

004

January 8, 1985

DOCKETED
USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
JAN 10 11:13

Before the Atomic Safety and Licensing Appeal Board

OFFICE OF THE
SECRETARY & SERVICE
BRANCH

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

APPLICANT'S ANSWER TO NRC STAFF'S MOTION
FOR CLARIFICATION AND/OR RECONSIDERATION

I. INTRODUCTION

Joint Intervenors currently have pending before the Appeal Board two motions to reopen the record in this proceeding. The first motion, filed on December 12, 1983, relates to the Waterford 3 concrete basemat. The second, filed more recently on November 7, 1984, seeks to raise several new issues, including that of quality assurance. Applicant's November 30, 1984 answer to Joint Intervenors' quality assurance motion set forth, inter alia, its argument that the Appeal Board lacked jurisdiction over the motion. In ALAB-792, December 12, 1984, the Appeal Board advised the parties of its determination that it had jurisdiction to rule on the quality assurance motion. The NRC Staff, on December 24, 1984, filed a motion for clarification and/or reconsideration of that decision.

8501100752 850108
PDR ADCK 05000382
Q PDR

DS03

The Appeal Board reasoned that its jurisdiction, if any, over the quality assurance motion would depend upon the nature and extent of the jurisdiction it possessed over matters in this proceeding as a result of the pending basemat motion, for which jurisdiction was not contested. ALAB-792 at 7. The Appeal Board then determined that there existed reasonable nexus between the subject matter of the two motions sufficient to confirm its jurisdiction over the quality assurance motion. Id. at 7-8. The Staff, noting the broad extent of the issues sought to be raised in the later motion, seeks clarification or reconsideration to the extent that ALAB-792 may be construed to imply jurisdiction over the entirety of the motion, including those matters which cannot be deemed to be related to the basemat issue.

Applicant supports in part and opposes in part the positions advanced by the Staff in its motion for clarification and/or reconsideration.

II. DISCUSSION

Applicant concurs with the Staff and the holding of the Appeal Board that jurisdiction would lie if there were a "rational and direct link" between the matters raised in the later motion and the discrete matter pending before the Appeal Board as raised by the basemat motion. Florida Power and Light Co. (St. Lucie Nuclear Power Plant, Unit No. 2), ALAB-579, 11 N.R.C. 223, 226 (1980). Applicant also agrees with and supports the Staff's position that the Appeal Board's jurisdiction

is limited to those matters which bear a reasonable nexus, i.e., a "rational and direct link," to matters in the basemat motion. In Applicant's view, however, there are no matters presented in the quality assurance motion which would bear such a reasonable nexus to matters raised in the basemat motion. To this extent, Applicant does not support the Staff's position.

What has been referred to above as the "quality assurance" motion actually is a motion which seeks to raise three discretely defined new contentions, QA Motion at 2-3, relating to quality assurance, Id. at 4-15, Applicant's character and competence, Id. at 15-32, and the Staff's performance, Id. at 32-36. The quality assurance motion also contains a section of allegations stemming from Joint Intervenors' perception of the actions of both Applicant and the Staff in the course of the evaluation and review of the basemat cracking. Id., Section II.E, pp. 39-44. The allegations in that section were presented and were obviously designed to support one or more of the three specified contentions. For example, Joint Intervenors alleged that Applicant failed to "follow mandated mapping and surveillance programs." Id. at 40. Viewed both in the context of the motion as a whole and in terms of the plain meaning of the wording, this obviously can be construed only as an allegation in support of their contention on Applicant's character and competence. There is no contention in the motion alleging structural inadequacy of the basemat.

In Applicant's view, there is no reasonable relationship between the allegations in Section II.E of the quality

assurance motion and the substance of the basemat motion. The entirety of the basemat motion reads as follows:

Now before this honorable Appeal Board through undersigned counsel, comes Gary Groesch, Chairman of the Waterford 3 Joint Intervenors, who with respect moves again to reopen Contention 22 in the light of further newly discovered evidence which appeared this day in Gambit weekly newspaper, which is appended hereto and made part hereof. Because the study made by Harstead Engineering on the Waterford 3 basemat as well as that made by the Staff rely on falsified documents for their basic assumptions, it must now be shown affirmatively that this fact has no effect on the safety of Waterford 3 and its potential to give reasonably long service.

WHEREFORE mover reurges his request for a public hearing.

The motion was accompanied by a series of newspaper articles, with no attempt to specify which, if any, issues that might be included in the articles were sought to be litigated, other than that which was quoted above.

The Appeal Board, in commenting on the basemat motion, stated that "a newspaper article alone does not provide a basis for reopening a closed adjudicatory record," ALAB-786, October 2, 1984, at 3. The Appeal Board noted that "there is little doubt" that the motion failed to meet the Commission's standards for reopening, Id. at 4, and observed that "if we had nothing more before us than Joint Intervenors' motion and convincing replies in opposition, we would likely be compelled to find that the request to reopen does not raise a significant safety issue and thus would deny the motion." Id. at 6.

Applicant is not contending that the merit or lack thereof of a pending motion to reopen is necessarily dispositive of the question of whether that motion provides the requisite jurisdiction for another motion. In this case, however, the dearth of substance of the basemat motion makes it a very slim thread indeed upon which to support the jurisdiction of the Appeal Board for any aspect of the quality assurance motion.

The Staff asserts at page 4 of its motion that its review of the quality assurance motion led them to find, as did the Appeal Board, that a "reasonable nexus" exists between that motion and the basemat motion. But we find very little explanation of what the nexus is that the Staff feels exists. There is certainly no relationship between the three stated contentions in the quality assurance motion and the basemat motion, and a reading of Section II.E of the quality assurance motion yields no apparent relationship between the allegations therein to the above-quoted basemat motion.

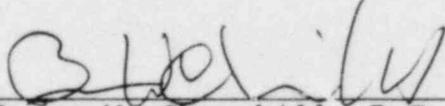
The requirement for a "rational and direct link" between the two motions, St. Lucie, supra, surely requires more than a non-specific relationship to a broad subject matter such as a major plant structure or system. Any number of discrete issues could conceivably bear a relationship to a single structure or system -- e.g., the adequacy of the design, the adequacy of construction, the adequacy of management, the adequacy of the Staff review -- without the issues necessarily being related one to the other.

III. CONCLUSIONS

In sum, Applicant concurs with the three conclusions advanced by the Staff -- that the Appeal Board has jurisdiction to consider only those issues which bear a reasonable nexus to matters raised in the basemat motion; that the Staff's regulatory activities provide substantial assurance of the safety of the Waterford 3 facility and a reopening of the adjudicatory proceedings is unnecessary; and that the appropriate avenue for Joint Intervenors to pursue is a petition filed pursuant to 10 C.F.R. 2.206. Applicant does not believe, however, that matters have been presented in the quality assurance motion which bear a reasonable nexus to matters raised in the basemat motion, and we respectfully urge the Appeal Board to reconsider its decision in that respect as well.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE



Bruce W. Churchill, P.C.

Counsel for Applicant

1800 M Street, N.W.
Washington, D.C. 20036
(202) 822-1000

Dated: January 8, 1985

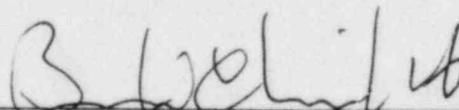
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Appeal Board

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

CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing "Applicant's Answer to NRC Staff's Motion for Clarification and/or Reconsideration" were served, by deposit in the United States mail, first class, postage prepaid, to all those on the attached Service List, this 8th day of January, 1985.



Bruce W. Churchill, P.C.

Dated: January 8, 1985

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Appeal Board

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

SERVICE LIST

Christine N. Kohl
Administrative Judge
Chairman, Atomic Safety and
Licensing Appeal Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

W. Reed Johnson
Administrative Judge
Atomic Safety and Licensing
Appeal Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Howard A. Wilber
Administrative Judge
Atomic Safety and Licensing
Appeal Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Sherwin E. Turk, Esquire
Office of the Executive
Legal Director
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Atomic Safety and Licensing
Appeal Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Sheldon J. Wolfe
Administrative Judge
Chairman, Atomic Safety and
Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Harry Foreman
Administrative Judge
Atomic Safety and Licensing
Board
Director, Center for Population
Studies
Box 395, Mayo
University of Minnesota
Minneapolis, MN 55455

Walter H. Jordan
Administrative Judge
Atomic Safety and Licensing
Board
881 West Outer Drive
Oak Ridge, TN 37830

Docketing & Service Section (3)
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

LP&L
Service List-ASLAB
Page Two

Mr. Gary Groesch
2257 Bayou Road
New Orleans, LA 70119

Carole H. Burstein, Esq.
445 Walnut Street
New Orleans, LA 70118

Lynne Bernabei, Esq.
Government Accountability Project
1555 Connecticut Avenue, N.W.
Suite 202
Washington, DC 20009