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April 6, 1984

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
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Before the Atomic Safety and Licensing App

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

APPLICANT'S ANSWER OPPOSING JOINT INTERVENORS'
MOTION FOR EXTENSION OF TIME

On February 22, 1984, Joint Intervenor filed a "Motion to Open Quality Assurance Contention" which inter alia sought a re-opening of the record on a new, undefined quality assurance contention. That request, which consisted of little more than photocopies of newspaper articles stapled to a perfunctory motion, was dismissed as "wholly unacceptable" by the Appeal Board. As a matter of discretion, however, the Appeal Board granted leave to file "a properly documented motion in compliance with Commission requirements by March 30, 1984." Memorandum and Order, February 28, 1984 at 5 ("Order") (emphasis in original).

The deadline is now past and Joint Intervenor have done nothing toward perfecting their motion. Instead, they have filed, on the last day allowable to properly document their motion and without good cause, a request for a six-month extension of time

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in which to perfect the motion. The Appeal Board's course of action is clear; the motion for extension should be denied.

As justification for their request, the Joint Intervenors state that: (1) co-counsel Luke Fontana is currently inactive in the intervention; ^{1/} (2) other present counsel is inexperienced ^{2/} and has been afflicted with eye problems; (3) they have been unable, as of yet, to associate more experienced counsel; ^{3/} and (4) they were faced with an "untenable" choice of filing an incomplete motion on time or a complete motion that would be untimely, in contravention of the general legislative intent behind the Atomic Energy Act. ^{4/}

1/ Mr. Fontana has been counsel of record for Joint Intervenors since 1979 and has filed no withdrawal of appearance.

2/ Carole H. Burstein, co-counsel for Joint Intervenors, has been formally associated as counsel since July 7, 1983 and has signed on behalf of Joint Intervenors three motions to reopen in this proceeding prior to the motion at issue here. See Motion to Reopen Contention, dated July 22, 1983; Motion to Reopen Contention, dated November 7, 1983; Amended and Supplemental Motion to Reopen Contention 22, dated December 12, 1983. As the Appeal Board observed, she is now well acquainted with NRC adjudicatory proceedings, and particularly with motions to reopen. Order, fn. 1.

3/ Joint Intervenors' participation in this proceeding spans more than five years, during which the entire case has been tried and appeals processed. Little, if any, weight should be accorded to a representation now, on the literal eve of fuel loading, that they need more time to obtain still other counsel for this proceeding.

4/ This "reason" is spurious. The Intervenors' dilemma is one that every party must face when it has a deadline to meet. Almost by definition a complete but untimely motion is one that would

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Applicant respectfully submits that under the circumstances the Joint Intervenors' reasons are totally inadequate to justify giving them additional time in which to perfect their motion. Applicant has stated in its letter to the Appeal Board of February 28, 1984, that it expects to begin loading fuel at the Waterford 3 plant by April 30, 1984. On present information and belief, Applicant intends to file with NRC by mid-April a request that NRC issue the license to allow fuel loading of Waterford 3 within thirty days of the request. On the other side of the coin, we have been given no indication whatsoever that Joint Intervenors will be able to support their motion, either now or at the end of the six-month extension.

The Appeal Board has specifically directed Joint Intervenors' counsel to the standards applicable to motions to reopen.^{5/} Counsel and the Joint Intervenors should by now be fully aware of these requirements, having previously filed such motions and having been treated in Applicant's and Staff's responses to a

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have been incomplete if submitted before the deadline. Furthermore, the Joint Intervenors' "untenable choice" is one of its own making; if they had put together an adequate motion at the outset, the Appeal Board would not have dismissed it with 30 days to perfect, and the Joint Intervenors would not now be faced with dismissal with prejudice for missing the deadline. Their vague reference without specifics to support in the Atomic Energy Act is itself untenable.

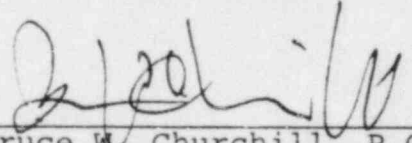
^{5/} Order, at 2.

catalogue of the applicable law. Even inexperienced counsel and laymen could be expected to have made an effort to comply with these requirements initially, and certainly within the 30-day grace period allowed by the Appeal Board.

Joint Intervenors have not shown good cause here and the potential prejudice to Applicant is considerable. Joint Intervenors have now had two chances to present an adequate motion to open the record on the basis of the quality assurance allegations raised in the Gambit articles. To hold their motion in abeyance or to further extend the amount of time to perfect is completely unjustified. Should Joint Intervenors wish to raise new matters, they are free to attempt to do so now, six months from now, or any other time in a properly conceived motion to reopen or in a request under 10 C.F.R. § 2.206. There is no need formally to hold open that prospect. The instant motion for extension should be denied.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

By: 

Bruce W. Churchill, P.C.
Ernest L. Blake, Jr., P.C.

Counsel for Applicant

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

Dated: April 6, 1984

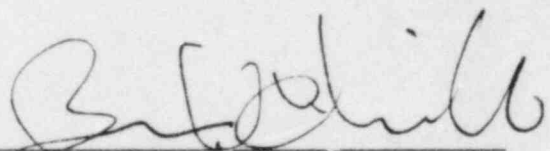
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CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing "Applicant's Answer Opposing Joint Intervenor's Motion for Extension of Time" were served, by deposit in the United States mail, first class, postage prepaid, to all those on the attached Service List, except those marked with an asterisk were served by hand delivery, this 6th day of April, 1984.



Bruce W. Chruchill, P.C.

Dated: April 6, 1984

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SERVICE LIST

* Christine N. Kohl Administrative Judge Chairman, Atomic Safety and Licensing Appeal Board 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
* W. Reed Johnson Administrative Judge Atomic Safety and Licensing Appeal 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
* Howard A. Wilber Administrative Judge Atomic Safety and Licensing Appeal Board U.S. Nuclear Regulatory Commission Washington, D.C. 20555	Walter H. Jordan Administrative Judge Atomic Safety and Licensing Board 881 West Outer Drive Oak Ridge, TN 37830
Sherwin E. Turk, Esquire Office of the Executive Legal Director U.S. Nuclear Regulatory Commission Washington, D.C. 20555	Docketing & Service Section (3) Office of the Secretary 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	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

Brian Cassidy, Esquire
Federal Emergency Management
Agency
Region I
422 J. W. McCormack
Boston, MA 03109

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

Luke B. Fontana, Esquire
824 Esplanade Avenue
New Orleans, LA 70116

Spence W. Perry, Esquire
Federal Emergency Management
Agency
Office of the General Counsel
500 C Street, S.W., Room 840
Washington, D.C. 20472