an express written request that he "promptly provide to the staff any information [that he might] have pertaining to the safety of the Waterford Unit 3 facility". Id. at 2. Now, some six months after Mr. Groesch indicated that he had

the information, Joint Intervenors seek to reopen the record and introduce a contention on management competence in part because they allege that "[Applicant] made inaccurate and misleading statements in its April 27, 1984, letter to the NRC." Motion to Reopen at 21, Item B(3).

Other examples of Joint Intervenors' untimeliness are Applicant's unsuccessful attempts to meet with GAP; see letter from Saul Levine to Billie Garde dated August 24, 1984 (Exhibit 2 to Applicant's Answer to Motion to Reopen); and Staff's unanswered request to GAP to provide any information that it had, relating to Waterford, of potential safety significance. See letter from Darrell G. Eisenhut to Lynn Bernabei dated August 15, 1984 (Exhibit 3 to Applicant's Answer to Motion to Reopen).

Additionally, the Joint Intervenors' use of the Staff's June 13, 1984 letter as a basis for its current allegations demonstrates that the present motion to reopen the record is untimely. That letter, written five months prior to the filing of the instant motion, identified issues which required Staff resolution prior to licensing of Waterford. Joint Intervenors have adopted those issues as allegations in their motion. See Motion to Reopen Items A(1)(c), A(8)(c), A(10)(a), A(10)(c), A(10)(f), B(3)(a), B(3)(d), B(3)(e), C, D(1), D(2), D(3), and D(4). Joint Intervenors were obviously aware of the issues raised by the Staff last summer, just as they must be aware that considerable effort has been exerted by the Applicant in resolving those issues since Mr. Eisenhut's letter was issued. No reason is advanced as to why Joint Intervenors did not come forward earlier with their motion to reopen to litigate those matters.

Other exhibits submitted by Joint Intervenors in support of the motion to reopen are also untimely. A majority of these documents are

more than two years old. Approximately twenty-five of them are over five years old. No reason is advanced by Joint Intervenors to demonstrate why the issues allegedly raised by these documents "could not have been raised earlier." Pacific Gas and Electric Company, ALAB-775, supra.

Joint Intervenors acknowledge at pages 46-48 and 59 of their motion that the motion to reopen is untimely. However, they assert that they have demonstrated "good cause" for the late filing. The Staff's response to the Joint Intervenors' assertions in this regard is set forth below in the discussion relating to the first of five criteria for admitting late filed contentions.

D. The Staff has Fully Addressed and Resolved the Issues Raised in Joint Intervenors' Motion - to the Extent Anything New Has Been Raised, It Is Not Significant

Based on the attached affidavits, it is the Staff's position that the issues raised in the intervenors' motion have been fully addressed and resolved. In sum, as stated in the Affidavit of Dennis M. Crutchfield, at ¶ 15, the individual who directed Staff efforts during the NRC Task Force review, "Joint Intervenors' motion does not contain any significant new safety issues that have not been previously reviewed by the Staff and brought to a satisfactory resolution."

E. The Joint Intervenors Have Not Shown That a Different Result Might Have Been Reached Initially Had the Material in Support of the Motion Been Considered Earlier

To support a motion to reopen the record, a movant must demonstrate that it has raised a significant safety issue that might have caused a different result had the information set forth in the motion been con-

sidered initially. The proponent of a motion to reopen the record must present "significant new evidence . . . that materially affects the decision," not "bare allegations or simple submissions of new contentions." Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant), CLI-81-5, 13 NRC 361, 362-363 (1981). This requirement has been interpreted to mean that the information supporting a motion to reopen must exceed the particularity required by the basis and specificity requirements of 10 C.F.R. 2.714(b) applicable to admission of timely contentions. The material must "be tantamount to evidence" and must possess the attributes set forth in 10 C.F.R. 2.743(c) defining admissible evidence for adjudicatory proceedings. Pacific Gas and Electric Company (Diablo Canyon) Nuclear Power Plant, Units 1 and 2), ALAB-775, 19 NRC 1361, 1366-67 (1984). "[T]he new evidence supporting the motion must be "relevant, material, and reliable." Id.

In the Staff's view, Joint Intervenors have totally failed to carry their "heavy burden" in establishing the safety significance of the issues raised in their motion. Joint Intervenors' proposed quality assurance contention is based on numerous allegations which are without factual support, are factually incorrect, are based on a misreading of their own exhibits, or are derived from stale issues that have been previously identified and resolved. Similarly, Joint Intervenors' proposed management character and competence contention is based on allegations which are either unsupported by the evidence or are inaccurate. Finally, Joint Intervenors' third proposed contention is extremely vague, is supported only by broad allegations and, to the extent that it seeks

to litigate the adequacy of Staff review efforts, fails to raise an issue that is appropriate for litigation in this proceeding.

1. The Proposed Quality Assurance Contention.

Joint Intervenors' proposed quality assurance contention encompasses twelve general allegations, broken down into numerous sub-allegations. In order to raise a significant safety issue, Joint Intervenors' "supporting information must be more than mere allegations"; rather, it must be "tantamount to evidence." Id. Accordingly, the Joint Intervenors are required to support each of their sub-allegations with relevant, reliable, and factually accurate information. This has not been done. In addition, the Joint Intervenors must establish that their allegations raise significant safety problems. Joint Intervenors' broad brush approach, which lists numerous alleged problems with less regard to substance and evidentiary support than to sheer volume, is not sufficient to support the reopening of the record to litigate a quality assurance contention. As stated in Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-756, 18 NRC 1341 (1983), involving a motion to reopen the record to introduce a new quality assurance contention:

Although a program of construction quality assurance is specifically designed to catch construction errors, it is unreasonable to expect the program to uncover all errors. In short, perfection in plant construction and the facility construction quality assurance program is not a precondition for a license under either the Atomic Energy Act or the Commission's regulations. What is required instead is reasonable assurance that the plant, as built, can and will be operated without endangering the public health and safety.

In order for new evidence to raise a "significant safety issue" for purposes of reopening the record, it must

establish either that uncorrected construction errors endanger safe plant operation, or that there has been a breakdown of the quality assurance program sufficient to raise legitimate doubt as to the plant's capability of being operated safely. See Union Electric Co. (Callaway Plant, Unit 1), ALAB-750, 18 NRC 343, 346 (1983).

Id. at 1345. The Joint Intervenors' motion fails to meet these standards.

The NRC staff's specific responses to the numerous individual allegations and sub-allegations concerning quality assurance are presented in the affidavits and attachments appended to this response. As discussed therein, Joint Intervenors' quality assurance allegations are either totally without factual support, are factually wrong, are based on a misreading of the cited exhibits, or derive from stale issues which have been previously identified and resolved by Applicant or Staff.

Moreover, many of Joint Intervenors' allegations appear to be unsupported by the exhibits which they have cited for factual support. <sup>6/</sup> For example, in Item A(3)(c), Motion to Reopen at 8, it is alleged that Applicant lacked a records index as required by ANSI N.45.2.9 and Applicant's PSAR. This allegation is allegedly supported by Exhibits 25 and 26 attached to the motion to reopen. However, an examination of these exhibits does not disclose any reference to a lack of a records index that may be required by the PSAR or ANSI N45.2.9. Also, Item A(4)(c), Motion to Reopen at 9, alleges that Applicant failed, even after notifica-

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<sup>6/</sup> Joint Intervenors rarely identify the specific passages in the exhibits which they claim support their allegations. Based on the large amount of irrelevant material contained in their exhibits, the burden is on Joint Intervenors, not the Board or other parties, to "separate the wheat from the chaff and present the material in an organized and persuasive manner." Diablo Canyon, ALAB-775, supra, 19 NRC at 1368, n. 22.

tion, to ensure that administrative procedures were instituted to cover the interface between on-site Waterford 3 staff and the off-site support group. The only factual support offered by Joint Intervenors in this regard is a reference to Exhibit 1. An examination of that exhibit, however, does not reveal any reference to the specific allegation stated in the motion. There are numerous other examples, all of which are discussed in Attachment 1 to Applicant's Answer to the motion to reopen. Allegations which are unsupported by the exhibits upon which they rely cannot have factual basis. Thus, they cannot constitute evidence sufficient to support a motion to reopen.

In addition to many unsupported allegations, some of the Joint Intervenors' quality assurance allegations appear to be contradicted by the documents which are listed for factual support. For example, as noted in Applicant's Answer to the Motion to Reopen (at 19), Joint Intervenors' Item A(3)(b), Motion to Reopen at 8, asserts that Applicant lacked oversight of procurement activities, including subcontractor documentation. The Joint Intervenors refer to their Exhibit 29 as support for this assertion. However, a review of that exhibit shows it is a letter from the Applicant to Ebasco instructing that a procurement under consideration be rejected; thus, Exhibit 29 appears to refute rather than support the allegation. Another example is Item A(1)(a)(iii), Motion to Reopen at 4. Here, Joint Intervenors allege that Applicant's construction organization had effective control over both the day-to-day operations of the quality assurance department and the major policy decisions. However, their Exhibit 4, the only document cited in support of the allegation, explicitly defines and describes the authority and independence of the

Applicant's Quality Assurance Organization, and shows how the Applicant's quality assurance program established and maintained independence of its Quality Assurance Organization.

Many of the Joint Intervenors' allegations also appear to be factually erroneous. For example, Item A(1)(o), Motion to Reopen at 6, asserts that Applicant provided no QC coverage for work done on the night shift. This assertion is allegedly supported by Joint Intervenors' Exhibits 1, 8 and 22; however, a review of those exhibits does not lend support to the allegation.

2. The Management Competence Contention

The second proposed contention which Joint Intervenors seek to litigate in a reopened proceeding is one which alleges that the Applicant lacks the necessary character and competence to operate Waterford 3. Motion to Reopen at 15. In support of this proposed contention, Joint Intervenors advance allegations in several areas encompassing alleged improprieties dating back to 1981. None of these allegations raise a significant safety issue, and none supports reopening to litigate a contention that Applicant lacks the requisite character and competence to operate Waterford.

(a) The OI Investigation

It is argued by Joint Intervenors that the existence of an investigation by the NRC's Office of Investigation (OI) is evidence in support of their contention that Applicant "does not have the necessary character and competence." Motion to Reopen at 15-16. However, the pendency of

an OI investigation, in and of itself, cannot support Joint Intervenors' motion to reopen the record. Until a finding is made by OI, the accuracy and significance of the allegations which instigated the investigation should not be presumed.

(b) Financial Reports

Joint Intervenors' motion next asserts that Applicant lacks character and competence because it allegedly made a number of "misstatements and misleading statements" in financial documents filed with the Securities and Exchange Commission (SEC). This allegation is insufficient to support a motion to reopen the record. The allegation centers on statements pertaining to the licensing status of Waterford 3. The question of whether the statements were untrue or misleading is a question that should be addressed, in the first instance, by the SEC. (See Affidavit of D. Crutchfield). In any event, the Staff's review leads it to conclude that Applicant has the character, integrity and competence to safely operate the Waterford 3 facility. See Crutchfield Affidavit at ¶ 6B, and the attached Memorandum from the Regional Administrator, NRC Region IV to the Director of NRR, dated December 4, 1984.

(c) Applicant's April 27 Letter

Joint Intervenors, at pages 21-23 of their motion, allege that Applicant made inaccurate and misleading statements in its April 27, 1984 letter responding to various issues identified by the Staff on April 2, 1984. In our view, the significance of those matters has been fully addressed in the Task Force's subsequent work and, given the very general nature of the Staff's letter of April 2, 1984, it is understandable that

the Applicant's response may not have been fully responsive to the concerns of the Staff. For this reason, the Staff did not rely on the Applicant's response of April 27, 1984. See Affidavit of Dennis M. Crutchfield at ¶ 6.B.

(d) The Staff's CAT Report

Based on the Staff's May 14, 1984 Construction Assessment Team (CAT) Report (Joint Intervenors' Exhibit 23), it is asserted that Applicant has historically failed to correct noncompliances and prevent their recurrences. According to Joint Intervenors, this supports a reopening for admission of a management character and competence contention.

The attached affidavit of W. Crossman shows that the NRC staff did identify instances where Applicant failed to take adequate corrective action. Enforcement action is pending in regard to these failures, and no other actions are required. The followup inspection to the CAT Report is documented in NRC Inspection Report 84-30 and 84-45.

(e) Staffing at Waterford 3

Joint Intervenors allege at 28-29 of their motion that Applicant failed to upgrade its staff after repeated warnings by the NRC. This allegation is without support. As noted in the Crutchfield Affidavit at ¶ 6B, Applicant commenced a recruiting effort in 1981 and significantly increased staffing levels. The Staff has tracked and acknowledged the improvement in Applicant's staffing in several SER Supplements. The Staff has also concluded that staffing levels and staff qualifications are adequate for operation of Waterford 3. See attached memorandum from

Regional Administrator, NRC Region IV, to Director, Office of Nuclear Reactor Regulation dated December 4, 1984. Joint Intervenors have offered no new evidence in support of their allegation.

(f) Ebasco Site Management Competence

The allegation is made by Joint Intervenor, at 29 that Applicant failed to ensure that Ebasco site management was "competent, trustworthy, and dedicated to quality principles."

This allegation, too, is unsupported by the evidence. Joint Intervenors have not presented any documents in support of this allegation. Joint Intervenors rely on a paraphrasing of portions of a 1981 Staff inspection report relating to a single individual while he was employed at another project. Joint Intervenors have made no allegations about that individual's performance at Waterford 3. In essence, it appears that Joint Intervenors are attempting to rely on stale and unsubstantiated allegations against an individual. Bare allegations of this nature cannot serve as a justification for reopening the record. Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant), CLI-81-5, 13 NRC 361, 362-363 (1981).

(g) Other Issues

After Section B, it becomes difficult to follow the Intervenors' motion to reopen. For example, Section C purporting to deal with Joint Intervenors' third contention concerning Staff, is almost entirely devoted to criticizing Applicant. This Section, as well as Sections D and E appears to relate to Joint Intervenors' proposed contention on management

character and competence. It is argued by Joint Intervenors in Sections C and D of the motion that Applicant's attitude and strategy in responding to NRC concerns has been questionable. Motion to Reopen at 32-39. Joint Intervenors also assert in Section E that Applicant's handling of the basemat issue raises questions about Applicant's ability and willingness to comply with NRC directives, motion at 39-40. No rationale is set forth as to why these allegations should not be dealt with in the context of the basemat issues still pending before the Appeal Board.

Applicant has addressed and responded to concerns raised by the NRC Inquiry Team (as have been documented in SSER 7 and Inspection Reports 84-43 and 84-45 and as will be further documented in SSER 9) and the NRC Construction Assessment Team (CAT). (See Inspection Reports 84-30 and 84-45). These documents show that in response to the concerns raised in the Staff's June 13, 1984 letter, Applicant mobilized a large work force, headed by a special management team with personal oversight by the Applicant's President and Chief Executive Officer. In addition, Applicant has arranged for an outside Task Force of qualified experts to provide a more independent review and assessment of the adequacy of the resolution of the NRC issues. Each response to NRC issues has included identification of the cause, safety implications, necessary corrective action and assessment of the generic implications of the issue. The Applicant has also properly addressed safety issues brought to its attention by the Staff in the three recent inspection efforts.

In Section E of the motion to reopen, at 39-44, the Joint Intervenors make allegations about Applicant's handling of the basemat issue to

bolster their proposed contention on LP&L character and competence. Again, these allegations do not appear sufficient to support a contention on management and integrity, and Joint Intervenors have not explained why this matter could not be addressed within the context of the basemat issue pending before the Appeal Board.

3. Staff Performance Contention

The third proposed contention advanced by Joint Intervenors alleges that the NRC staff's regulatory activities have been inadequate (page 32 of the motion). Joint Intervenors have failed to provide any basis for the allegation. A reading of Section II.C of the motion, pages 32-36, shows nothing more than general criticisms of the Staff's efforts. This criticism is difficult to square with the language at the start of the section which describes, in glowing terms, the Staff's extensive programs for inspection and review of the Waterford project, and notes that the "NRC Staff has engaged in an unprecedented inspection effort at the Waterford 3 plant..."

As detailed in the Crutchfield and other attached affidavits, the Staff's inspection and review effort has, in fact, been thorough and far reaching. While Joint Intervenors have offered criticism of the Staff in other sections of their motion, those criticisms are not offered in support of this third proposed contention, but only in support of their argument that they have met the standards for reopening the record to admit late contentions. Motion at 48-50, 51-58. These criticisms are simply a series of unsupported complaints expressing Joint Intervenors' disagreements on how the Staff has handled particular issues, that the

Staff has not formally stated ahead of time how particular issues are to be resolved, or that Joint Intervenors lack documentation with which to review the Staff's work.

Moreover, the Joint Intervenors have set forth no authority for the proposition that dissatisfaction with the Staff's review is a sufficient basis to support a contention, let alone to reopen a record to admit a late contention. In this regard, it is well established that the Applicant's request for a license, and its qualifications therefor, constitute the proper subjects for a contention, and that the Staff's performance of its regulatory responsibilities does not provide a proper subject for a safety contention in a licensing proceeding. See, e.g., Commonwealth Edison Co. (Byron Nuclear Power Station, Units 1 and 2), LBP-80-30, 12 NRC 683, 690 (1980). Nor do these matters present "significant new evidence" sufficient to support a motion to reopen. Diablo Canyon, supra, CLI-81-5. For these reasons, this contention should be denied.

F. Joint Intervenors Have Not Demonstrated "Good Cause" for the Late Filing of their Motion to Reopen and Admission of New Contentions

In an attempt to establish "good cause" for their untimely motion, Joint Intervenors assert that they have relied on the NRC Staff's intensive inspection and reform efforts, and only when those efforts "appeared" to falter did they move to reopen the record. These assertions should be rejected.

First, as more fully detailed in the attached Staff affidavits, the Staff's efforts have not faltered. The Staff has conducted an extensive and exhaustive review of more than 350 allegations related to Waterford Unit 3. This investigation has reached into numerous aspects of the

Applicant's QA program, and has resulted in the Applicant's undertaking new efforts to correct deficiencies and records problems at the plant. The Staff's effort, rather than "faltering", has succeeded demonstrably well.

Secondly, Joint Intervenors' reliance on the Skagit Case<sup>7/</sup> for their "good cause" argument is misplaced. Skagit actually undermines Joint Intervenors argument. That case evidences the expectation by the Appeal Board that, absent demonstrable good cause for not doing so, an individual interested in the outcome of a particular proceeding will act to protect his interest within established time limits. As noted above, Joint Intervenors sought Appeal Board approval in February of this year to reopen the record. As also noted above, as recently as August of this year, the Staff urged Joint Intervenors "to promptly provide the Staff any information [they] may have pertaining to the safety of the Waterford Unit 3 facility." See Exhibits 2 and 3 attached to Applicant's Answer to Motion to Reopen, and Affidavit of D. Crutchfield. However, not until November of this year did the Joint Intervenors finally come forward and make the many unsupported assertions contained in their present motion to reopen.

Without, as here, a demonstration of good cause, a "compelling showing" is required as to the remaining four factors in order to reach a favorable balancing under 10 C.F.R. § 2.714(a). South Carolina Electric and Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), ALAB-642, 13 NRC 881, 886 (1981), aff'd sub nom. Fairfield United Action v. NRC, 679 F.2d 261 (D.C. Cir. 1982); Mississippi Power & Light Co. (Grand Gulf

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<sup>7/</sup> Puget Sound Power & Light Co. (Skagit Nuclear Power Project, Units 1 and 2), ALAB-557, 10 NRC 162, 165 (1979).

Nuclear Station, Units 1 and 2), ALAB-704, 16 NRC 1725, 1730 (1982). An examination of Joint Intervenors' motion demonstrates that it fails to make the requisite compelling showing.

G. Availability of Other Means Whereby the Intervenors' Interest will be Protected

The Staff concedes that, if the Appeal Board finds merit to their assertion that Staff has not fully addressed and resolved the issues raised in Joint Intervenors' motion, the Joint Intervenors may not have other means available to them whereby their interests will be protected. However, as noted above and in the attached affidavits, the Staff believes the assertions in question are without merit. In any event, however, this factor is of considerably less importance than the factors discussed in Section F, H, and J herein. Thus, the Appeal Board has repeatedly held that factors 2 and 4, which could weigh in Joint Intervenors favor, are of "decidedly 'lesser weight than the other factors.'" Grand Gulf, supra, ALAB-704, 16 NRC at 1731, citing South Carolina Electric and Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), ALAB-642, 13 NRC 881, 895 (1981), aff'd sub nom. Fairfield United Action v. NRC, 679 f.2d 261 (D.C. Cir. 1982).

H. Intervenors' Participation in a Reopened Proceeding

The Joint Intervenors have not established that their participation in a reopened proceeding would reasonably be expected to assist in developing a sound record. Their motion merely contains a conclusory statement, without specificity, as to how they would assist in developing

a sound record. Such a conclusory statement fails to satisfy the requirements for a favorable showing under this factor. The Appeal Board has stated that "[w]hen a petitioner addresses this criterion it should set out with as much particularity as possible the precise issues it plans to cover, identify its prospective witnesses, and summarize their proposed testimony [citations omitted]. . . . Vague assertions regarding petitioner's ability or resources, as we have here, are insufficient."

Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-704, 16 NRC 1725, 1730 (1982). Accord, Washington Public Power Supply System (WPPSS Nuclear Project No. 3), ALAB-747, 18 NRC 1167, 1177 (1983); Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-743, 18 NRC 387, 399-400 (1983). Accordingly, this factor weighs heavily against the Joint Intervenors.

I. Representation of Intervenors' Interests by Other Parties

The Staff concedes that, if Joint Intervenors' assertions regarding Staff resolution of the issues raised in the motion are upheld by the Appeal Board, Intervenors interests would probably not be represented by any other party. In this regard, the Staff does not believe that Joint Intervenors assertions, offered in support of the motion to reopen, have any merit. In any event, however, this factor is of lesser importance than the factors discussed in Sections F, H and J herein.

J. The Extent to Which Joint Intervenors' Participation Will Broaden the Issues or Delay the Proceeding

Joint Intervenors have not addressed this criterion in their motion. Given the voluminous nature of the motion and attachments, there can be

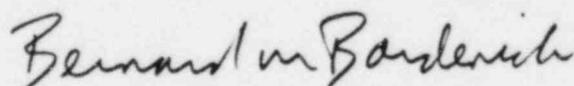
no doubt that a grant of their motion to reopen the record would extensively broaden the issues and excessively delay the proceedings. The Joint Intervenors' failure to address this criterion appears to constitute an admission of this fact. The delay factor under the circumstances presented here should also weigh heavily against Joint Intervenors. Detroit Edison Company (Greenwood Energy Center, Units 2 and 3), ALAB-476, 7 NRC 759, 762 (1978).

As discussed above and in the attached affidavits, the Joint Intervenors have failed to sustain their burden in moving to reopen the record. As to the five factors which must be weighed in determining whether to admit a late filed contention, factors 1, 3 and 5 weigh heavily against admission of the three late contentions proposed by Joint Intervenors.

#### IV. CONCLUSION

For the reasons set forth above, the Joint Intervenors have failed to satisfy the standards governing a motion to reopen, and have failed to satisfy the balancing test set forth in 10 C.F.R. § 2.714(a)(1). Accordingly, the motion to reopen and to admit new contentions should be denied.

Respectfully submitted,



Bernard M. Bordenick  
Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 21st day of December, 1984



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UNITED STATES  
NUCLEAR REGULATORY COMMISSION

REGION IV

PARKWAY CENTRAL PLAZA BUILDING  
611 RYAN PLAZA DRIVE, SUITE 1000  
ARLINGTON, TEXAS 76011

DEC 04 1984

1. ~~HRD~~  
DGE  
2. DMC  
3. DT. Nowak

MEMORANDUM FOR: H. R. Denton, Director  
Office of Nuclear Reactor Regulation

FROM: R. D. Martin, Regional Administrator

SUBJECT: LOUISIANA POWER & LIGHT COMPANY (LP&L)  
WATERFORD 3 STEAM ELECTRIC STATION (DN: 50-382)

Based on the results of our inspection effort, we have determined that construction and preoperational testing of the subject facility have been completed in substantial agreement with docketed commitments and regulatory requirements, with the exception of items indicated in Attachment 1. These remaining items have been grouped according to our recommended mandatory completion milestones.

As part of our inspection efforts, we have reviewed the implementation of the licensee's Quality Assurance Program for operations and have found that their program meets the requirements of 10 CFR 50, Appendix B.

Based on our inspections, we conclude that construction is complete, preoperational testing has not revealed any significant unresolved problems, and the licensee is ready and, in our judgement, competent to operate the Waterford 3 plant. The licensee has sufficient trained and licensed staff to safely operate the Waterford 3 plant. We have no items which would preclude issuance of a low power operating license. We recommend that the operating license be conditioned as described in Attachment 1.

R. D. Martin  
Regional Administrator

Attachment:  
As stated

UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20545  
WATERFORD STEAM ELECTRIC STATION  
OPERATING LICENSE NPF-26

ATTACHMENT 1

This attachment identifies items which must be completed to the Commission's satisfaction prior to placing the facility into the operational modes identified below.

- A. The following items must be completed prior to proceeding to Operational Mode 2 (initial criticality).
1. The licensee shall submit a final report for the following significant construction deficiencies:
    - SCD-037 Temperature Detectors (RTDs) Failure
    - SCD-080 Unsatisfactory Stroking of EFW Pump Turbine Steam Supply Shut-Off Valves
    - SCD-093 Charging and Letdown Containment Isolation Valve Deficiency
  2. The licensee shall complete the loading and testing of the air cleaning systems for the auxiliary and containment buildings. (8211-09)
  3. The licensee will complete rework on masonry wall S-24. (CAT Findings 6.2 and 6.3)
- B. The following items must be completed prior to proceeding to Operational Mode 1 (power operation).
1. The licensee shall evaluate the emergency load testing using maximum and minimum voltages. (8223-04)
  2. The licensee shall develop a suitable method for verifying the postaccident sampling capability to provide representative samples. (8405-02)
  3. The licensee shall provide verification that the particulate and iodine grab sampling portion of the high range effluent monitor for the main ventilation stack yields a representative sample. (8405-03)



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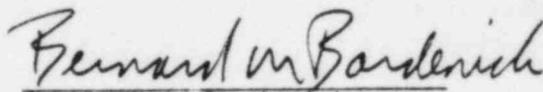
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