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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)	)	

APPLICANT'S ANSWER IN OPPOSITION TO JOINT INTERVENORS' MOTION FOR LEAVE TO FILE REPLY

On November 30 and December 21, 1984, respectively, Applicant and the NRC Staff filed answers to Joint Intervenors' voluminous November 8, 1984 motion to reopen the record. Late on Friday evening, January 25, 1985, after close of business, almost two months after Applicant's answer and over a month after the Staff's answer, Joint Intervenors filed a motion for leave to reply to answers. 1/ A reply brief ("Reply") accompanied their motion. 2/ For the reasons discussed below,

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1/ Joint Intervenors' Motion for Leave to File reply to Applicant and NRC Staff's Responses to Joint Intervenors' Motion to Reopen, January 25, 1985

2/ Joint Intervenors' Reply to Applicant and NRC Staff's Responses to Joint Intervenors' Motion to Reopen, January 25, 1985.

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leave to file the Reply should be denied, and the Reply itself should be stricken from the record.

I. JOINT INTERVENORS DO NOT HAVE THE RIGHT TO FILE A REPLY

The Commission's rules of practice governing the type of reply filed by the Joint Intervenors are clear. Movants do not have a right to file a reply to answers to their motions; such a reply may only be made upon prior application for and the granting of leave to file by the presiding body. See 10 C.F.R. 2.730(c); Detroit Edison Company (Enrico Fermi Atomic Plant, Unit 2), ALAB-469, 7 NRC 470, 471 (1978); Arizona Public Service Company, et al. (Palo Verde Nuclear Generating Station, Units 1 and 3), LBP-83-36, 18 NRC 45, 50 (1983). Leave to file a reply "will be granted sparingly," and then only upon a strong showing of good cause". Texas Utilities Generating Company, et al. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-81-22, 14 NRC 150, 157 (1981); Commonwealth Edison Company (Byron Station, Units 1 and 2), LBP-81-30A, 14 NRC 364, 372 (1981). If a motion for leave to file a reply brief is made, "the reply brief should not be attached to the motion but should only be submitted after permission to file is granted." Public Service Company of Oklahoma Associated Electric Cooperative, Inc. (Black Fox Station, Units 1 & 2), LBP-76-38,

4 NRC 435, 441 (1976). Joint Intervenors have failed to meet these standards.

A. Joint Intervenors' Filing is Prejudicial and Unfair

To Applicant's prejudice, in contravention to the Commission's requirement that leave be granted before the reply is filed, Joint Intervenors have impermissably submitted their reply brief simultaneously with their motion for leave to file the brief. The purpose for the requirement that leave be sought by a movant prior to filing a reply to an answer is to provide order to the briefing process and fairness to the parties, and to prevent an unnecessary "ping-pong" battle of briefs. Parties will naturally seek to have the last word on every issue, and without some order to the briefing process, this desire would lead to an avalanche of paper in which each side continues to find fault with its opponent's latest responses. To keep the process under control and assure that the briefing process comes to an end, the Commission's rules of practice specify that under ordinary circumstances, the moving party will not be allowed to file a reply to a brief responding to its motion. 10 C.F.R. § 2.730(c).

The rules contemplate that both the movant and the respondent will each have one chance to make their case. While the movant may apply for leave to file a response brief, it is the

Appeal Board, not the Joint Intervenors, who should decide if circumstances exist that justify the initiation of another round of briefing. By filing their Reply simultaneously with their motion for leave to file their Reply, Joint Intervenors have undermined the purpose of the rule, have infringed on the power of the Appeal Board, and have prejudiced Applicant's right to initially challenge Joint Intervenors' request.

Joint Intervenors' statement that their reply brief will not prejudice any party is not true. Any filing that lengthens the proceedings carries with it at least the potential for delay in an ultimate decision on full power operation of Waterford 3. Such a delay would carry with it extreme prejudice to Applicant and the public to whom it provides electric power. That prejudice is heightened considerably by Joint Intervenors' impermissable filing of its Reply along with its motion for leave to reply.

B. Joint Intervenors Have Not Been Diligent in Their Filing

Joint Intervenors' motion for leave to file a reply comes nearly two months after Applicant's November 30, 1984 answer, and more than a month after the Staff's December 21 answer. Such lack of diligence is especially egregious in the context of this particular proceeding where the motion to reopen itself was extraordinarily untimely, and where Joint Intervenors are

well aware of the severe time constraints facing Applicant. Under such circumstances, preoccupation of counsel is not a reasonable excuse for the dilatory filing. Motion at 1. Equally unreasonable is the excuse of awaiting the issuance of the NRC's SSER 9,3/ all the more so since, as will be discussed in Section II below, SSER 9 was not used to reply to any arguments in Applicant's or the Staff's answers. Neither of these reasons comes close to justifying why the one-page motion for leave to file a reply could not have been filed considerably earlier.

The record is closed. It is Joint Intervenors who are attempting to take the extraordinary and highly consequential step of having it reopened, an attempt in which they bear a "heavy burden." Kansas Gas & Electric Co., (Wolf Creek Generating Station No. 1), ALAB-462, 7 NRC 320, 338 (1978). Therefore, particularly under the circumstances of this case, Joint Intervenors should be held to a high standard of diligence, not the opposite. Applicant and the Staff were able to submit substantial responses in a very short time to Joint Intervenors' lengthy and untimely motion to reopen. It should be expected that Joint Intervenors would do the same.

3/ Safety Evaluation Report Related to the Operation of the Waterford Steam Electric Station, Unit No. 3, NUREG-0787, Supp. 9 (December 1983).

C. Joint Intervenors Have Not Provided Good Cause for Filing a Reply

In addition to ignoring the Commission's requirement of obtaining leave prior to filing their Reply, Joint Intervenors have completely failed to meet the requirement to establish good cause justifying the granting of their motion.

Moreover, while Joint Intervenors' instant motion is cast as a request for leave to reply to the answers of Applicant and the NRC Staff to the motion to reopen, very little of the proffered document can be construed as a reply to the filings of Applicant and the Staff. The majority of the Reply consists of new arguments and exhibits which do not relate to the information contained in Applicant's and the Staff's answers. See, e.g., Reply at 5-21, Sections III-IV. Joint Intervenors have not sought leave of the Appeal Board to supplement their motion to reopen, and consequently have provided no cause for such supplementation. See Section II, infra.

The only attempt made to provide cause for filing a reply is Joint Intervenors' assertion, without explanation or amplification, that "[t]here are a number of misstatements and misleading statements made in both applicant and the NRC Staff's briefs which require correction." Motion at 1. In light of the policy behind 10 C.F.R. § 2.730(c) discussed earlier, it seems doubtful as a general matter that an asserted and unexplained need to correct "misstatements and misleading

statements" can provide the good cause needed to grant leave to file a reply brief. In an adversarial context, it is always possible to construe the arguments of one's opponent as consisting of incorrect or misleading statements. If leave were granted to "correct" such misstatements on a routine basis, the ping-pong battle of briefs that the rule was intended to avoid would ensue as each party attempts to correct the alleged misstatements of other parties. Therefore, at a minimum, the "misstatements or misleading statements" that Joint Intervenors cite ought to be serious and of safety significance in order to justify leave to file a reply brief. As will be shown below however, the "misstatements and misleading statements" that they cite are either not wrong or misleading, are themselves in error, or are of absolutely no significance. With no good cause having been shown for filing its Reply, the motion must necessarily be denied.

The only section of Joint Intervenors' proposed Reply purporting to deal with misstatements, Section II presents four instances of alleged misstatements by the Staff. Reply at 4-5. The first instance cited by Joint Intervenors involves a comparison of a statement made by Mr. Crutchfield in his affidavit attached to the NRC Staff's answer4/ with a statement made by

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4/ Affidavit of Dennis M. Crutchfield, December 21, 1984 ("Crutchfield Aff.").

Mr. Denton at a June 8, 1984 public meeting concerning Waterford 3. Reply at 4. Joint Intervenors apparently believe that these statements, concerning the circumstances under which CAT inspections are conducted, are contradictory. Id. It is not at all apparent that the statements are contradictory. Mr. Crutchfield was referring to "construction and QA problems," while Mr. Denton was apparently referring to problems in meeting "requirements" of an unspecified nature. In any event, the alleged contradiction, if in fact it is a contradiction, has no significance and no bearing whatsoever on the merits of Joint Intervenors' motion to reopen.

Next, Joint Intervenors complain about Mr. Crutchfield's statement that Joint Intervenors' were incorrect in stating that the NRC's Task Force was composed of 22 inspectors. Reply at 4-5 (apparently referring to Crutchfield Aff. at ¶11). Joint Intervenors say that they derived this information from pages 2-3 of the introduction to SSER 7.5/ A reading of those pages yields a list of 62 names of the individuals who comprised the NRC Task Force. This is consistent with Mr. Crutchfield's statement that "over 50 technical specialists were involved." Crutchfield Aff. at ¶ 11. That fact is not disputed. Joint Intervenors are concerned only about what he said they said. This is truly quibbling. It has no bearing on

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5/ NUREG-0787, supra, Supp. 7 (September 1984).

the merits of the motion to reopen, and falls far short of justifying a reply to the Staff's answer.

Joint Intervenors claim that Mr. Crutchfield stated "somewhat mysteriously" that at least one of the three anonymous affiants that submitted affidavits in support of Joint Intervenors' November 8 motion to reopen has contacted the NRC Staff but refused to identify safety issues. Reply at 5. They imply that this was a factual misstatement. In fact, Mr. Crutchfield stated that "it is our belief" that one of the allegers was in contact with the NRC, Crutchfield Aff. at ¶12, and Joint Intervenors have not offered any evidence to the contrary. The only basis they provide for their charge is that they do not have any information that any of the affiants did as Mr. Crutchfield testified. Obviously, the fact that Joint Intervenors have no knowledge of the incident cannot possibly demonstrate that the incident did not occur, and cannot serve as a basis for alleging that Mr. Crutchfield made a misstatement of the incident in his sworn statement. Their charge that Mr. Crutchfield made a misstatement is unfounded.

Finally, Joint Intervenors allege that Mr. Crutchfield made misstatements concerning reimbursements paid to allegers who worked with the NRC Staff. Reply at 5. This charge is unsupported. Hearsay statements allegedly made by an individual to one of Joint Intervenors' counsel is incompetent as a basis for impuning Mr. Crutchfield's sworn statement. No sworn

statements of the individual were provided nor are the statements a part of the record in any way. Joint Intervenors' allegation is clearly baseless.

The only other arguments that could be construed as alleging "misstatements and misleading statements" are found in Section IV, Reply at 21-24. These arguments are devoted solely to Applicant's statements that the exhibits attached to Joint Intervenors' motion to reopen did not support the specific allegations made. None of the cited statements is a "misstatement" or "misleading statement".

Joint Intervenors first allege, contrary to Applicant's statement, that JI Exhibit 1, a 1979 report by Management Analysis Company (MAC), supports the allegation that "LP&L failed, even after notification, to ensure administrative procedures were instituted to cover the interface between on-site and off-site personnel." Reply at 22. Joint Intervenors' protestations to the contrary, there simply is no reference to such administrative procedures in the MAC report. Even if there were, the exhibit certainly could not support the allegation that after such "notification" Applicant failed to develop such procedures. See Applicant's Answer at 18 and attached Responses to Specific Allegations in the Joint Intervenors' Motion to Reopen to the Record ("Affidavit") at 33-34, Item A(4)(c).

Joint Intervenors claim that Applicant was wrong in stating that JI Exhibit 4 did not support the allegation that "construction had effective control over day-to-day operations of the QA department and the major policy decisions" because JI Exhibit 4 shows QA reporting to the Manager of Power Production. Reply at 22. This fact indicates just the contrary -- construction did not control QA. Figure 1-1 of JI Exhibit 4 (Section QR 1.0, p. 13, not included in Joint Intervenors' Reply Exhibit 2) clearly shows the Nuclear Project Manager and the Quality Assurance Manager reporting through independent organizational chains of command up to the Manager of Power Production. Both Figure 1-1 and Joint Intervenors' Reply Exhibit 2, Section QR 1.0 at 2, show that the Manager of Power Production reported directly to the President of LP&L. This organizational structure was a part of the approved Quality Assurance Program which was squarely in accordance with the requirements for organizational separation in Criterion 1 of 10 C.F.R. Part 50, Appendix B. See Applicant's Answer at 19 and Affidavit at 3-4, Item A(1)(a)(iii).

Joint Intervenors have mischaracterized Applicant's statements with respect to JI Exhibits 1, 8 and 22 as they pertain to the allegation that "LP&L failed to provide QC coverage for work done on the night shift." Reply at 23. What Applicant stated was, "JI Exhibits 1 and 22 have nothing to do with QC coverage, and JI Exhibit 8 is nothing more than a demonstrably

false allegation by an anonymous affiant." Applicant's Answer at 19-20. JI Exhibit 1 does not touch on QC. Neither does JI Exhibit 22. The statement now cited by Joint Intervenors for the first time from Exhibit 22 refers to a quality assurance auditing and surveillance program that was being conducted in 1979 with respect to cable pulling. It had nothing to do with QC coverage, night or day. Joint Intervenors have not challenged Applicant's statement that the allegation in JI Exhibit 8 was demonstrably false. See Applicant's Answer at 19-20 and Affidavit at 17-18, Item A(1)(o).

Joint Intervenors assert that Applicant is wrong in stating that JI Exhibits 25 and 26 do not support the allegation that "LP&L lacked a records index as committed to in LP&L's PSAR and as required by ANSI N.45.2.9." Reply at 23. Applicant correctly stated that the two exhibits "contain no reference to a lack of a records index that may be required by the PSAR or ANSI N45.2.9." Applicant's Answer at 18. In fact, in their Reply, Joint Intervenors now say only that the exhibits demonstrated a "problem" that would have been cured or avoided by such an index. The facts are that the exhibits make no reference to such an index, Applicant indeed has the required index, and the "problem" alluded to was minor in nature and was not indicative of either a failure of adequate document control or a failure to detect and correct design errors. See Applicant's Answer at 18 and Affidavit at 26, 29-30, and 36, Items A(3)(c), A(3)(g) and A(5)(b).

Joint Intervenors' concede the accuracy of Applicant's statement that Exhibit 29 does not support the allegation that "LP&L did not maintain adequate oversight of procurement activities." See Applicant's Answer at 19 and Affidavit at 26 and 28-29, Items A(3)(b) and A(3)(f). Instead, they now proffer three exhibits not previously submitted which they assert supports the allegation. Reply at 24. Hence, this is not an example of a "misstatement or a misleading statement".

In sum, none of the instances cited by Joint Intervenors in their Reply supports the stated basis for their motion that Applicant and the NRC Staff made "misstatements and misleading statements" in their answers to Joint Intervenors' motion to reopen the record.

The remaining portions of Joint Intervenors' Reply are completely unrelated to Joint Intervenors' purported requirement to correct "misstatements" and "misleading statements." In fact, with the exception of Section I,6/ the balance of their brief cannot even be characterized as responsive to either Applicant's or Staff's arguments against Joint Intervenors' motion to reopen.

6/ Section I, Reply at 2-4, presents Joint Intervenors' incredible argument that the Staff's use of wording similar to that in Applicant's answer indicates that the Staff has not done an independent analysis. The affidavits attached to the Staff's answer clearly demonstrate that the Staff independently reviewed the materials of record and relied on their own conclusions in formulating their response. The use of quotes and words from Applicant's brief indicates agreement with Applicant's argument, not capitulation.

Having totally failed to provide good cause, the motion for leave to reply should be denied.

II. THE PROFFERED REPLY IS PRIMARILY A SUPPLEMENT TO THE MOTION TO REOPEN RATHER THAN A REPLY TO THE PARTIES' ANSWERS

The only parts of Joint Interverors' Reply that can be construed as a reply to the answers filed by Applicant and the Staff are Section I (dealing with the close agreement between Applicant and the Staff on the lack of merit of the motion to reopen), Reply at 2-4, Section II (dealing with alleged factual misstatements in the Staff's answer), Reply at 4-5, and Section IV (taking issue with Applicant's statements about Joint Intervenors' exhibits), Reply at 21-24. The bulk of the proffered Reply concerns new issues and arguments not raised in the motion to reopen. Reply, Sections III-IV, at 5-21. For example, Joint Intervenors are now for the first time criticizing the disposition of certain issues by the Staff in SSER 7 even though the subject matter of these issues was not raised by Joint Intervenors in their motion to reopen. See, e.g., Reply at 7 (A-347, A-072, A-076, A-077); Id. at 11 (A-341); Id. (A-306); Id. at 12-13 (A-123). Similarly, the arguments provided with respect to SSER 9 are new. Reply at 13-21. Joint Intervenors do not purport to be responsive to the specific

facts or arguments presented by Applicant and the Staff in their answers to the motion to reopen. As such, their arguments constitute an undisclosed attempt to supplement the motion to reopen rather than a reply to the answers of the other parties. It should be rejected as unauthorized supplemental argument. Consumers Power Company (Big Rock Point Nuclear Plant), ALAB-636, 13 NRC 312, 322 (1981).

Joint Intervenors have not sought leave of the Appeal Board to supplement their motion to reopen. Hence, they have not attempted to provide good cause for supplementing their motion with new issues, arguments, and exhibits. The primary basis cited in their motion for leave to reply, alleged "misstatements and misleading statements," certainly provides no cause for the introduction of new matters. Nor would their alleged untimely receipt of SSER 9 be cause for supplementing the motion. No attempt was made to show that they had come into possession of new information of such safety significance or importance as to warrant supplementing an already untimely motion to reopen.

Part of Joint Intervenors' attempt to supplement their motion involves the submission of four additional exhibits.7/ The new exhibits predate substantially the motion to reopen, and none is offered in response to any of the points discussed in Applicant's or the Staff's answers to the motion to reopen.

7/ A fifth, Exhibit 2, contains excerpts from JI Exhibit 4 of the motion to reopen.

Exhibit 1 is a memorandum from the NRC Chairman presented in support of the totally specious allegation that the Staff had "predetermined" the safety significance of the allegations discussed in SSER 7. Reply at 6-7. Not only is this a new issue, it is untimely. Both the memorandum, dated April 23, 1984, and SSER 7 predate Joint Intervenors' November 8, 1984 motion to reopen. Moreover, the purpose of the memorandum, on its face, was to develop administrative steps to avoid inaccurate delay forecasts, efficiently allocate NRC resources, and avoid "unwarranted" licensing delays. It therefore provides no support for the allegation.

Exhibits 3, 4 and 5 are newly proffered in support of Joint Intervenors' allegation that "LP&L did not maintain adequate oversight of procurement activities." Reply at 24. Presumably this is in reference to Item A(3)(b) at page 8 of their motion to reopen. Joint Intervenors, however, made no argument at all in their motion to reopen with respect to this issue, other than to reference, without comment, JI Exhibit 29 which they now agree does not support the allegation. Id. Thus, they are supplementing their motion with both argument and exhibits, with no reference at all to the substantive responses of Applicant and the Staff to the allegation. See Applicant's Affidavit at 26 and 28-29, Items A(3)(b) and A(3)(f), and Crutchfield Aff., Attachment 2 at 3,4. Further, the exhibits provide no cognizable or timely support for the allegation.

Exhibit 3, a letter dated November 9, 1976, demonstrates that Applicant had in place a program and procedures for control of purchased items received at the site, and that findings of procedural noncompliance had been resolved and full compliance had been previously achieved. Exhibits 4 and 5 seem to be of the same ancient vintage as Exhibit 3. With respect to Exhibit 4, we see nothing in the exhibit that links the memorandum to the Waterford site or that is relevant to procurement activities. And, as noted by Joint Intervenors, page 4 of Exhibit 5 indicates that the document is concerned with documentation packages for "non-safety items."

Beyond the arguments associated with the proffered exhibits, Joint Intervenors' supplementary offerings consist primarily of a commentary and a critique of SSER 7 and SSER 9. Reply at 5-21. Joint Intervenors do not feel that the Staff has provided enough information in the supplements to permit Joint Intervenors to determine if the Staff has adequately addressed all of the allegations. See Reply at 7, 8, 10, 11. In addition, Joint Intervenors repeatedly claim that the supplements do not contain sufficient detail to justify the Staff's conclusions. See Reply at 8, 11, 16, 18.

The SSER's are not intended to be comprehensive reports of the entire course, conduct and methodology used in a licensing review. They are summaries of NRC findings. Joint Intervenors' protestations notwithstanding, the conclusions set forth

in the SSER's were not reached through slight-of-hand. The NRC Staff examined vast numbers of documents, and conducted numerous investigations, and interviews, prior to reaching the conclusions ultimately set forth in the SSER's. It would not be practical or necessary to require the NRC Staff to fully detail the course of each investigation in its report.

The fact that Joint Intervenors desire more information is not basis for reopening a closed adjudicatory record. To justify such a reopening, the proponent must come forward with a significant safety issue, not just a complaint that the proponent is less informed than the NRC. Joint Intervenors have not been invested with the privilege of overseeing how the NRC disposes of allegations. As stated earlier in Applicant's Answer at 32, asserted dissatisfaction with the staff's review is an insufficient basis to support a contention, let alone reopen a closed record. The Commission's rules do not provide the right for an intervenor to set itself up as an oversight organization to perform an additional review.

Joint Intervenors take issue with the way the Staff has written SSER 7. Reply at 7-13. SSER 7 was issued in October of 1984, yet no justification is offered explaining why the Joint Intervenors could not have made these comments earlier. Part of Joint Intervenors' motion to reopen was in fact devoted to a criticism of SSER 7. Motion to Reopen at 52-56. If Joint Intervenors did have criticisms of SSER 7 relevant to their

motion to reopen, they should have been raised in that motion. To the extent that their new criticisms are relevant to their motion to reopen, they constitute supplemental argument and should not be entertained.

In addition to constituting untimely supplemental argument, Joint Intervenors' criticisms are unfounded. Many of Joint Intervenors' criticisms are based on statements taken out of context, half truths and mischaracterizations. For instance, as an example of an allegation illustrating the inadequacy of Waterford's document control procedure, they cite A-223, SSER 7 at 203, in regard to which they quote the Staff as stating:

> [R]ecords were poorly maintained; weld history was difficult to follow; the filing system was extremely cumbersome; retrievability was difficult; and records were not always original copies . . .

Reply at 9, n.4. Joint Intervenors artfully neglected to supply the rest of the paragraph:

> . . . (but originals are not a requirement). Even though the noted problems are an NRC concern, all requested records were available and were found to be acceptable. This allegation has neither safety significance nor generic implications.

SSER 7 at 203.

Another example is the paragraph starting at the bottom of page 10 of the Reply. Joint Intervenors there allege that in conjunction with its discussion of A-35, SSER 7 at 92, the

Staff "acknowledges that adequate documentation may not be available'" to insure that Ebasco and LP&L adequately verified that piping systems were installed and inspected properly. Joint Intervenors charge that

> [n]onetheless, after reviewing no more than document control procedures, the staff concludes that: "Implementation [of the procedures] was verified by reviewing objective indications to substantiate documentation adequacy."

Reply at 10. On the basis of this analysis of the Staff's treatment of A-35, Joint Intervenors take exception to the Staff's conclusion. Id. at 11.

Joint Intervenors neglected to say that SSER 7 clearly indicates that the Staff reviewed documentation packages as well as document control procedures. Packages were reviewed to determine if adequate/detailed quality records were maintained, if the records were complete prior to filing, if the inspection/test results were documented and traceable to the material, and if records were retrievable when required. SSER 7 at 92. The Staff did not find that "adequate documentation may not be available" as Joint Intervenors allege. That quote was lifted from the section of the NRC's analysis wherein the implications of allegation A-35 was discussed. The phrase is, in a sense, part of a paraphrase of the allegation, it does not represent an NRC "acknowledgement" of its veracity. Accordingly, Joint Intervenors have grossly mischaracterized the NRC's disposition of the allegation.

In another example, Joint Intervenors allege that the NRC Staff erred in concluding that there is no factual basis to the allegation that QA record reviewers were not allowed "to look in the field" because they found problems with work. Reply at 12. Joint Intervenors claim that the "real significance" of this allegation is that document reviewers "were being obstructed in performing their job." Id at 13. The SSER, however, provides no basis whatsoever for Joint Intervenors' new allegation. SSER 7 at 102 (A-123). The job of QA record reviewers was to identify areas of record deficiencies. The Staff clearly noted that, if a record reviewer found a concern related to plant configuration, he was required to bring his concern to the Ebasco QA/QC review and verification group. The Ebasco review and verification groups were charged with the responsiblity for conducting any necessary field work. Id. Not only was it not part of a record reviewer's "job" to look into the field, such reviewers were not necessarily qualified to do so. Thus, as the NRC Staff concluded, the allegation has no safety signficance.

Not only are Joint Intervenors' arguments specious, they are also contradictory. In their Reply at 9, they argue that related allegations must be considered together in order to fully appreciate the magnitude of the problem; yet at page 7, they chastise the Staff for combining allegations because "it is impossible to determine whether the staff has investigated

each allegation." In their discussion of SSER 9, the Joint Intervenors criticize the Staff for failing to require more substantial review of documentation. Reply at 15, 18, 20. However, where 100% reviews were done, Joint Intervenors argue that their findings cannot be credible because documentation "is notoriously deficient." Id. at 17. They are simply taking a scattergun approach in levying indiscriminate criticism without basis. This kind of argument lacks substance and deserves no consideration.

With respect to SSER 9, Joint Intervenors offer various criticisms of the Staff's evaluation of Issues 1, 6 and 22 which were described in the Staff's letter of June 13, 1984 to Applicant. Again, however, the requirement for a motion to reopen is to raise a significant safety issue, not to simply offer gratuitous, after-the-fact criticism of the Staff's evaluation of an issue. As noted in Applicant's answer to the motion to reopen, these issues were known to Joint Intervenors well in advance of their motion to reopen, and there has been no justification given for waiting until the eleventh hour to come forward with them to the Appeal Board. Applicant s Answer at 10. Nor can Joint Intervenors' latest arguments be said to be in reply to Applicant's or the Staff's answers. Joint Intervenors have totally ignored Applicant's Exhibits 12 and 8 of their Answer, which are Applicant's evaluations and resolutions of Issues 1 and 6, respectively, and Issue 22 was not touched upon in the motion to reopen.

For example, Joint Intervenors take issue with the disposition of various issues in SSER 9 because the standards used allegedly were not those required by the NRC Staff at Zimmer and Midland. Reply Brief at 14. There is no reference in this argument to either the motion to reopen or the answers of the other parties. Joint Intervenors do not describe what these standards are, nor do they provide any evidence to show that such undefined standards are not being required, or why Waterford should be treated the same as Zimmer and Midland. In fact, the NRC Staff has stated that the Waterford 3 licensing issues were relatively minor compared to those at Midland and Zimmer. See Hammond Daily Star, October 2, 1984 at page 3B (attached hereto as App. Exhibit 1). There is no basis for drawing analogies. And there is no requirement that the NRC Staff depart from its case-by-case treatment in favor of some sort of stare decisis method of resolving licensee issues.

Joint Intervenors descriptions of the resolutions of Issues 1, 6, and 22 are fraught with mischaracterizations. For example, in their critique of the NRC's disposition of Issue 1. Joint Intervenors complain that in the area of seismic supports and restraints, "Ebasco conducted only undefined 'field verification' activities and apparently small relative amount of reinspection (4500 safety-related pipe supports and 200 highly-stressed hangers)." Reply at 18. What Joint Intervenors failed to add, however, is that in addition, 3500 hangars

were reinspected by LP&L with satisfactory results, that 100% of the hanger documentation was reviewed by Thompson-Beckwith and Ebasco QA and sampled by LP&L, including some field inspection, and that the NRC itself conducted as-built walkdowns. SSER 9 at 17. The omission of these intensive hanger inspection activities is seriously misleading and casts grave doubts on the veracity of Joint Intervenors' arguments.

In another example, Joint Intervenors complain that the Staff ignored the fact that six unqualified Ebasco QC inspectors were Level III's, and even though they did not perform inspections, "it is likely that they were in supervisory or adminsisrative roles" and that "their lack of qualification or training may have greater consequences than if they had been merely inspectors." Reply at 16. In fact, the six inspectors were qualified at Level II, not unqualifeid inspectors as Joint Intervenors allege. There is no requirement that supervisors and managers be qualified as Level III. The six individiuals performed no functions in their capacity as supervisors or managers other than those for which they were qualified. LP&L Response to Issue 1 at B-2, updating LP&L Exphibit 12, transmitted to the Appeal Board by letter dated December 20, 1984.

Joint Intervenors' treatment of Issue 6 is no better. Joint Intervenors assert that, because deficiencies were found in the sample of the NCR's and DR's reviewed, the Staff's finding of acceptibility constituted "Alice in Wonderland"

reasoning. Reply at 19, citing SSER 9 at 31. Joint Intervenors, however, unaccountably failed to note that the Staff clearly stated that none of the deficiencies were of safety significance. SSER 9 at 31. In three instances, "limited discretionary rework" was performed, Id., but, contrary to Joint Intervenors' statement, such rework was not required. Based on the fact that Applicant's extensive review of NCR's and DR's found no deficiencies of safety significance, the Staff's resolution was reasonable and proper.

Joint Intervenors' criticisms about Issue 22 are even more misleading. They claim that "largely on the basis of the electrode manufacturer's word" the procedure used at Waterford for rebaking low hydrogen electrodes were found to be adequate even though the procedures did not meet Code requirements. Reply at 21. In actuality, SSER 9 explains that Applicant hired the weld rod manufacturer to conduct tests duplicating the rebaking process as it was actually utilized on site in order to assure that the process would provide acceptable characteristics. The experimental data was reviewed by the NRC and was found to be satisfactory. SSER 9 at 83. The Staff relied on the manufacturer's "word" only in the most literal sense. Once again, Joint Intervenors' have mischacterized a SSER in order to make a new and misleading allegation.

Joint Intervenors' nibbling and misleading criticisms certainly do not rise to the high level of substance required to reopen a record, i.e., a showing 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." Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-756, 18 NRC 1341, 1345 (1983).

III. CONCLUSION

Joint Intervenors' motion for leave to file a reply is dilatory and prejudicial, and fails to meet applicable Commission requirements. Joint Intervenors have not provided good cause for contravening the rule prohibiting such a reply. The motion is primarily an undisclosed attempt to supplement thier motion to reopen. Joint Intervenors have not requested leave to supplement their motion, and have not attempted to provide cause for supplementing their motion. Moreover, the substance of the reply itself, improperly proffered, fails to provide new information of sufficient safety significance to warrant reopening a closed adjudicatory record.

For all of these reasons, Applicant respectfully submits that the Joint Intervenors' motion for leave to reply must be denied and their reply brief rejected.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

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Dated: February 1, 1985

App. EXHIBIT 1

Hammond (La.) Daily Star, Tuesday, October 2, 1984, Page 3B

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ard is saying is that if ing, we can't expend Farlough said.

Whitehead of the ciation of Educators, ng the strikers, said not allowed to against employees regardless of the strike.

"The policy states that you are an active employee and will remain an active employee until you are terminated," she said.

Most of the 700 school employees, including all but a few of the 330 teachers, went on strike Aug. 28. They demand a 5 percent general pay raise, which the board said it can't afford, and collective bargaining rights, which the board said it firmly opposes.

All 15 schools remain open, but most of the 6,200 students have been staying home.

Meanwhile, strikers plan to meet with lawyers tonight to discuss the health insurance payments and parish Registrar of Voters Melvin Pedeaux's refusal to certify signatures on recall petitions against all 10 school board members.

"We are going to look into two things: forcing the re-election of all board members and possible court action against Pedeaux," said Joe Hutchinson, co-chairman of the St. John Parents' Action Committee.

Pedeaux has asked a state judge to throw out the recall petitions.

Pedeaux told the court he cannot certify signatures on recall petitions until election districts for the board's 10 members are set.

A federal judge declared the board's reapportionment plan unconstitutional in June because two members, Donald Cox and Fernand Becnel, represent the same district. U.S. District Judge Peter Beer ordered the board to draw up a new plan, but it has not acted.

Pedeaux last Friday got a temporary order in which District Judge C. William Bradley of Edgard forbade employees and parents from taking legal action against Pedeaux for not certifying signatures on petitions.

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2 inmates lose in Supreme Court

ANGOLA, La. (AP) — Two inmates on death row in the Louisiana Penitentiary — Willie Celestine and Sterling Rault Sr. — have lost appeals to the U.S. Supreme Court, clearing the way for new execution dates to be set.

Both inmates had been scheduled to die in April but won delays so their lawyers could go to the Supreme Court, which refused to hear the cases Monday and, in effect, left intact their convictions and death sentences.

Celestine, 27, was convicted of the Sept. 13, 1981, rape and strangulation of 81-year-old Marcelianne Richard in Lafayette. He had been scheduled to be executed April 30 but won time for this appeal.

Rault, who prosecutors said had embezzled $84,000 as an assistant comptroller for the Louisiana Energy and Development Corp. in New Orleans, was convicted of killing Janie Francioni, a secretary working there, on March 1, 1982.

Celestine's lawyers wanted to argue that under Louisiana's jury selection process people who are unalterably opposed to the death penalty are easily excluded from juries.

On the other hand, he said, people who are in favor of the death penalty can be excluded from murder trial juries only under limited circumstances.

Celestine, in a four-minute taped confession played for the jury at his trial, said he was drunk and on drugs when he attacked Mrs. Richard.

23 safety issues hang at Waterford

NEW ORLEANS (AP) — Builders of the Waterford III nuclear plant at Taft were sloppy about quality control but faults found so far by federal inspectors do not involve safety, the Nuclear Regulatory Commission says.

"We can live with them," said Dennis Crutchfield, head of the 61-member commission team that has studied the still unlicensed $2.65 billion plant beside the Mississippi River in St. Charles Parish, 25 miles upstream from New Orleans.

However, the report released Monday reported that 23 issues remain unresolved, all of them could involve plant safety, and the plant has not been given approval as safe.

Crutchfield said no decision on an operating license will be reached until Louisiana Power & Light, which built the plant, satisfies commission concerns about those 23 issues.

The interim report issued by the commission staff Monday dealt with 347 allegations of construction irregularities.

Of these, Crutchfield said six remain open and nine have been submitted to the NRC Office of Investigation to be checked out for possible intimidation, harassment, falsification or forgery.

This still incomplete study already has consumed a million dollars and 10,000 commission staff hours.

It is unique in that it was initiated by the staff itself instead of the staff reacting to complaints filed by anti-nuclear and public interest organizations.

"They provided no new technical issues to us," said Crutchfield.

Jay Harrison, head of the team that investigated quality control, said the problems besetting Waterford III were relatively minor compared to those of Midland, a nuclear plant in Michigan, or Zimmer, a plant in Ohio.

Asked if he referred mainly to the paperwork that should document quality control work, Harrison replied:

"In terms of quality in general."

Lack of documented quality control was a major issue. Investigators found that about 35 percent of the people who had been hired as quality control and quality assurance inspectors did not have the background showing they knew how to do such work.

Among other things, LP&L was ordered to verify the credentials of every inspector ever on the 10-year project and to reinspect work done by those found to be unqualified.

Crutchfield said the commission has the power to order new testing of any construction passed by unqualified quality control inspectors, even if it means tearing up structure to get at it.

Cracks in the plant's massive reinforced concrete foundation were found to be harmless, the report said.

This interim report was issued to keep the public informed, Crutchfield said. There was no estimate of when the remaining issues will be resolved, but he said he expects LP&L to be fined before the end of the year due to the sloppy project.

Actually, much of the sloppiness traced to construction contractors such as EBASCO Services Inc. rather than LP&L, but Crutchfield said LP&L is responsible, regardless.

The LP&L plant is seven years behind schedule and 11 times over cost.

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
	)	
(Waterford Steam Electric Station, Unit 3)	)	
	)	

CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing "Applicant's Answer in Opposition To Joint Intervenors' Motion For Leave To File Reply" were served, by deposit in the United States mail, first class, postage prepaid, to all those on the attached Service List, this 1st day of February, 1985.

Bruce W. Churchill, P.C.

Dated: February 1, 1985

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