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UNITED STATES OF AMERICA
BEFORE THE U.S. NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

In the Matter of
Louisiana Energy Services
(Claiborne Enrichment Center)

'96 OCT 21 P4:33

Docket No. 70-3070
October 17, 1996

DEPT. OF SECRETARY
DOCKETING & SERVICE
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CITIZENS AGAINST NUCLEAR TRASH'S
MOTION FOR PARTIAL RECONSIDERATION OF CLI-96-08

I. INTRODUCTION

Pursuant to 10 C.F.R. § 2.771, Citizens Against Nuclear Trash ("CANT") hereby moves for partial reconsideration of CLI-96-08, __ NRC __ (October 2, 1996), in which the Commission granted CANT's petition for review of the Atomic Safety and Licensing Board's Partial Initial Decision on emergency planning issues raised by the combined construction permit/operating license application for the proposed Claiborne Enrichment Center ("CEC") [LBP-96-7, 43 NRC 142 (1996)], but disposed of the case without a briefing by the parties. CANT seeks reconsideration of that part of CLI-96-08 which rules that the applicant, Louisiana Energy Services ("LES"), has sufficiently clarified the relationship between the onsite fire brigade and the offsite volunteer fire department in responding to an emergency at the CEC.

CANT respectfully submits that, rather than confirming the adequacy of LES' Emergency Plan, the new information submitted by LES now demonstrates that LES is relying on the local volunteer fire department as a surrogate for its own fire brigade, without

requiring a demonstration that the volunteer fire fighters are qualified or trained to handle their significant onsite responsibilities. This leaves the public without any reasonable assurance of a sufficient onsite emergency response to a severe, fast-moving chemical fire at the CEC. Accordingly, the Commission must remand this issue to the Licensing Board for further proceedings. At the very least, the Commission should set a schedule for full briefing of the issue.

II. BACKGROUND

A. The Proceeding Below

In the summer of 1994, the Atomic Safety and Licensing Board held a hearing on, inter alia, the adequacy of LES' Emergency Plan under NRC emergency planning regulations and Regulatory Guide 3.67, (Task DG-3005) Standard Format and Content for Emergency Plans for Fuel Cycle and Materials Facilities (January 1992), to which LES has committed compliance. See Citizens Against Nuclear Trash's Proposed Findings of Fact and Conclusions of Law Regarding Contention H, Claiborne Enrichment Center Emergency Planning Deficiencies, par. 5 (October 7, 1994) (hereinafter "CANT PF").

In the hearing, CANT demonstrated, through the testimony of its expert witness, Clifford J. Earl, that the Emergency Plan is inherently inconsistent and confusing regarding whether the primary fire-fighting responsibility lies with the CEC onsite fire brigade, or with the offsite volunteer fire department. CANT PF,

par. 52.¹ Other inconsistent statements about who has primary responsibility for fighting onsite fires are found in the Final Safety Analysis Report ("FSAR"). Id., pars. 55-57. CANT also demonstrated that if the volunteer firefighters have primary responsibility for suppressing severe onsite fires, the ER fails to demonstrate that they will be qualified or trained to perform their onsite fire-fighting responsibilities. See CANT PF, pars. 40-48.

In LBP-96-7, the Licensing Board found that the relative roles of the onsite fire brigade and the volunteer fire department are confusing.² 43 NRC at 161. The Board ordered LES to amend its Emergency Plan if the facility fire brigade is to have primary fire-fighting responsibility. Id. The Board also ordered that the SAR should be appropriately revised "if additional training or the size of the brigade must be increased because of the changed role of the onsite brigade." Id. The Board, however, did not give any instructions as to how the Emergency Plan should be revised if, as a result of LES' clarifications, it became clear that the offsite volunteer fire department has primary responsibility for fighting fires at the site.

¹ In this regard, CANT notes that the Commission is incorrect in stating that the Licensing Board identified the "apparent ambiguity" in the license application "on its own." CLI-96-08, slip op. at 6, note 2, citing LBP-96-7, 43 NRC at 161.

² The Board based this finding not on the inherent inconsistencies in the Emergency Plan that were demonstrated by CANT, but on inconsistencies between the oral testimony of LES' witness, Peter G. LeRoy, and statements made in the FSAR and the staff's Safety Evaluation Report ("SER"). Id.

B. CLI-96-08

On May 16, 1996, CANT petitioned the Commission for review of LBP-96-7. Intervenor's Petition for Review of LBP-96-7. The Commission took partial review of the case but held no briefing. Instead, on October 2, 1996, it handed down CLI-96-08, which reversed the Licensing Board's decision to refer the role of the onsite fire brigade to the staff. Id. Concluding that the issue is both "important" and "material" to the Board's emergency planning findings, the Commission held that "the Board itself ought to have resolved any question about the fire brigade's role as part of its review of the CEC emergency plan." Id., slip op. at 3-4.

The Commission declined to remand the case to the Board, however, on the ground that LES had sufficiently clarified the secondary role of the onsite fire brigade in fighting a severe storage yard fire, in its answer to CANT's petition for review. Id., slip op. at 4-5. The Commission directed LES to amend the Emergency Plan and FSAR to "unambiguously reflect this." Id. at 5. It also directed the staff to revise its SER to include "an accurate description of the on-site fire brigade's clarified role." Id.

The Commission then went on to address the adequacy of the Emergency Plan, given the onsite fire brigade's newly clarified role. Noting that the NRC emergency planning regulations require only a "brief description" of the "responsibilities of the

licensee's emergency personnel and its "training" program, the Commission found that the onsite fire brigade was adequately described and trained. Id. The Commission made no mention, however, of the qualifications or training of the offsite volunteer fire department, now to be relied on as the principal onsite responder in a severe storage area fire. Nor did the Commission address whether the Emergency Plan complies with Regulatory Guide 3.67, to which LES has committed to comply, and which the Licensing Board has therefore held to govern its review of the Emergency Plan. See LBP-96-07, 43 NRC at 150.

III. ARGUMENT

CANT seeks reconsideration of CLI-96-08 to the extent that it fails to fully consider the regulatory implications of LES' belated clarification that the offsite volunteer fire department, not the onsite fire brigade, bears primary responsibility for onsite fire suppression in the event of a severe fire at the CEC site. LES' clarification reveals a major gap in the Emergency Plan, which is that LES is relying on an offsite organization to carry out major onsite responsibilities, without specifying the qualifications or training of that organization. In effect, LES has substituted the offsite volunteer fire department as a surrogate for LES' own emergency fire brigade, without seeking to establish that the offsite fire department is qualified or trained to substitute for LES in this important role. As a result, LES leaves to chance the fulfillment of some of the most

important purposes of an emergency plan, i.e., "ending the accident as quickly as possible, reducing the quantity of material released, protecting workers onsite, . . . and promptly restoring the facility to a safe condition." Final Rule, Emergency Preparedness for Fuel Cycle and Other Radioactive Material Licensees, 54 Fed. Reg. 14,051 14,052 (April 7, 1990). This unsupported assignment of primary fire-fighting responsibility to the offsite volunteer fire department fatally undermines the reasonable assurance finding made by the Licensing Board in LBP-96-08.

As CANT pointed out in its Proposed Findings, but was ignored by the Licensing Board, LES' assignment of primary responsibility to the offsite volunteer fire department is not supported by any demonstration that those firefighters will be qualified or trained to respond to severe fires on the site, some of which must be extinguished within 30 minutes in order to avoid significant hazardous consequences. See CANT PF, par.40, citing FSAR § 9.2.2.7.1.

In CLI-96-08, the Commission appears to minimize the requirements for qualifications and training, noting that NRC regulations at 10 C.F.R. §§ 70.22(i)(3)(i) require that emergency plans must provide only a "brief description" of the "responsibilities of the licensee's emergency personnel and its "training" program, the Commission found that the onsite fire brigade was adequately described and trained. Id., slip op. at 5-6.

CANT respectfully submits, however, that the Commission has neglected to consider the further requirements of Reg. Guide 3.67, with which LES must comply. LBP-96-07, 43 NRC at 150. Section 1.3 of the Reg. Guide requires, among other things, that LES must specify whether fire stations are "qualified to handle exposure to radioactive contamination or toxic chemicals." This information is required in order to "provide perspective about the facility and the licensed activity such that the adequacy and appropriateness of the licensee's emergency planning, emergency organization, and emergency equipment can be evaluated." Id., § C.I. In addition, where offsite agencies have responsibilities for assisting onsite personnel during and after an emergency, Section 4 of Reg. Guide 3.67 calls for a description of "the emergency organization to be activated onsite for possible events, as well as its augmentation and support offsite." LES has not met these requirements. See CANT PF, pars. 40-48. The Commission erred in failing to apply the Reg. Guide to the adequacy of LES' surrogate fire brigade, the Claiborne Parish Volunteer Fire Department.

One of the important reasons favoring Commission reconsideration of CLI-96-08 is that the Licensing Board itself failed to address the qualifications and training of the offsite volunteer fire department to perform its primary onsite functions, apparently because it considers offsite organizations irrelevant to its emergency planning finding. See 43 NRC at 160:

the premise underlying the Commission's emergency plan regulations is that "the normally available capabilities of States and local governments for responding to industrial emergencies and the normally available radiological health capabilities of States will be adequate to deal with accidents at fuel cycle and other radioactive material licensees."

43 NRC at 150, citing Final Rule, Emergency Preparedness for Fuel Cycle and Other Radioactive Material Licensees, 54 Fed. Reg. at 14,057.

The Board's reliance on the Final Rule is misplaced and out of context. The Commission made the statement quoted by the Board in response to a public comment requesting that the emergency planning rule for fuel cycle facilities include a provision for offsite notification of releases, the establishment of Emergency Planning Zones, and the issuance of public information brochures -- measures that are required for emergency planning around nuclear power plants. Thus, at most the statement indicates that the Commission considered the normally available capabilities of offsite organizations to be adequate for an offsite response to a fuel cycle facility accident. The quotation can in no sense be relied on to allow a licensee to rely unquestioningly on an offsite fire department to perform major onsite emergency response functions, as is the case here. Rather, it presupposes that the licensee itself has taken adequate measures to "end[] the accident as quickly as possible, reduc[] the quantity of material released, protect[] workers onsite, . . . and promptly restor[e] the facility to a safe condition." 54 Fed. Reg. at

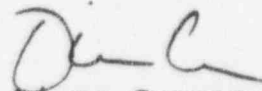
14,052. Not only does the record fail to support such a presupposition here, but it affirmatively undermines it.

In sum, it is now clear that LES has delegated some of its most important primary onsite emergency response functions, i.e., for stemming a severe chemical fire, to the local volunteer fire department. It has done this without any serious attempt to determine the qualifications of the fire fighters, or to assure that they are trained to meet the special demands of the potentially fast-moving and dangerous fire that they might be called upon to put out. As a result, the Emergency Plan for the CEC is a poor cloak for the naked fact that LES has no emergency plan for a severe chemical fire at the plant, other than for its staff to do their best and hope that the volunteer fire department will arrive soon and know how to put it out. The regulations do not envision leaving such life-and-death safety matters to chance.

IV. CONCLUSION

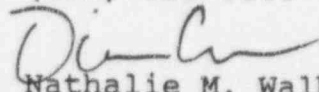
For the foregoing reasons, the Commission should partially reconsider its holding in CLI-96-08, and either remand the onsite fire fighting issue to the Licensing Board or entertain further briefing on the subject.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Diane Curran, certify that on October 17, 1996, copies of the foregoing CITIZENS AGAINST NUCLEAR TRASH'S MOTION FOR PARTIAL RECONSIDERATION OF CLI-96-08 were served by first-class mail on the following parties:

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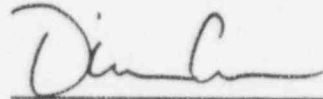
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