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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
LICENSING & SAFETY
BRANCH

Before Administrative Judges:

- B. Paul Cotter, Jr., Chairman
- Dr. Richard F. Cole
- Dr. Peter S. Lam

RECEIVED JAN 31 1994

In the Matter of

GULF STATES UTILITIES
COMPANY, et al.

(River Bend Station, Unit 1)

Docket No. 50-458-OLA

ASLBP No. 93-680-04-OLA

January 27, 1994

MEMORANDUM AND ORDER
(On Petition to Intervene)

I. Introduction

Petitioner Cajun Electric Power Cooperative, Inc. (Cajun) seeks to intervene in Gulf States Utilities Company's (Gulf States) applications to amend the River Bend Station facility operating license. The amendments (1) authorize Gulf States to become a wholly owned subsidiary of Entergy Corporation (Entergy); and (2) include Entergy Operations Inc. (EOI) on the license as a new licensee to operate, manage, and maintain River Bend. The petition was filed in response to a July 7, 1993 "Notice of Consideration of Issuance of Amendments to Facility Operating License, Proposed No Significant Hazards Consideration Determination

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and Opportunity for Hearing." 58 Fed. Reg. 36,423, 36,435-36 (1993).

The River Bend station, a 940 MWe, single cycle, boiling water reactor, is located in Feliciana Parish, Louisiana. The facility is owned jointly by Gulf States and Cajun.

Cajun seeks two forms of relief in this proceeding. First, Cajun seeks to have additional conditions imposed on the license amendments to protect the financial underpinning for River Bend operations and to preserve Cajun's rights and interests in River Bend. Second, Cajun requests the enforcement of two existing license conditions.¹

¹ At the outset of this proceeding, Cajun also had claimed that a hearing should be held to decide whether these license amendments should have been made immediately effective. However, 10 C.F.R. § 50.91 (1993) of the Commission's Rules makes clear that license amendments can be made immediately effective solely at the discretion of NRC staff, following a determination by staff that there are no significant hazards considerations involved. At the prehearing conference, counsel for Cajun conceded that immediate effectiveness findings are not subject to review by licensing boards, and he withdrew this issue from the proceeding. (Tr. 8-9)

II. The Parties

Cajun is an electricity generation and transmission company supplying 12 rural Louisiana electric cooperatives serving approximately one million people. Cajun and its 12 members are non-profit cooperatives under the Rural Electrification Act of 1936, 7 U.S.C.A. Sections 901, et seq. (1980). In addition to other generating facilities, Cajun owns 30 percent of the River Bend station, an interest Cajun values at approximately \$1.6 billion.

Gulf States, a Texas corporation headquartered in Beaumont, owns the remaining 70% of River Bend which Gulf States operates for itself and Cajun under a joint agreement the two entered into in 1979. Under that joint agreement, both companies share proportionately the costs, benefits and expenses of the facility. At the time the petition at issue here was filed, Gulf States was the operator for River Bend.

Entergy Operations Inc. (EOI) is a wholly owned subsidiary of Entergy Corporation. EOI operates nuclear units for four subsidiary companies owned by Entergy, its parent. EOI will operate River Bend in place of Gulf States under the terms of the proposed new Gulf States/EOI River Bend Station Operating Agreement.

Entergy Corporation will be the parent corporation of Gulf States if the merger is approved. Entergy is the parent corporation of EOI and several mid-south regional electric utilities including Arkansas Power & Light Co., Louisiana Power & Light Co., Mississippi Power & Light Co., and New Orleans Public Service, Inc.

III. Requirements for Intervention

As a threshold matter, Cajun must satisfy the NRC's requirements for intervention. Those requirements are set forth at 10 C.F.R. § 2.714(a)(2) (1993) which requires the statement of a cognizable interest in the proceeding, how that interest would be affected, the reasons why intervention should be allowed, and the specific subject matter as to which intervention is sought.

A. The Legal Standard for Standing

Judicial tests of standing are applied in NRC proceedings to determine whether a petitioner has sufficient interests to be entitled to intervene. These judicial tests require a petitioner to show that: (1) the proposal will cause "injury in fact" to the petitioner and (2) the injury is arguably within the zone of interest to be protected by the statutes governing the proceeding. See Georgia Power

Company, et al. (Vogtle Electric Generating Plant, Units 1 and 2), CLI-93-16, 38 NRC 25 (1993); Public Service Co. of Indiana (Marble Hill Generating Station Units 1 and 2), CLI-80-10, 11 NRC 438, 439 (1980); Portland General Electric Company (Pebble Springs, Units 1 and 2), CLI-76-27, 4 NRC 610, 613-614 (1976). In addition to these two elements of standing, the asserted injury must be redressable in the instant proceeding. Public Service Co. of New Hampshire (Seabrook Station, Unit 1), CLI-91-14, 34 NRC 261, 267 (1991).

B. The Positions of the Parties Regarding Standing

1. Cajun

Cajun contends that its ownership interest in the River Bend facility in and of itself confers standing in this proceeding. Among other things, it claims that the license amendments may cause unsafe operation of the plant because EOI (the new operating company resulting from the merger) will be thinly capitalized and may have insufficient operating funds due to pending legal actions against Gulf States. It also claims that safety will be jeopardized because the new arrangement (using EOI as operator rather than Gulf States) will foreclose Cajun from dealing directly with the plant's operator, thus preventing Cajun from

confirming that the plant is being operated safely and from being able to influence its safe operation. Cajun contends that unsafe operations can jeopardize Cajun's ownership property interest in the plant and increase the potential for third party liability resulting from accidents.

Cajun also makes the procedural argument that Gulf States does not have the right under state law to make changes which directly threaten Cajun's ownership in the plant and that Cajun should be allowed standing in this proceeding, as a co-owner, to contest whether Gulf States has the right to jeopardize this interest.

2. Gulf States

Gulf States opposes Cajun's standing primarily on the basis that Cajun's alleged injury is purely economic and therefore not within the zone of interests protected by the Atomic Energy Act which is confined to radiological health and safety matters. Gulf States also argues that the scenario relied upon by Cajun to establish standing (i.e., safety concerns at the plant caused by a lack of funding) is illusory since the plant can be safely shutdown even if these concerns occur. Moreover, it claims that the same lack of funding alleged by Cajun would result without the license amendments because the responsibility for the cost

of operating the plant will remain with Gulf States and Cajun even if the amendments are not granted. Gulf States additionally states that Cajun's argument concerning insufficient resources for safe operation is too speculative to be the basis for intervention. Finally, Gulf States contends that, to the extent that Cajun has attempted to gain standing by identifying injury to its member rural electric utility cooperatives, it has failed to do so in three respects. First, Cajun has failed to demonstrate that it has the authority to represent those persons who are members of those cooperatives. Second, Cajun has failed to show specific injury to them. Third, in any event, those persons are not members of Cajun but members of Cajun's members.

Gulf States additionally makes the procedural argument that there are two separate license amendments involved in this case and therefore two proceedings -- one involving Gulf States' merger application with Entergy Corp. and the other involving the replacement of Gulf States with EOI as the operator of the River Bend plant. Gulf States maintains that the board must find standing for each of these proceedings.

3. Staff

Staff supports Cajun's standing to intervene.

According to staff, injury-in-fact by the amendments has been established because Cajun has shown it will suffer concrete and particularized harm traceable to the license amendment if the proposed new plant operator does not have the resources to safely maintain and operate River Bend or if the proposed amendment would cause a lessening of Cajun's influence, as an owner, to see that the plant is safely maintained and operated. Staff also states that Cajun has shown that it might sustain an actual injury if Gulf States lacks the authority to file the application on its behalf and that the grant of the application might adversely affect rights Cajun has under the present license. Staff additionally notes that Cajun has established that the alleged harm might be redressed in this proceeding by denying the amendment and keeping Gulf States primarily responsible for the safe operation of River Bend, or by granting the amendment with appropriate license conditions to protect Cajun's interests.

Staff concludes that Cajun's petition is within the zone of interests protected by the governing statute because the Atomic Energy Act states that the Commission shall provide for the protection of property, as well as of life, from radiological hazards. As authority, it cites Sections 103.b, 42 U.S.C.A § 2133(b) (1973), and 161.b, 42 U.S.C.A. § 2201(b) (West Supp. 1974-1993) of the Act providing that

licenses may be issued to those who will observe standards to "minimize danger to life and property" and it cites Section 170 providing for the indemnification of damages caused by radiological accidents. As additional authority, it cites Section 2.f of the Act where Congress found that the use and control of atomic energy is necessary "for protection against possible interstate damage" occurring from the operation of nuclear facilities in interstate commerce. 42 U.S.C.A. § 2012(f) (1973).

C. Analysis of Standing

At the outset, we do not agree as a practical matter with Gulf States' argument that two proceedings are involved here -- the merger proceeding and the operator proceeding -- and that separate standing must be established for both. Although there were two Federal Register notices on July 7, 1993 regarding Gulf States' license amendments, one pertaining to the merger and one pertaining to the designation of an operator for the facility, the two amendments appear to be different facets of the same undertaking and do not require separate findings. That is there is one nuclear power plant, one license being amended, and one part owner of that plant seeking to intervene. Gulf States' view of the matter could double the litigation

burden and costs, an unhappy result this agency normally seeks to avoid.

Aside from this procedural issue, the issue here is whether the property interest of Cajun in River Bend is sufficient to confer standing in this license amendment proceeding. We conclude that it does.

There are a limited number of NRC cases involving standing that involve property interests. Most have held that the property interests involved were insufficient to confer standing since they were outside the zone of interests designed to be protected by the Atomic Energy Act -- namely, interests related to health, safety, and radiological matters. The property interests in those cases primarily involved economic interests of ratepayers and taxpayers or general concerns about a facility's impact on local utility rates and the local economy. See Kansas Gas & Electric Co. (Wolf Creek Generating Station, Unit 1), ALAB-424, 6 NRC 122, 128 (1977); Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-789, 20 NRC 1443, 1447 (1984); Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 & 2), ALAB-413, 5 NRC 1418, 1421 (1977).

Notwithstanding the ratepayer/taxpayer line of cases, property interests can confer standing. The ratepayer/taxpayer cases failed to find standing because the property interests were too far removed from the purpose of the underlying statutes governing those proceedings. Cajun's stated interest in this proceeding, on the other hand, is to protect its property, River Bend, from radiological hazards arising from unsafe plant operation. Cajun's asserted interest in avoiding damage to property from nuclear-related accidents coincides with the Atomic Energy Act's stated purpose of affording protection from radiological hazards. As Staff correctly points out, radiological protection under the Act is afforded for both human life and property. In fact, the protection of property is specifically mentioned in the Atomic Energy Act in several places, including Sections 103.b and 161.b which speak of minimizing "danger to life or property." 42 U.S.C.A. §§ 2133(b) and 2201(b) (West Supp. 1974-1993). Cajun's property interest in River Bend thus clearly meets the zone of interests requirement for standing.²

² We note that standing arguably may be granted for property interests other than those associated with physical damage from radiological hazards. See Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit 1), CLI-85-2, 21 NRC 282, 316-317 (1985). However, we see no need in this case for us to determine whether standing may be granted for property interests which do not directly pertain to radiological hazards.

Both license amendments found in the July 7, 1993 Federal Register Notice play a role in the potential radiological hazards which Cajun has alleged in this proceeding. The amendment naming a new plant operator will install an allegedly under-funded operator whose lack of funding may jeopardize the safe operation of River Bend. According to Cajun, potential under-funding stems from multiple legal actions against Gulf States that could cause considerable financial difficulty, including bankruptcy. The merger amendment to permit Gulf States to become a subsidiary of Entergy Corp. also can cause unsafe operations since the terms of the merger agreement allegedly allow for under-funding at the plant. Thus, both amendments play a part in this proceeding and both are contributors to Cajun's standing arguments.

Cajun also has demonstrated injury-in-fact sufficient to confer standing. Because it is a co-owner of River Bend, it arguably can suffer substantial damage to its property interest from the plant's unsafe operation, including loss of its share of the plant, loss of plant power and revenue, and potential liability to third parties from radiological accidents.³

³ Cajun has not specifically claimed standing based upon potential personal injury to individuals. However, it has listed various rural electric distribution cooperatives that are Cajun
(continued...)

We reject Gulf States' argument that the alleged injury to Cajun is too speculative to be the basis for intervention. A petitioner need not establish that injury will inevitably result from the proposed action to show an injury in fact, but only "that it may be injured in fact" by the proposed action. Virginia Electric & Power Co. (North Anna Power Station, Units 1 & 2), ALAB-342, 4 NRC 98, 104-05 (1976). In this case, Cajun has supplied information to establish that safety at the plant may be jeopardized by potential plant under-funding and a lack of oversight by Cajun. It has specifically alleged in this regard that only Gulf States will be responsible for funding the plant under the current terms of the merger agreement and that Gulf States' officials have conceded the potential for bankruptcy to Gulf States from pending litigation. We view these allegations as adequate to establish the necessary injury in fact.

We also reject Gulf States' argument that a lack of funding could not adversely affect plant safety. This argument clearly contradicts the rationale of 10 C.F.R.

³(...continued)
members whose service areas include individual members who are living adjacent to the River Bend facility. We agree with Gulf States that Cajun cannot obtain standing through those individuals who are members of these member cooperatives because it has neither demonstrated authority to represent them nor has it alleged any specific injury to them.

§ 50.33 (f) (1993) requiring applicants for operating licenses to demonstrate that they possess reasonable assurance of obtaining funds necessary to cover estimated operation costs for the period of the licenses. The regulatory basis for section 50.33 (f) would include numerous safety factors including a consideration that insufficient funding might cause licensees to cut corners on operating or maintenance expenses. Even though, as Gulf States asserts, the plant could be safely shut down if funds are lacking, under § 50.33 (f) financial assurances would still have to be provided.⁴ We note that even during shutdown there are accident risks associated with a nuclear reactor. See generally, "A Prioritization of Generic Safety Issues" (NUREG-0933, 1991).

Finally, we reject Gulf States' argument that the license conditions are immaterial to Cajun's property interests since the responsibility for operating costs at River Bend will still rest with Gulf States and Cajun, just as they did before the merger. This claim is controverted

⁴ Although an electric utility's financial qualification usually cannot be the subject of litigation in NRC operating license proceedings (see 10 C.F.R. § 50.33(f); Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), CLI-89-20, 30 NRC 231 (1989)), the matter here concerns the financial viability of the operating company, EOI, which is not an electric utility. (For a more detailed analysis of this question, see discussion for Contention 2, infra.)

in Cajun's petition where Cajun asserts that the new Operating Agreement runs only between Gulf States and EOI and, therefore, Gulf States has the full obligation to compensate EOI for River Bend operation and EOI cannot look to Cajun for payment. Gulf States' argument also fails to recognize that license conditions could arguably be imposed which would help alleviate Cajun's financial concerns.

For the reasons explained in this section, we conclude that the potential injury to Cajun's property interest in River Bend establishes the requisite "injury in fact" for standing in this proceeding and that the potential injury to this interest is within the zone of interests protected by the Atomic Energy Act.⁵

⁵ Our ruling does not reach Cajun's argument that standing can also be derived from its rights as a co-owner of River Bend alone. Cajun appears to argue that co-owners and co-licensees of nuclear facilities should be allowed to contest license amendments that are contrary to their ownership interests (especially where, as here, State law does not allow a joint ownership agreement to be amended in the manner proposed) regardless of the subject matter at issue. Our subject matter jurisdiction is limited by statute, and we find Cajun's contractual property interest at issue here inappropriate to confer standing. Absent radiological health and safety concerns, environmental concerns, or antitrust matters subject to NRC license conditions, contractual disputes between co-owners in nuclear facilities ordinarily should be resolved by the appropriate state, local, or federal court. Contract disputes are not within the scope of this proceeding and will not be addressed by this board.

IV. Cajun's Contentions

To be admitted as a party in this proceeding, Cajun must not only establish standing, but also must proffer at least one admissible contention. The standards for admissible contentions are set out in 10 C.F.R. § 2.714 (b)(2) and (d)(2) (1993). These regulations require that Cajun's contentions include a specific statement of the issue of law or fact to be raised or controverted, a brief explanation of the bases of the contentions, and a concise statement of the alleged facts or expert opinion which support the contentions, together with references to those specific sources and documents on which the petitioner intends to rely to prove the contentions. In addition, Section 2.714 (b)(2)(iii) requires that Cajun present sufficient information to show that a genuine dispute exists on a material issue of law or fact. And, of course, Cajun's contentions must fall within the scope of the issues set forth in the notice of the proposed licensing action. See Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 NRC 167, 170-71 (1976).

Cajun has listed the following seven contentions for litigation in this proceeding. See "Cajun Electric Power Cooperative Inc.'s Amendment and Supplement to Petition for

Leave to Intervene Comments and Request for Hearing", pp. 7-22, dated August 31, 1993. Gulf States and staff oppose these contentions on the basis that they are economic in nature and outside of the scope of health and safety issues in this proceeding, that they fail to have a sufficient basis, and that they would not entitle Cajun to relief even if proven.

Contention 1. The Proposed Amendments Fail To Reflect The Public Interest And Interests Of Co-owners, Wholesale Customers And Customers That May Be Affected By The Outcome Of The Cajun And Texas Litigation.

Cajun contends that the NRC should consider the adverse financial impact which Gulf States, Entergy and EOI would experience from a judgment or settlement resulting from presently pending litigation against Gulf States. These cases include Cajun Electric Power Cooperative, Inc. v. Gulf States Utilities Company, No. 89-474-B, United States District Court for the Middle District of Louisiana and Southwest Louisiana Electric Membership Corporation, et al. v. Gulf State Utilities Company, No. 92-2129, United States District Court for the Western District of Louisiana. The case brought by Cajun involves an attempt by Cajun to rescind the River Bend Operating Agreement and collect

damages of over \$1.6 billion for alleged misrepresentation by Gulf States regarding Cajun's ownership purchase in River Bend. Cajun cites statements of Michael J. Hamilton of Price Waterhouse to establish that a decision in this litigation in favor of Cajun could bankrupt Gulf States and reduce the present net earnings of Gulf States/Entergy from \$2.20 per share to a loss of \$3.34 per share. Cajun further claims Entergy will not protect Gulf States in the event of these litigation losses since the Entergy/Cajun Reorganization Plan allows Entergy to withdraw from the merger if Cajun prevails.

Contention 1, insofar as its allegations may establish the potential for unsafe operation of River Bend, does not directly refer to safety concerns but, in fact, is an integral part of Contention 2 which does refer to safety. In essence, Contention 1 states a basis for Contention 2 since the allegations in Contention 1 regarding the Gulf States litigation are an element in proving the allegation of under-funding and reduced safety in Contention 2. In fact, Cajun asserts the Contention 1 allegations concerning financial damage resultant from litigation as a basis for Contention 2. See Item c under Contention 2, below, and related discussion. Accordingly, for all the foregoing reasons, Contention 1 is denied.

Contention 2. The Proposed License Amendments May Result In
A Significant Reduction In The Margin Of
Safety At River Bend.

Cajun's claim in this contention is that safety at River Bend will be jeopardized because the proposed new operator, EOI, will be under-funded. It asserts, as bases for this contention, that:

a) The proposed River Bend Operating Agreement runs only between Gulf States and EOI. Therefore, Gulf States has the full obligation under the Operating Agreement to compensate EOI for River Bend operation and EOI cannot look to Entergy or Cajun for payment. (These allegations are based on provisions in the River Bend Operating Agreement and the statements of Edwin Lupberger, Chief Executive Officer of Entergy, and Donald Hintz, Chief Executive Office of EOI.)

b) EOI is very thinly capitalized. If Gulf States ceases to make its Operating Agreement payments, EOI has no other sources of funds to maintain safe and reliable River Bend operation. (Cajun cites the proposed Operating Agreement as the source for this allegation.)

c) Gulf States faces severe financial exposure from litigation with Cajun and from certain Texas regulatory proceedings which could render Gulf States bankrupt and unable to make adequate payments to EOI to maintain safe and reliable River Bend operation. (To support this allegation, Cajun has provided the specific information described above in Contention 1.)

d) Entergy views its obligations to support EOI in the event of lack of funding from Gulf States to be very limited. Officials of Entergy and EOI have admitted that EOI would be forced to shut down River Bend if EOI lacked adequate funds. (Cajun has cited the testimony of Edwin Lupberger and Donald Hintz in a Federal Energy Regulatory Commission (FERC) proceeding as a source for these allegations.)

See Cajun Amendment and Supplement, pp. 11-13 and references therein.

We find these bases adequate to satisfy the contention requirements of this proceeding. Cajun, of course, is not obliged to prove its entire case at this time. See discussion in Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), LBP-93-23, Slip Opinion at 4-5, 38 NRC__ (November 30, 1993).

In its opposition to Contentions 1 and 2, Gulf States primarily argues that both contentions are contrary to the Commission's "financial qualification" rule which exempts electric utilities from demonstrating financial qualification. However, this reliance is misplaced since the exemption in 10 C.F.R. § 50.33 (f) applies only to electric utilities and EOI is not an electric utility. Contentions 1 and 2 concern EOI's, and not Gulf States', financial qualifications. EOI will be the facility's operator and it is EOI's under-funding that allegedly will cause safety concerns at River Bend.

Clearly, EOI is not an electric utility. EOI's sole function will be to operate and maintain the plant. An electric utility, as defined in 10 C.F.R. 2.4 (1993), is an "entity that generates or distributes electricity and which recovers the costs of this electricity, either directly or indirectly, through rates established by the entity itself or by a separate regulatory authority." Gulf States will be the entity functioning as an electric utility with respect to River Bend since it will continue to distribute and sell the River Bend power and will be the entity responsible for recovering its costs.

Other arguments Gulf States makes in opposing Contention 2 are the same arguments it made for opposing

Cajun's standing. These include Gulf States allegations that the responsibility for funding plant operations will remain with Gulf States and Cajun, that the economic injury which Cajun asserts is too speculative to be a basis for a contention, and that the plant could safely shut down if funds were lacking. We have found these arguments wanting in the standing section of this decision and they are wanting here. For all the foregoing reasons, Contention 2 is accepted.

Contention 3. The Proposed License Amendment Cannot Be Approved Without Cajun's Consent.

In this contention, Cajun contends that the proposed license amendment requests were not properly made on Cajun's behalf and that the amendments are contrary to Cajun's ownership interest in the facility. We reject this contention for the reasons set out in our discussion regarding standing. Cajun has contracted with Gulf States to have Gulf States operate River Bend. That authority included the power to seek license amendments. When antitrust and radiological health and safety concerns are not involved, contractual disputes between co-owners in a nuclear facility should not be resolved by the NRC. Such questions should be handled by appropriate state, local, or federal courts.

Contention 4. The Proposed License Amendments Will Adversely Affect Cajun's Rights Regarding The Operation Of River Bend.

Cajun contends that the transfer of ownership and operation of River Bend violates Cajun/Gulf States contracts and that NRC approval of these transfers must be conditioned to protect Cajun's rights as a thirty percent co-owner of River Bend. Cajun claims in this regard that operational decisions for River Bend will no longer be made to protect the interests of Gulf States and Cajun, but rather will be made on behalf of the entire Entergy System which consists of a number of other electric utilities. Cajun also claims that the transfers to EOI will destroy Cajun's contractual privity with the plant's operator, which in turn will adversely affect River Bend safety by preventing Cajun from sharing plant operational information and participating in plant decision making.

Just as for Contention 3, we reject this contention because it involves non-safety related contractual matters between co-owners of a nuclear facility. Jurisdiction for such issues lies in other forums, not this one. No significant health or safety concern has been presented here since Cajun has not asserted or shown any basis to establish that a safety problem would exist without its oversight at River Bend.

Contention 5. The Proposed License Amendments Cannot Be Approved Without Certain License Conditions.

In this contention, Cajun lists seven license conditions which it alleges will alleviate the problems caused by the license amendments. On their face, these contentions appear related only to contractual disputes between the co-owner of River Bend, and they do not appear necessary for the plant's safe operation.⁶ Consequently, we reject these conditions with the proviso that Cajun can later request license conditions for Contention 2 that include aspects of these proposed conditions if Cajun can demonstrate their safety significance.

Contention 6. The Proposed Ownership Amendment Should Be Approved Only With Conditions Adequate To Remedy Its Adverse Impacts on the Cajun/Gulf States Interconnection Agreement.

⁶ Cajun requests conditions that: (1) require a tripartite agreement among Gulf States, EOI, and Cajun; (2) require EOI to be the direct agent of Cajun; (3) require EOI to be directly liable to Cajun; (4) allow Cajun to have input into River Bend decisions regarding maintenance, fuel outages, budgets, and capital improvements; (5) allow Cajun to have access to EOI records and River Bend operational data; (6) require EOI to submit River Bend cost management and regulatory reports to Cajun; and (7) allow Cajun to attend Institute for Nuclear Power Operation (INPO) meetings and have access to INPO documents.

In this contention, Cajun alleges that the proposed Gulf States merger will adversely impact the Cajun/Gulf States interconnection agreements to the economic detriment of Cajun and its consumers. According to Cajun, these agreements include, among other things, interconnection and transmission provisions, rates for electric power and services, cost sharing agreements, long-term and short-term planning functions, and similar, utility-related, operational agreements. This contention describes utility functions that clearly lie within the jurisdiction of FERC or appropriate state agencies which regulate electric utilities. See 42 U.S.C.A. Section 2019.

Moreover, to the extent Cajun's interconnection agreement concerns relate to Cajun's antitrust license conditions in the River Bend NRC license, they have been evaluated by staff as part of a staff antitrust review involving the Gulf States' merger. See 58 Fed. Reg. 16,246 (1993). Antitrust matters were not included in the notices governing this proceeding and this board has no jurisdiction over them. Accordingly, the contention is denied.

Contention 7. The River Bend License Conditions Must Be Enforced.

In this contention, Cajun requests that Gulf States and EOI be required to comply with the current River Bend license conditions. Cajun alleges that Gulf States is violating Condition 10 (by seeking to void a transmission contract between Gulf States and Cajun) and Condition 12 (by refusing to provide certain delivery points for electric power). We reject this contention since licensing boards have no jurisdiction to enforce license conditions unless they are the subject of an enforcement action initiated pursuant to 10 C.F.R. 2.202a (1993). Cajun's only recourse to enforce these conditions is to request enforcement action by the staff pursuant to 10 C.F.R. 2.206 (1993).⁷

⁷ We note that the license conditions to which Cajun refers are the River Bend antitrust license conditions which were inserted in the River Bend license to alleviate antitrust concerns and assure competition among utilities in Gulf States' service area. As discussed regarding Contention 6, supra, the antitrust aspects of the Gulf States' merger were the subject of a separate antitrust review conducted by NRC staff and were not included in the notices governing this proceeding.

V. Conclusion

Cajun's Contention 2 regarding a potential safety risk caused by under-funding of the plant's operator is accepted. The remaining contentions are rejected because they do not concern health and safety matters or any other basis for Licensing Board jurisdiction. They involve contractual disputes and disagreements between co-owners of nuclear facilities which are not within the jurisdiction of this forum. Matters argued by the parties but not addressed herein were not considered material to the decision reached.

We conclude that Cajun has met the requirements for standing. It has proffered one viable contention, demonstrated an "injury in fact," and alleged an injury that falls within the zones of interest sought to be protected by the governing statutes. Cajun's petition to intervene is therefore granted, and a hearing is hereby ordered in this proceeding.

VI. Appeal Rights

In accordance with 10 C.F.R. 2.714a (1993), Gulf States or staff may seek appeal on the question of whether the petition and request for a hearing should have been wholly

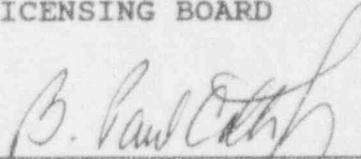
denied. Cajun may not appeal this Order because it does not wholly deny its petition.

An appeal to the Commission may be sought by filing a petition for review, pursuant to 10 C.F.R. 2.714a (a) (1993), within 10 days after service of this Order. Any other party to the proceeding may, within 10 days after service of the appeal, file an answer supporting or opposing the appeal.

VII. Discovery and Scheduling

Discovery shall begin immediately. The parties shall commence negotiation concerning appropriate trial schedules and file a report with suggested scheduling by March 1, 1994.

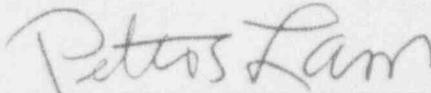
THE ATOMIC SAFETY AND
LICENSING BOARD



B. Paul Cotter, Jr., Chairman
ADMINISTRATIVE JUDGE



Richard F. Cole
ADMINISTRATIVE JUDGE



Peter S. Lam
ADMINISTRATIVE JUDGE

Bethesda, Maryland,

January 27, 1994.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of
GULF STATES UTILITIES COMPANY
(River Bend Station, Unit 1)

Docket No.(s) 50-458-OLA

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB M&O (LBP-94-3) (PETITION..) have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

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

Administrative Judge
B. Paul Cotter, Jr., Chairman
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

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

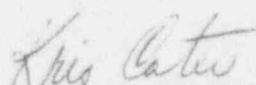
Administrative Judge
Peter S. Lam
Atomic Safety and Licensing Board
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