

18025

DOCKETED
USNRCUNITED STATES OF AMERICA '96 OCT 30 P5:04
NUCLEAR REGULATORY COMMISSIONBEFORE THE COMMISSIONOFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)

Docket No. 70-3070-ML

LOUISIANA ENERGY SERVICES, L.P.)

ASLBP No. 91-641-01-ML

(Claiborne Enrichment Center))

October 28, 1996

ANSWER OF APPLICANT LOUISIANA ENERGY SERVICES
IN OPPOSITION TO INTERVENOR'S
MOTION FOR PARTIAL RECONSIDERATION OF CLI-96-08I. INTRODUCTION AND SUMMARY

Applicant Louisiana Energy Services, L.P. ("LES"), herein answers, pursuant to 10 C.F.R. § 2.771, in opposition to a motion filed by Intervenor Citizens Against Nuclear Trash ("CANT") on October 17, 1996, seeking partial reconsideration of Commission Order CLI-96-08.^{1/} In CLI-96-08, the Commission granted in part and denied in part CANT's petition for review of Louisiana Energy Services, L.P. (Claiborne Enrichment Center), LBP-96-7, 43 NRC 142 (1996), in which the Atomic Safety and Licensing Board held that CANT's Contentions H, L, and M, related to emergency planning and material control and accounting at the Claiborne Enrichment Center ("CEC"), cannot be sustained and that LES has satisfied NRC regulations in these areas. The Commission granted CANT's petition for review for the limited purpose of considering whether "the Licensing Board err[ed] when, after raising a question whether the applicant's emergency plan clearly describes the intended role and training of the applicant's on-site fire brigade, it left the question for post-hearing resolution by the NRC staff." CLI-96-08

^{1/} Louisiana Energy Services, L.P. (Claiborne Enrichment Center), CLI-96-08, slip op. (October 2, 1996).

D503

at 1. The Commission held that the Board should not have left the fire brigade question undecided but found that any ambiguity in the role of the onsite fire brigade had been resolved. The Commission ordered that the CEC Emergency Plan, SAR, and SER be amended to unambiguously reflect the role of the onsite fire brigade and held that no further review was necessary. CLI-96-08 at 2, 5-6.

CANT purports to seek reconsideration of the Commission's Order. However, CANT does not seek reconsideration of the Commission's decision that the Licensing Board acted inappropriately and that the role of the onsite fire brigade is clear. Rather, CANT seeks to raise a different issue -- whether offsite firefighters are qualified and adequately trained to handle firefighting responsibilities at the CEC.

The Commission should deny CANT's motion for reconsideration. First, pursuant to 10 C.F.R. § 2.786(e), the motion cannot be entertained because it seeks reconsideration of issues that were not raised on appeal and were not the subject of Commission review.^{2/}

In addition, even if the Commission were to conclude that CANT's motion is properly before it, the motion should be denied because the issue now raised by CANT does not warrant further

^{2/} Arguably, CANT's motion for reconsideration was filed late and could be dismissed on that basis alone. The Commission issued Order CLI-96-08 on October 2, 1996. CANT's motion was filed fifteen days later, on October 17. NRC regulations specify that "[a] petition for reconsideration of a final decision may be filed by a party within ten (10) days after the date of the decision." 10 C.F.R. § 2.771; 10 C.F.R. § 2.786(e) (emphasis added). 10 C.F.R. § 2.710 provides additional time for filing in certain circumstances, but only where the filing period runs from the date of service of a decision (see, e.g., 10 C.F.R. § 2.786(b)(1)).

Licensing Board or Commission consideration. Contrary to CANT's assertion, the contemplated role of offsite firefighters has not been altered and remains as stated in the record, and the Commission has found that any ambiguity regarding the roles of firefighters has been clarified. As CANT points out in its motion for reconsideration (at pages 3 and 6),^{3/} CANT argued before the Licensing Board that the CEC Emergency Plan did not demonstrate that offsite firefighters would be qualified and trained to have primary responsibility for fighting fires at the CEC. The Board found CANT's arguments to be without merit (43 NRC at 151-152, 158). There is no reason to revisit the Licensing Board's findings that the CEC Emergency Plan adequately addresses training and qualifications of offsite firefighters or the Commission's conclusion that the Emergency Plan satisfies NRC regulations. CLI-96-08 at 5. At bottom, the record supports a finding of reasonable assurance that offsite firefighters will be trained and qualified to respond to emergencies at the CEC, and that NRC regulations and guidance on this point have been met.

II. ARGUMENT

A. Intervenor May Not Seek Reconsideration Of An Issue Not Raised On Appeal And With Respect To Which Commission Review Was Not Granted.

CANT seeks "reconsideration" of the Commission's Order for the purpose of considering the qualifications and training of the offsite fire department. However, a party has no right to raise for the first time in a petition for reconsideration a matter which

^{3/} Citing Citizens Against Nuclear Trash's Proposed Findings of Fact and Conclusions of Law Regarding Contention H, Claiborne Enrichment Center Emergency Planning Deficiencies, October 7, 1994, at pp. 22-27 (paragraphs 40-48).

was not contested before the Licensing Board or on appeal. Tennessee Valley Authority (Hartsville Nuclear Plants, Units 1A, 2A, 1B, and 2B), ALAB-467, 7 NRC 459, 462 (1978); Kansas Gas & Electric Co. (Wolf Creek Generating Station, Unit No. 1), ALAB-477, 7 NRC 766, 768 (1978). In this case, CANT did raise before the Licensing Board (in proposed findings) the qualifications and training of offsite firefighters. However, CANT did not raise these matters in its petition for review of LBP-96-7. Rather, CANT questioned the Board's findings regarding the function of the onsite fire brigade and the adequacy of the training and sizing of that brigade. Petition for Review, May 16, 1996, at 7-8.

Even if CANT had raised this issue in its petition for review, that portion of the petition was not granted and is therefore not the proper subject of a petition for reconsideration. NRC regulations provide that petitions for reconsideration of Commission decisions granting or denying review in whole or in part will not be entertained. 10 C.F.R. § 2.786(e). Pursuant to 10 C.F.R. § 2.786(e), the only issues that may be raised in a petition for reconsideration are those with respect to which the petition for review was granted (i.e., those that the Commission considered). In CLI-96-08, the Commission denied review of LBP-96-7 "except for a single issue: did the Licensing Board err when, after raising a question whether the applicant's emergency plan clearly describes the intended role and training of the applicant's on-site fire brigade, it left the question for post-hearing resolution by the NRC staff?" CLI-96-08 at 1. Because the Commission denied CANT's petition for review with respect to all other issues (including any issue concerning the qualifications and

training of offsite firefighters), CANT may not seek "reconsideration" of any such issue.^{4/}

B. Intervenor Has Failed To Establish A Basis For Reconsideration Of The Commission's Decision. The Record Supports A Finding Of Reasonable Assurance That Offsite Firefighters Will Be Trained And Qualified.

Even if the Commission were to ignore the procedural deficiencies in CANT's motion for reconsideration, the Commission should deny CANT's motion since the issue now raised by CANT is addressed in the record and does not warrant further Licensing Board or Commission consideration.

As CANT acknowledges, the Commission's view on the qualifications of offsite emergency response organizations is central to its emergency planning regulations:

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 54 Fed. Reg. 14,051, 14,057 (1989) (NRC final rule on emergency preparedness at fuel cycle facilities). Thus,

^{4/} Notably, with respect to the sole issue on which Commission review was granted, the Commission decided in favor of the Intervenor. The Commission determined that, as Intervenor asserted, the Licensing Board should not have left the fire brigade question undecided. The Commission also resolved the Intervenor's assertion that the role of the onsite fire brigade was unclear, by finding that any ambiguity had been clarified. CLI-96-08 at 2, 4. Intervenor presumably does not seek reconsideration of these decisions. In this regard, the Commission has held that a motion for reconsideration cannot be used to open the door for a new contention, and that a party should not be heard to complain when it receives through the decision on appeal essentially what it requested. Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), CLI-89-3, 29 NRC 234, 241-242 (1989).

the Commission has acknowledged that offsite firefighters will be generally capable of fighting fires at such facilities.

CANT attempts to wriggle out of this plain statement by the Commission, asserting that the Commission merely considered the capabilities of offsite organizations to be adequate for an offsite response to a fuel cycle facility accident. CANT cites no support for this strained reading, which is at odds with the regulatory framework. As the Licensing Board stated, "[t]he participating government agencies have the capability to perform both offsite and onsite functions and the Commission's regulations specifically anticipate that dual role for emergency response organizations." 43 NRC at 161, citing 54 Fed. Reg. at 14,052. Even the plain language of the Commission's comment makes clear that it addresses the capabilities of offsite emergency response organizations for dealing with accidents at fuel cycle facilities.

Contrary to CANT's assertions, however, LES has not rested on the Commission's plain statement alone. The record evidence in this proceeding, including the CEC Emergency Plan, addresses specifically the qualifications and training of offsite firefighters.

For example, the Lisbon Volunteer Fire Department is listed in Section 4.3 (Local Offsite Assistance To The Claiborne Enrichment Center Facility) and Section 4.4 (Coordination With Participating Government Agencies) of the Emergency Plan. Attachment B to the Emergency Plan (p. 11-6) is a letter from the local fire chief stating that the fire department will respond to any request for aid in fire-fighting resulting from an emergency at the CEC and

that the department will participate in periodic drills and training as required by the Emergency Plan.

With respect to training, Section 4.3 of the Emergency Plan provides that "[a]pplicable equipment and procedural training that the local police, fire department, and local hospitals might need to deal with UF₆ releases and/or exposures are discussed in the Emergency Plan Implementing Procedures." Emergency Plan at 4-5. In addition, Section 7.2.3 of the Plan (Offsite Organization Personnel Training) provides:

Offsite assistance organization personnel are periodically trained in CEC emergency planning procedures. This training includes facility tours, information concerning facility access control (normal and emergency), potential accident scenarios, exposure guidelines, personnel monitoring devices, communications, contamination control, and the offsite assistance organization role in responding to an emergency at the CEC.

Emergency Plan at 7-2. Section 7.3 of the Plan also provides that participation in biennial exercises will be required of all offsite response organizations. Emergency Plan at 7-3. These sections of the Emergency Plan implement the corresponding provisions of the applicable regulatory guidance, NRC Regulatory Guide 3.67.

The Licensing Board recognized the adequacy of the record on these points (and largely addressed the issue now sought to be raised by CANT) when it held that CANT's Contentions H.2 (that LES has not specified whether emergency organizations are qualified to handle radioactive contamination or toxic chemicals), H.6 (regarding the adequacy of emergency communications and training), and H.10 (regarding, among other things, onsite coordination with offsite firefighters) could not be sustained (43 NRC at 149, 158,

160). With respect to the qualifications of offsite firefighters, the Licensing Board found:

we are satisfied that the CEC Emergency Plan contains sufficient information for us at least reasonably to infer that all emergency response[] organizations are qualified or, as a result of planned training, will be qualified to handle exposure to radioactive contamination or toxic chemicals by the time the facility commences operation. Further, the NRC Staff's witness, Mr. Ramsey, indicated that, under the training regimen of the plan, the emergency response organizations would all be qualified to handle radioactive and chemical contamination. Moreover, the Intervenor offered no evidence that the various offsite emergency response organizations were not qualified in this regard.

43 NRC at 151 (citations to the record omitted). The Licensing Board concluded:

We do not agree that the information contained in the Applicant's emergency plan is insufficient to determine the qualifications of the emergency response organizations. In any event, the level of information in the emergency plan that CANT asserts is necessary is not the regulatory standard for judging the adequacy of the CEC Emergency Plan nor is it the standard of the NRC Staff guidance.

43 NRC at 152.

With respect to training, the Licensing Board found that:

The [CEC emergency] plan describes the LES training and training exercise program, including its frequency, for all onsite personnel as well as offsite emergency responders. . . . the NRC Staff's witness indicated that the Staff found the Applicant's provision for training adequate. Thus, with respect to training that will lead to qualified fire fighters, we find that the Applicant's plan complies with the Commission's regulations which require "[a] brief description" of the training program.

43 NRC at 158 (emphasis added) (record citations omitted).

In addition, the Board found that the CEC Emergency Plan adequately addresses the onsite coordination of activities of offsite response organizations with those of onsite personnel and held that Contention H.10 could not be sustained (43 NRC at 160).

CANT's assertion (Motion for Reconsideration at 7) that the Licensing Board failed to address the qualifications and training of offsite firefighters ignores the record and the Licensing Board's specific findings on these points.

The Commission likewise has found that the CEC Emergency Plan, incorporating the clarified role of the onsite fire brigade, satisfies NRC requirements. CLI-96-08 at 5. As the Commission noted, the Licensing Board has approved the emergency planning documents' description of training as a general matter (CLI-96-08 at 6, citing 43 NRC at 158), and the Commission, following inspection of those documents, has confirmed the adequacy of the existing description of training, even as applied to the onsite brigade's clarified role. CLI-96-08 at 6.

CANT has produced no record evidence that would call into question the adequacy of the CEC emergency planning documents with respect to their description of the qualifications or training of offsite fire fighters or the findings of the Licensing Board on this subject. The description provided by LES in its Answer to CANT's Petition for Review of LBP-96-7, which was a compilation of statements from the record in this proceeding intended to show their consistency, was found by the Commission to have clarified any ambiguity in the roles and training of firefighters. Contrary to CANT's assertions, the roles of onsite and offsite firefighters have not changed and are as described in the record. As CANT notes in its motion for reconsideration (at pp. 3 and 6), CANT argued specifically before the Licensing Board that the Emergency Plan did not demonstrate that offsite firefighters would be qualified and trained to have primary responsibility for fighting fires at the

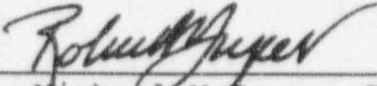
CEC, and the Licensing Board found that argument to be without merit (43 NRC at 151-152, 158, 160). There is no basis for revisiting the Board's ruling on this point or the Board's (43 NRC at 165) and Commission's (CLI-96-08 at 5-6) unequivocal findings that the CEC Emergency Plan satisfies NRC regulations.

The record evidence on training, exercises, qualifications, preparedness, and coordination of offsite firefighters serving the CEC, combined with the Commission's fundamental acknowledgment that offsite organizations are deemed capable of performing their emergency response functions, provide reasonable assurance that offsite firefighters will be trained and qualified to respond to an emergency at the CEC.

III. CONCLUSION

For the foregoing reasons, Intervenor's motion for reconsideration should be denied.

LOUISIANA ENERGY SERVICES, L.P.



J. Michael McGarry, III
Robert L. Draper

WINSTON & STRAWN,
ATTORNEYS FOR LOUISIANA ENERGY
SERVICES, L.P.

Dated at Washington, D.C.,
this 28th day of October, 1996

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE COMMISSION

'96 OCT 30 P5:04

In the Matter of)
)
LOUISIANA ENERGY SERVICES, L.P.)
)
(Claiborne Enrichment Center))
)

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Docket No. 70-3070

CERTIFICATE OF SERVICE

I hereby certify that copies of "Answer of Applicant Louisiana Energy Services in Opposition to Intervenor's Motion for Partial Reconsideration of CLI-96-08" were served upon the following by deposit in the United States mail, first class, this 28th day of October, 1996:

Administrative Judge
Thomas S. Moore, Chairman
Atomic Safety and Licensing
Board
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555
(2 copies)

Administrative Judge
Richard F. Cole
Atomic Safety and Licensing
Board
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Administrative Judge
Frederick J. Shon
Atomic Safety and Licensing
Board
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Secretary of the Commission
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555
Attention: Chief, Docketing and
Service Section
(Original plus 2 copies)

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Eugene Holler, Esq.
Office of the General Counsel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Ronald Wascom, Deputy Assistant
Secretary
Office of Air Quality &
Radiation Protection
P.O. Box 82135
Baton Rouge, LA 70884-2135

Joseph DiStefano, Esq.
Quinn, Racusin & Gazzola
1401 H Street, N.W.
Suite 510
Washington, D.C. 20005

Robert G. Morgan
Licensing Manager
Duke Engineering & Services,
Inc.
230 South Tryon Street
P.O. Box 1004
Charlotte, NC 28201-1004

Diane Curran
Harmon, Curran, Gallagher &
Spielberg
2001 S Street, N.W.
Suite 430
Washington, D.C. 20009-1125

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

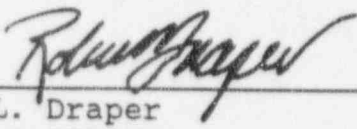
Thomas J. Henderson, Esq.
David S. Bailey, Esq.
Lawyers' Committee for
Civil Rights Under Law
1450 G Street, N.W.
Suite 400
Washington, D.C. 20555

Marcus A. Rowden
Fried, Frank, Harris, Shriver &
Jacobsen
1101 Pennsylvania Avenue, N.W.
Suite 900 South
Washington, D.C. 20004

Nathalie Walker
Sierra Club Legal Defense Fund
400 Magazine St.
Suite 401
New Orleans, LA 70130

Roland J. Jensen
Louisiana Energy Services, L.P.
2600 Virginia Avenue, N.W.
Suite 608
Washington D.C. 20037

LOUISIANA ENERGY SERVICES, L.P.


Robert L. Draper
WINSTON & STRAWN,
ATTORNEYS FOR LOUISIANA ENERGY
SERVICES, L.P.