

173

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Commission

In the Matter of)
)
LOUISIANA POWER & LIGHT COMPANY)
)
(Waterford Steam Electric Station,)
Unit 3))

Docketed
USNRC
85 AUG -9
Docket No. 50-382-OLP 4:38

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

JOINT INTERVENORS' PETITION FOR REVIEW

On July 11, 1985, the Atomic Safety and Licensing Appeal Board ("Appeal Board") denied Joint Intervenors' motion to reopen the record of the operating license hearing for the Waterford Steam Electric Station, Unit 3 ("Waterford") to litigate applicant Louisiana Power & Light Company's ("LP&L") lack of character and competence to operate Waterford and its inability to assure its safe operation in light of the quality assurance breakdown during its construction ("ALAB-812"). Louisiana Power & Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-812 (July 18, 1985). ^{1/}

Joint Intervenors appeal from that decision on the following grounds:

1) The Appeal Board's refusal to decide a portion of Joint Intervenors' Motion to Reopen on the basis of the Nuclear Regulatory Commission ("NRC" or "Commission") Office of Investigations' ("OI") inability or refusal to provide the information necessary to an informed and public adjudicatory decision deprives Joint

^{1/}
The Commission granted Joint Intervenors an extension of time to August 9, 1985 to petition for review of ALAB-812.

DS07
8508120764 850809
PDR ADOCK 05000382
G PDR

Intervenors of their right to have a hearing on and to have decided all material safety issues prior to Waterford's licensing; and

2) The Appeal Board's reliance on LP&L's reinspection and record review efforts to ensure the safe construction and operation of Waterford 3 is unwarranted, as demonstrated by recent equipment failures at the plant since the Commission authorized full power operation on March 15.

In their response to ALAB-801 Joint Intervenors raised the issue that their rights were violated by the Appeal Board's consideration of information communicated to it ex parte by OI. Joint Intervenors' Response to ALAB-801 (May 16, 1985), at 11-12. Joint Intervenors objected to an Appeal Board decision based on ex parte communications not subject to challenge since they expected the Appeal Board to issue a decision on the proposed "character and competence" contention based on consideration of this OI information. Prior to ALAB-812 the Appeal Board did not inform Joint Intervenors, or even suggest, that it would refuse to decide a portion of the motion on the ground of insufficient information.

Joint Intervenors objected to the Appeal Board's reliance on LP&L's reinspection and record review efforts to verify the quality of Waterford's construction and its safe operation in its original motion to reopen and in all supporting pleadings. See Joint Intervenors' Motion to Reopen (Nov. 7, 1984), at 3,35-42,45-46; Joint Intervenors' Reply to Applicant and NRC Staff's Responses to Joint Intervenors' Motion to Reopen (Jan. 25, 1985), at 14-15; 16-21; Joint Intervenors' Response to NRC Staff and

Louisiana Power and Light Co. Responses to ALAB-801 (May 6, 1985), at 2, 3-5, 7-9, 11, 14, and 17-18.

In support of this petition for review Joint Intervenors provide examples of equipment failures occurring since grant of a full power license which demonstrate that LP&L's reinspection and record review corrective action program was inadequate to guarantee the plant's safe construction. Because these events occurred after the submission of pleadings to the Appeal Board, Joint Intervenors had no opportunity to present this evidence to the Appeal Board.

I. THE APPEAL BOARD'S REFUSAL TO DECIDE A PORTION OF JOINT INTERVENORS' MOTION DENIES JOINT INTERVENORS THEIR RIGHT TO A FAIR AND PUBLIC ADJUDICATION OF ALL MATERIAL SAFETY ISSUES PRIOR TO LICENSING OF WATERFORD.

Under the Atomic Energy Act, Joint Intervenors have the right to a public hearing on all issues material to safety. 42 U.S.C. 2239(a); Union of Concerned Scientists v. Nuclear Regulatory Commission, 735 F.2d 1437, 1444-45 (D.C.Cir. 1984). Thus Joint Intervenors have the right to adjudicate such issues in accordance with the rules established by the NRC for adjudicatory proceedings. The rules provide that they may request and have fairly considered motions to reopen the record and to litigate late-filed contentions which raise significant and possibly determinative safety issues.

Good character is one of three statutory requirements for NRC licensees and is acknowledged as material to a plant's safe operation. 42 U.S.C. 2232(a); Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), 19 NRC 659 (1984). OI is the NRC office charged with investigating willful or delib-

erate violations of the Atomic Energy Act, NRC regulations or a company's license violations. OI has investigated allegations of such willful violations at Waterford since 1983, focusing on allegations of quality assurance ("QA") record falsification and harassment and intimidation of QA and quality control ("QC") personnel. OI has not yet completed its investigations and has not given any date by which it expects to complete them.

Commissioner Asselstine, in dissenting from the Commission's decision to authorize full power operation of Waterford, based his decision in part on questions about LP&L's management integrity raised in the OI investigations.^{2/}

All such questions about LP&L's management integrity should be fully resolved in adjudicatory hearings prior to grant of an operating license to LP&L. Otherwise the Commission cannot assure, as it is required to do, that LP&L possesses the character and competence to operate Waterford safely.

OI briefed the Appeal Board several times on its ongoing investigations. Moreover, the Appeal Board members themselves personally reviewed investigative records in the NRC's regional offices. This review was totally ex parte. The Appeal Board afforded the parties no right to review the materials, even subject to a protective order, or to rebut the evidence presented. After this review, the Appeal Board decided that it did not have, and had no expectation of receiving, adequate informa-

^{2/} Commissioner Asselstine noted that at least one of the integrity issues being investigated was "significant." See Transcript of March 15, 1985 Commission Meeting, at 107.

tion from OI to decide Joint Intervenors' motion "within a reasonable, definite period of time." ALAB-812 at 72. Thus, the Appeal Board effectively determined that the present adjudicatory record did not support denial of Joint Intervenors' motion.

The Appeal Board could not obtain the information it needed to decide Joint Intervenors' motion since the public disclosure of information obtained by OI is restricted by the Commission's Policy concerning conflicts in the disclosure of investigatory information to adjudicatory boards and parties. 49 Fed.Reg. 36,032 (1984).

In this case the Appeal Board's adherence to this policy violates Joint Intervenors' hearing rights under the Atomic Energy Act and due process rights to have their motion to reopen decided in accordance with constitutional and NRC adjudicatory procedures. Essentially one branch of the NRC is preventing a full and fair adjudication of issues which may significantly affect Waterford's safe operation. Neither the Commission nor the Appeal Board can make safety decisions unless all offices in the agency provide them with complete and accurate information. This principle becomes even more important when the information withheld -- possible willful violations of the Atomic Energy Act and NRC regulations -- has potentially serious implications for safe operation of Waterford.

Further, any information on which the Commission bases a safety decision must be publicly disclosed and subject to the parties' cross-examination and rebuttal. Just as any other administrative agency, the NRC's adjudicatory process provides due process guarantees to all parties to the litigation.

OI is the NRC Office specifically charged with investigating serious allegations of willful violations of safety regulations which reflect on a licensee's character. The Appeal Board cannot make its final decision on Joint Intervenors' motion prior to resolution of these serious charges. It makes no sense for the Commission to create a special office to investigate willful violations of safety violations and then to separate these investigations from its licensing decision. Certainly the Commission's hasty decision to license Waterford prior to any resolution of OI's investigations does not provide the requisite reasonable assurance of safety.^{3/}

The Appeal Board in its decision acknowledged its inability to make a decision on Joint Intervenors' motion to reopen given the ongoing and incomplete nature of the OI investigations. The current adjudicatory record does not therefore provide reasonable assurance that LP&L possesses the character and competence to operate Waterford safely.

Joint Intervenors urge the Commission to take review on the ground that the Appeal Board's refusal to decide their motion to reopen presents an important constitutional and public policy issue concerning the Commission's ability to make licensing decisions prior to resolution of outstanding investigations on adjudicatory matters.^{4/}

^{3/} In comments to the Commission, Joint Intervenors challenged the Commission decision to license Waterford prior to OI's resolution of the outstanding integrity issues. See Transcript of March 15, 1985 Commission Meeting, at 88-89.

^{4/} At least one other NRC adjudicatory board has similarly

FOOTNOTE CONTINUED

II. THE APPEAL BOARD'S RELIANCE ON LP&L'S REINSPECTION AND RECORD REVIEW PROGRAM TO ENSURE THE SAFE CONSTRUCTION AND OPERATION OF WATERFORD IS UNWARRANTED IN LIGHT OF THE LARGE NUMBER OF RECENT EQUIPMENT FAILURES SHOWING REMAINING HARDWARE PROBLEMS.

The Appeal Board relies throughout ALAB-812 on LP&L's reinspection and record review program for assurance that Waterford has been constructed and can be operated safely. See, e.g., ALAB-812 at 19; 21; 24-28; 32; 37-39; 41; 44; 49; 53; 55; 60-61; and 64-65. A number of significant equipment failures have occurred at Waterford since the Commission authorized its full power operation which demonstrate that hardware problems persist at Waterford and LP&L's corrective actions do not ensure its safe construction and operation. The following are the most significant:

1) In early May, Waterford was shut down after a faulty valve in the containment spray system leaked radioactive water into the containment building. See "Waterford 3 still shut down after radioactive leak found," New Orleans Times-Picayune, May 13, 1985, attached and incorporated herein as Exhibit 1.

2) On May 8, 1985, snubbers and steam line supports were damaged, after operators heard a loud noise when opening the A side steam supply valve. See NRC PNO (May 13, 1985), attached and incorporated herein as Exhibit 2.

FOOTNOTE 4 CONTINUED

found that OI's refusal to provide it with presumably probative and useful information prevented it from fully deciding the issue before it. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-85-18, 21 NRC ____ (June 14, 1985), slip op. at 6-8.

3) On June 4, 1985, lead deposits discovered in Waterford's steam generator forced a three week slowdown of start-up testing. See Cunningham, "Waterford 3 tests slowed by deposits," New Orleans Times-Picayune, June 4, 1985, attached and incorporated herein as Exhibit 3.

4) On July 18, 1985, intense vibrations caused damage to a large rotor in the turbine generator system and caused a minimum three week shutdown of the plant. Four days earlier a computer problem in the turbine's control panel automatically shut down the reactor. See Cunningham, "N-plant repairs will take 3 weeks," New Orleans Times-Picayune, July 23, 1985, attached and incorporated herein as Exhibit 4.^{5/}

These significant equipment failures demonstrate LP&L's corrective action program does not deserve the unquestioning endorsement it received from the NRC Staff and the Appeal Board. LP&L's inability or refusal to detect the continuing stream of problems plaguing the plant since authorization of its full power operation prove convincingly the inadequacy of LP&L's corrective efforts. Certainly the effectiveness of its program can be better judged by its actual results (and failures) than by the paper program.^{6/}

^{5/} During its ascension to full-power operation, Waterford experienced several reactor trips due to the failure to maintain the correct steam generator water levels. Joint Intervenors cannot determine from the Licensee Event Report whether these trips were due to equipment or operations' personnel failures.

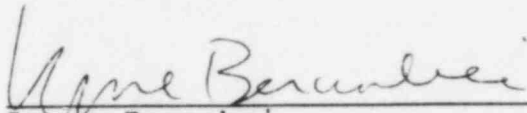
^{6/} Insofar as the information presented in this petition for review is deemed improperly submitted in support of a Petition for Review, Joint Intervenors request that their request be construed as a Motion to Reopen the Record on their proposed character and competence contention on the ground of newly-discovered evidence.

Joint Intervenors request the Commission to take review of the Appeal Board's decision because plant failures since authorization of full power operation have demonstrated that the Appeal Board's reliance on LP&L's reinspection program to ensure Waterford's safe construction is unwarranted and endangers the public safety.

III. CONCLUSION.

For the foregoing reasons, Joint Intervenors respectfully request that the Commission take review of ALAB-812.

Respectfully submitted,


Lynne Bernabei
George Shohet
Government Accountability Project
1555 Connecticut Avenue, N.W.
Suite 202
Washington, D.C. 20036
(202) 232-8550

Attorneys for Joint Intervenors

DATED: August 9, 1985

"Waterford 3 Still Shutdown After Radioactive Leak Found," The Times-Picayune (May 13, 1985)

Monday, May 13, 1985

METRO NEWS

Waterford 3 still shut down after radioactive leak found

The Waterford 3 nuclear power plant at Taft remained shut down Sunday as workers tried to repair a faulty valve that leaked radioactive water inside the containment building, a Louisiana Power & Light Co. official said.

Although repairs were expected to be completed late Sunday, the company did not plan to immediately reactivate the reactor, LP&L spokesman Jim Fort said.

While the reactor is shut down, company crews will inspect other valves and other pipes in the containment building, which contains the reactor, Fort said.

However, Fort said the plant would be producing electricity back up to 80 percent of its capacity by midweek.

The company still plans to go into commercial operation at the end of June, he said.

The shutdown of the nuclear power plant began at 5 a.m. Saturday when a leak was discovered by plant monitors, Ken Cook, LP&L nuclear licensing manager, said. The leak was traced to a valve in a spray system inside the containment building.

"As a result of the leak, LP&L declared an 'unusual event' at the plant, the term applied to the worst of four emergency designations at nuclear power plants.

The emergency was canceled

shortly after 5 p.m., Lt. Joe Cardella, a spokesman for the St. Charles Parish Sheriff's Office, said.

When the leak was discovered, the plant was running at 80 percent of its designed capacity, officials said. It was slowly shut down during the day, Cook said.

The valve was leaking about 6 gallons per minute, Cook said. Water from the valve was recycled in the system in the building, he said.

It is the second time the plant has been shut down in recent months, Cook said, and the third time officials called an unusual event emergency.

Fort said it is fairly routine for unusual events to be declared during a plant's beginning operation.

Though the plant is not in commercial operation, Fort said, it is producing electricity that is

now going into the utility's power supply. By June, Fort estimated Waterford 3 will have sold \$23 million worth of electricity during the test phase.

A St. Rose man who fell into a sump of boiling water at the plant Friday night remained in critical condition Sunday at Ochsner Foundation Hospital.

Francis Quinn, 61, 132 Petrie Drive, St. Rose, received second-degree burns over 49 percent of his body when he slipped on an oil spot and fell into the sump. The accident was unrelated to the leak that forced the shutdown, officials said.

The sump contained water from a coupling that had broken loose in a steam line between a feed pump and the generator's turbine, Fort said.

An Ochsner spokesman said Quinn was in the hospital's critical care unit.

OF EVENT OR UNUSUAL OCCURRENCE

This preliminary notification constitutes EARLY notice of events of POSSIBLE safety or public interest significance. The information is as initially received without verification or evaluation, and is basically all that is known by NRC staff on this date.

FACILITY: Louisiana Power & Light Company
Waterford Unit 3
Killona, Louisiana
Docket No. 50-382

Licensee Emergency Classification:
☒ Notification of Unusual Event
☐ Alert
☐ Site Area Emergency
☐ General Emergency
☐ Not Applicable

5/13/85

71

SUBJECT: STEAM HAMMER IN STEAM SUPPLY LINE TO EMERGENCY FEEDWATER PUMP

At approximately 4:35 p.m. (CDT) on May 8, 1985, the emergency feedwater pump AB was started for monthly surveillance. The operators notices a loud noise when opening the A side steam supply valve and assumed it was the opposite line (B side) check valve slamming shut.

Subsequently, at 5:40 p.m. (CDT) on May 9, 1985, it was observed that snubbers and several steam line supports were damaged.

The licensee is evaluating the cause of the event.

No press release is planned by the licensee.

The state of Louisiana was notified.

This information is current as of 2:00 p.m. May 13, 1985.

CONTACT: W. A. Crossman, FTS 728-8151.

DISTRIBUTION:

H. ST.	MNBB	Phillips	E/W	Willste	MAIL:
Chmn PaTadino	EDO	NRR	IE	NMSS	DOT: Trans Only
Comm. Zech	PA	DCS	OIA	RES	DMB (Original)
Comm. Roberts	MPA		AEOD		
Comm. Asselstine	ELD		VIB		INPO
Comm. Bernthal					NSAC
SECY		Air Rights			
ACRS		SP			
CA					
PDR Regions:					

Licensee:
(Reactor Licensees)

DRSP *WAC*
WACrossman/lk
5/13/85

RA
RDMartin
Mc85

8505170446 850513
PDR I&E
PNO-IV-85-021 PDR

S

85051302
5/13/85
0/1

Cunningham, Waterford 3 Tests Slowed By Deposits
The Times-Picayune (June 4, 1985)

Waterford 3 tests slowed by deposits

By LYNN CUNNINGHAM
Staff writer

Lead deposits discovered this weekend in Waterford 3's generator have forced a three-week delay at the Taft plant, which was on the verge of full-power production.

The lead came from solder that was exposed to moisture, according to Ken Cook, spokesman for Louisiana Power & Light Co.

Cook said the company, which owns the \$2.73 billion reactor, is concerned that additional buildup might cause electrical shorts in the generator and require more expensive and lengthy repairs in the future if not taken care of immediately.

The repairs will delay the plant's testing schedule, which was about to enter the final phase before commercial operation. However, LP&L spokesman James Fort said the company was still shooting for a late June or early July commercial startup.

Cunningham, "N-Plant Repairs Will Take Three Weeks,"
The Times-Picayune (July 23, 1985)

N-plant repairs will take 3 weeks

By LYNN CUNNINGHAM
 Staff writer

The Waterford 3 nuclear reactor in St. Charles Parish will be shut down for three weeks while technicians replace equipment damaged by intense vibrations that closed the plant last Thursday, a utility spokesman said.

James Fort, a spokesman for the reactor's owner, Louisiana Power & Light Co., said it is not known whether the outage will delay the pending commercial operation of the \$2.73 billion Taft plant.

Waterford 3, which will furnish electricity to LP&L customers in 43 parishes, was scheduled to go into commercial service last week after a seven-year delay and running 11 times over its budget. LP&L is asking the Louisiana Public Service Commission for emergency treatment of its record \$468 million rate increase request, most of which will go to pay off the debt it incurred to build Waterford 3.

On Monday, a team of LP&L and Westinghouse technicians continued to survey the damage caused by the vibrations, Fort said. The vibrations, Fort said, were felt by control room technicians 21 feet below ground and 120 feet away from the turbine generator.

While workers at Waterford 3 disassembled the turbine's housing and probed the huge equipment, parts of the electrical generator were still being examined at the Pittsburgh operations of Westinghouse Electric Co., manufacturer of the parts. Fort said LP&L expects to get the parts back sometime this week.

Fort said LP&L had not yet determined the cause of the vibrations, but had discovered irreparable damage to the largest rotor in the turbine generator system. A spare rotor, in stock at the plant, was being prepared for installation, Fort said.

Thursday's Waterford 3 shutdown was one of a number of mishaps to plague the enormous turbine generator system since testing began in December. On July 14, for example, a computer problem in the turbine's control panel circuit automatically shut Waterford 3 down.

"All plants have problems during testing," Fort said. "It's part of the plan. The turbine generator has been sitting for six or seven years waiting for Waterford 3 to be completed. It's been maintained, but it's a piece of equipment that requires the plant to be running in order to test it."

The turbine is powered by high-pressure steam that is created from contact with fission-generated heat. The steam turns the rotor, which activates a series

See WATERFORD, next page

Waterford

From A-17

of magnets in the power-producing electrical generator. The turbine is not in the plant's radioactive area.

James Wilson, a Nuclear Regulatory Commission engineer who supervises Waterford 3's compliance with regulations, said Monday that the agency "is very much interested in the Waterford 3 problem, but remains in the dark until LP&L figures out what caused the vibrations."

Wilson said the turbine generator at Waterford 3 is a standard piece of Westinghouse equipment that is installed at nuclear and other plants throughout the country. He said other plant owners with the same equipment want to find out the cause.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

DOCKETED
USNRC

In the Matter of

LOUISIANA POWER AND LIGHT COMPANY

(Waterford Steam Electric Station,
Unit 3)

)
)
)
)
)
)

'85 AUG -9 P4:38
Docket No. 50-382

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Joint Intervenors' Petition for Review has been served
this 9th day of August, 1985 by mailing a copy, first class,
postage prepaid to the following:

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

Dr. Harry Foreman, Director
Administrative Judge
University of Minnesota
Box 395, Mayo
Minneapolis, MN 55455

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

*E. Blake, Esq.
B. Churchill, Esq.
Shaw, Pittman, Potts & Trowbridge
1800 M Street, N.W.
Washington, D.C. 20036

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

Luke B. Fontana, Esq.
824 Esplanada Avenue
New Orleans, LA 70116

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

Malcolm Stevenson, Esq.
Monroe & Lemann
1424 Whitney Building
New Orleans, LA 70130

Dr. Walter H. Jordon
Administrative Judge
881 West Outer Drive
Oak Ridge, TN 37830

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

Brian P. Cassidy
Regional Counsel
FEMA
John W. McCormack
Post Office and Courthouse
Boston, MA 02109

Ian Douglas Lindsey, Esq.
7434 Perkins Road
Suite C
Baton Rouge, LA 70808

William J. Guste, Jr., Esq.
Attorney General for the
State of Louisiana
234 Loyola Avenue
7th Floor
New Orleans, LA 70112

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

Docketing and Service Section
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

*Nunzio J. Palladino, Chairman
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

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

*Thomas M. Roberts, Commissioner
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

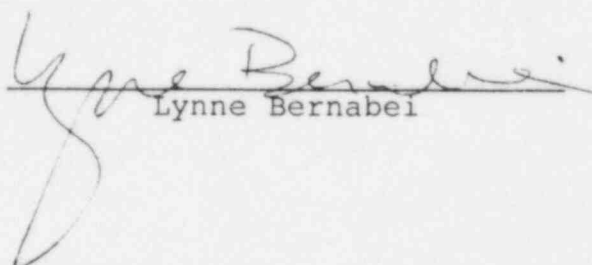
*Sherwin Turk, Esq.
Office of Executive Legal Director
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

*Frederick Bernthal, Commissioner
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

*James K. Asselstine, Commissioner
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

*Lando W. Zech, Jr., Commissioner
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

*Hand-delivered


Lynne Bernabei