

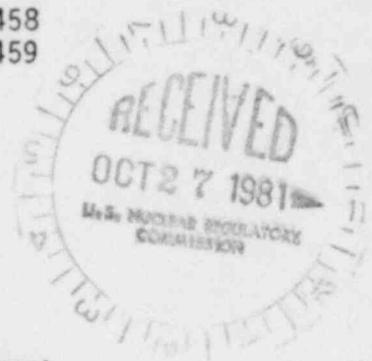
10/26/81

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of
GULF STATES UTILITIES CO., et al.
(River Bend Station, Units 1 & 2)

Docket Nos. 50-458
50-459



STAFF RESPONSE TO PETITIONS TO INTERVENE AND
REQUEST FOR A HEARING BY THE STATE OF LOUISIANA

I. INTRODUCTION

On September 4, 1981 the Nuclear Regulatory Commission (NRC) published a notice of opportunity for a hearing on the application for an operating license for the River Bend Station, Units 1 and 2 in the Federal Register (46 Fed. Reg. 44539) . By timely motion of September 30, 1981, the State of Louisiana (the State) on its own behalf and on behalf of its citizens petitioned to intervene.^{1/} By a separate motion also filed October 5, 1981, the State has additionally requested that hearings for the River Bend facilities be held in St. Francisville, Louisiana and Baton Rouge, Louisiana.

II. DISCUSSION

In its petition the State of Louisiana has failed to designate whether it is seeking intervention as a party to this proceeding under 10 CFR §2.714, or whether it is seeking to participate pursuant to 10 CFR §2.715(c) which

^{1/} The State is represented in this proceeding by its Attorney General.

DESIGNATED ORIGINAL

Certified By

[Signature]
DSO7

DSO7
1/1

8110280353 811026
PDR ADOCK 05000458
G PDR

allows representatives of an interested State, county, municipality, and/or agencies thereof an opportunity to participate in NRC proceedings. Although no such designation has been made, in Staff's opinion the State is probably seeking intervention as a full party under 10 C.F.R. § 2.714 since its petition attempts to satisfy the requirements of this section of the Commission's rules.

Staff believes that the State should be required at this time to designate how it wishes to participate in this proceeding. It should be noted that even if a State elects to intervene as a full party under 10 C.F.R. § 2.714 on certain issues, it may still participate as an "interested state" under 10 C.F.R. § 2.715(c) as to other issues.^{2/}

The State's of Louisiana's petition in the instant matter is analogous to the situation in the Midland proceeding^{3/} where the State of Michigan also failed to inform whether it was intervening under 10 CFR 2.714 or as an interested State under 10 CFR 2.715(c). In that decision the Board ruled that Michigan could participate in the proceeding as an interested State. It also deemed the Michigan petition to be filed under 10 C.F.R. § 2.714 since some of the elements of that section were discussed in that petition. It concluded that not all of the requirements for intervention under 10 C.F.R. § 2.714 were met, but it nevertheless granted Michigan leave to file an amended petition.

2/ Project Management Corp. (Clinch River Breeder Reactor Plant), ALAB-354, 4 NRC 383, 392-93 (1976).

3/ Consumers Power Company (Midland Plant Units 1 and 2), LBP-78 27, 8 NRC 275 (1978).

A. The State's Participation Under 10 C.F.R. § 2.715(c)

Staff believes that the Staff of Louisiana qualifies to participate in this proceeding as an interested State under 10 CFR 2.715(c).^{4/} Under this section of the Commission rules an interested State or other government body need not take a position on the issues, but it is nevertheless given an opportunity to participate in the proceeding by introducing evidence, interrogating witnesses, and advising the Commission. This section also requires that the State indicate with reasonable specificity, in advance of the hearing, the subject matters on which it desires to participate. Although the State need not furnish contentions, if it is allowed into the proceeding it must comply with all of the procedural rules and is subject to the same requirements as the other parties appearing before the Board.^{5/}

B. The State's Participation Under 10 C.F.R. § 2.714

Just as in the Midland case, the State of Louisiana has also set forth elements in its petition necessary for intervention under 10 CFR 2.714 and, in Staff's view, has satisfied several of the requirements of this section for intervention. Under 10 CFR §2.714 a petitioner must:

^{4/} In this regard, the Commission has stated that the participation of an interested sovereign State, as a full party or otherwise, is always desirable. Public Service Company of New Hampshire et al. (Seabrook Station, Units 1 & 2), CLI-77-25, 6 NRC 535 (1977).

^{5/} Public Service Company of New Hampshire et al. (Seabrook Station, Units 1 & 2), CLI-77-25, 6 NRC 535 (1977).

- (1) set forth the interest of the petitioner in the proceeding. 10 CFR §2.714(a)(2),
- (2) set forth the specific aspect or aspects of the subject matter of the proceeding as to which petitioner seeks to intervene. 10 CFR §2.714(a)(2),
- (3) file within fifteen days prior to the first prehearing conference at least one acceptable contention which it desires to be litigated. 10 CFR 2.714(b).^{6/}

1. Interest and Standing

Staff believes that the State has established that it has the requisite "interest" and standing to intervene in this proceeding. As the State in which the facility is located, it has an understandable concern with health, safety and environmental areas associated with the proposed facility. In this regard, in its petition it has asserted its duty to promote the general welfare and rights of its citizens and it specifically points out that a number of its citizens live within a fifteen to thirty mile radius of the River Bend facility and may be adversely affected by the facility.^{7/}

^{6/} For a detailed discussion of the legal requirements for intervention under 10 CFR §2.714 see "Staff Response to Petitions to Intervene and Request for a Hearing By Louisiana Consumer's League, Inc. and Louisianans For Safe Energy, Inc." of October 21, 1981 at pp. 2-6.

^{7/} The Appeal Board has stated in Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 and 2), ALAB-522, 9 NRC 54,56 (1979) that "close proximity [to a Nuclear facility] has always been enough, standing alone, to establish the requisite interest." See also Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1421, n. 4 (1977). In Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-107, 6 AEC 188, 190; aff'd, CLI-73-12, 6 AEC 241 (1973) residence within 30-40 miles of the site was sufficient to show interest to raise safety questions. And see Consumers Power Co. (Palisades Nuclear Power Plant), LBP-79-20, 10 NRC 108 (1979) where residence as far as 40-50 miles was sufficient to provide a foundation for standing.

2. Aspect

The States's petition also meets the requirement of 10 CFR 2.714(a)(2) that a petitioner set forth the specific "aspect of the subject matter of the proceeding" for which it seeks intervention.^{8/} Although this pleading requirement has only been addressed by NRC tribunals on a few occasions, it is apparently satisfied if a petitioner identifies its general position on the subject matter for which it seeks intervention and the subject matter so identified is within the scope of the proceeding as set forth in the Notice of Hearing.^{9/} The "aspects" listed in the

^{8/} In its petition, the State has listed the following as aspects of the subject matter, for which its intervention is sought:

1. The economic impact of the nuclear power generation within the state.
2. The adequacy of nuclear waste storage facilities for waste that will be generated in the operation of this nuclear power station.
3. The adequacy of evacuation plans for low-income and moderate-income persons, especially those residing in public facilities, such as Louisiana State Penitentiary and East Louisiana State Hospital, within a 50-mile radius of this nuclear power station.
4. The safe operation of this nuclear power station.
5. The adequacy of the consideration of the probability of risk of a major nuclear accident at this nuclear power station.

^{9/} See e.g.: Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), Licensing Board "Memorandum and Order: Ruling on Petitions and Setting Special Prehearing Conference," Sept. 21, 1979, slip op. at 6. (See attachment). See also, Consumers Power Company (Midland Plant, Units 1 and 2), LBP-78-27, 8 NRC 275, 278 (1978); Wisconsin Electric Co. (Point Beach Nuclear Plant, Units 1 & 2), LBP-78-23, 8 NRC 71 (1978). Cf. Philadelphia Electric Co. (Limerick Generating Station, Units 1 & 2), Docket Nos. 50-352 and 50-353, "Memorandum and Preliminary Information," October 14, 1981, at pp. 13-14.

State's petition in item 3 regarding evacuation plans and item 5 regarding a major nuclear accident seem to meet this criteria. The pleading requirements of 10 CFR 2.714(a)(2) are satisfied if the petitioner provides at least one satisfactory aspect in its request for intervention.^{10/}

Having demonstrated standing to intervene and having set forth the specific aspect of the subject matter for which it seeks intervention, the State still must file within fifteen days prior to the first prehearing conference, or such other time as the Board may set, a list of the contentions that it wishes to have litigated and provide the basis for each contention with reasonable specificity. Id 10 CFR §2.714(b). If the State fails to satisfy this requirement with respect to at least one contention,^{11/} it will not be permitted to participate as a party.^{12/}

III. CONCLUSION

In its petition the State of Louisiana has failed to advise as to whether it wishes to participate in the instant proceeding as an interested State under 10 CFR §2.715(c), as a full party intervening party under 10 CFR §2.714, or as a participant with respect to both of these

^{10/} Consumers Power Co., supra, 8 NRC at 278.

^{11/} Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 & 2), ALAB-130, 6 AEC 423, 424 (1973). Louisiana Power & Light Co., Waterford Station Unit 3), ALAB-125, 6 AEC 371, 372 (1973).

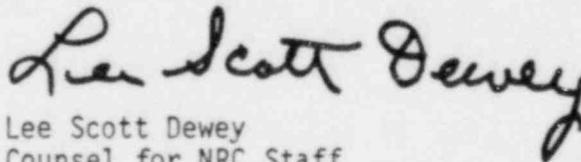
^{12/} For a brief discussion of the background of this rule see Consumers Power Co., Supra, 8 NRC 275, 277-278.

sections. At this time the State should be required to designate how it wishes to participate in this proceeding.

In Staff's opinion the State's instant petition is sufficient to qualify it to participate as an interested State under 10 CFR § 2.715(c). The State has also satisfied some intervention requirements under 10 CFR § 2.714, but it must still furnish at least one acceptable contention for litigation before it can be admitted as a party.

Regarding the State's request that hearings for this proceeding be held in Baton Rouge and St. Francisville, Louisiana, Staff believes that this request is premature and need not be ruled upon by the Board at this time.

Respectfully submitted,

A handwritten signature in cursive script that reads "Lee Scott Dewey". The signature is written in dark ink and is positioned above the typed name and title.

Lee Scott Dewey
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 26th day of October, 1981.

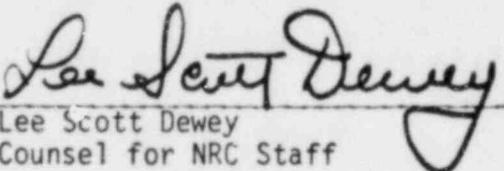
William J. Guste, Jr.
Attorney General
State of Louisiana
234 Loyola Avenue
7th Floor
New Orleans, Louisiana 70112

Linda B. Watkins
Staff Attorney
Department of Justice
7434 Perkins Road
Suite C
Baton Rouge, Louisiana

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

Atomic Safety and Licensing
Appeal Board*
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


Lee Scott Dewey
Counsel for NRC Staff