

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

Before the Atomic Safety and Licensing Board

In the Matter of )  
 )  
Gulf States Utilities Company, ) Docket No. 50-458  
 et al. ) 50-459  
 ) SECRETARY  
 ) & SERVICE  
 (River Bend Station, Units 1 and 2) ) BRANCH

'82 DEC 20 A11:01

APPLICANT'S ANSWER TO STATE OF  
LOUISIANA'S MOTION FOR EXTENSION OF  
TIME WITHIN WHICH TO FILE CONTENTIONS

On December 2, 1982, the State of Louisiana ("State") filed a Motion for Extension of Time Within Which to File Contentions ("Motion for Extension"). The Notice of Opportunity for Hearing in this case was published in the Federal Register by the Nuclear Regulatory Commission ("NRC") on September 4, 1981 (46 Fed. Reg. 44539). On October 5, 1981, the State of Louisiana petitioned to participate in the captioned proceeding as an interested state and as an intervenor pursuant to 10 C.F.R. §2.714. On August 20, 1982, over the objection of the Applicant, Gulf States Utilities Company, et al., the presiding Atomic Safety and Licensing Board ("Licensing Board") granted other petitioners' motion to delay filing of contentions which they wished to be considered in this proceeding until December 15, 1982.<sup>1/</sup> The stated ground was a change in

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<sup>1/</sup> Gulf States Utilities Company (River Bend Station, Units 1 and 2), Atomic Safety and Licensing Board "Order" (August 20, 1982).

schedule for the completion of the facility and the readjustment of the NRC Staff schedule to reflect this.<sup>2/</sup> The State now moves for a further thirteen month delay for the filing of contentions and asks that the special prehearing conference scheduled for February 8, 1983 be postponed accordingly.

As justification for this thirteen month delay, the State cites a request for amendment of the construction permit filed by Gulf States Utilities on November 5, 1982.<sup>3/</sup> It also notes that the Staff has not completed its technical review of the application and that the Safety Evaluation Report ("SER") is not scheduled to be issued until December 2, 1983.<sup>4/</sup> The State asserts that it has been receiving "voluminous amendments to the applicant's FSAR which it needs time to study and evaluate. . . ."<sup>5/</sup> None of these observations constitutes good cause for an extension of time. As discussed below, these procedures are routine under Commission regulations. Applicant opposes the request because such delay would significantly interfere with the timely completion of the hearing in this case and the issuance of operating licenses as scheduled.

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<sup>2/</sup> Order at 1 (August 20, 1982).

<sup>3/</sup> Motion for Extension at 2.

<sup>4/</sup> Id.

<sup>5/</sup> Id. at 3.

Initially, Applicant submits that the motion is untimely since it was filed less than two weeks prior to the deadline for submitting contentions.<sup>6/</sup> The purpose of the Licensing Board's August 20th Order was to allow the intervenors sufficient time to study the application for operating licenses and to draft specific contentions meeting the Commission's requirements. The State has not shown that it has made a good faith attempt to prepare any contentions.

Nor do the reasons enumerated by the State support the extension of time. The fact that a "Request for Amendment of Construction Permit No. CPPR-145" was filed asking that the latest completion date be extended to December 31, 1985<sup>7/</sup> is irrelevant to the instant motion. When the Licensing Board granted the previous extension of time it was aware that the date for fuel loading had been delayed until April, 1985 and took that fact into account in adjusting the schedule such that contentions would be submitted on December 15, 1982.<sup>8/</sup> Since that time, the schedule has not changed.

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<sup>6/</sup> Counsel for Applicant was not contacted until December 10, 1982 for its position regarding the extension of time.

<sup>7/</sup> Motion for Extension at 2.

<sup>8/</sup> Order at 1-2. It is common practice when amending a construction permit to request additional time beyond the projected fuel loading date to allow some latitude for contingencies and to minimize the number of extensions needed.

The Applicant's request for amendment of the construction permit was merely intended to conform the existing permit to the present schedule. While this could have been done at any time, the Staff discourages applicants from requesting such changes in the latest completion date to the construction permit until its expiration is approaching in order that all reasons can be considered together and further requests can be eliminated. Thus, the mere fact that the request was filed does not indicate a change in schedule nor constitute good cause for any delay in this proceeding. Thus, the second reason assigned by the State, i.e., that the operating license hearing which is scheduled for October, 1984 "will presumably be rescheduled"<sup>9/</sup> is also incorrect and cannot constitute grounds for granting of the motion.

Next, the State indicates that it has been informed by a member of the NRC Staff that the Staff's technical review of the application has not been completed.<sup>10/</sup> The fact that the Staff is at this time conducting its technical review conforms to standard procedure. The particular scheme whereby intervenors are required to specify contentions at the outset of the operating license proceeding has been a part of the regulations since 1972.<sup>11/</sup> The NRC is

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<sup>9/</sup> Motion for Extension at 2.

<sup>10/</sup> Id.

<sup>11/</sup> Restructuring of Facility License Application Review and Hearing Processes (37 Fed. Reg. 15127 (July 28, 1972)).

constantly reviewing the technical information which an applicant has submitted and continues to do so almost until the day that the operating license is issued. It is continuously issuing questions and other requests for information in order to complete its review. This ongoing review does not affect the requirement that an intervenor develop and file contentions prior to completion of Staff action. It is an intervenor's obligation to scrutinize the application and other publicly available information and to advance contentions which it believes should be considered at an operating license proceeding for the particular plant. In Duke Power Company (Catawba Nuclear Station, Units 1 and 2), ALAB-687, 17 NRC \_\_\_\_ (August 19, 1982) (slip op. at 13), the Appeal Board held that:

. . . an intervention petitioner has an ironclad obligation to examine the publicly available documentary material pertaining to the facility in question with sufficient care to enable it to uncover any information that could serve as the foundation for a specific contention. Stated otherwise, neither Section 189a. of the [Atomic Energy Act of 1954] nor Section 2.714 of the Rules of Practice permits the filing of a vague, unparticularized contention, followed by an endeavor to flesh it out through discovery against the applicant or staff.

A related reason given by the State is that the SER has not been issued by the Staff.<sup>12/</sup> Again, the Staff's

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<sup>12/</sup> Motion for Extension at 2.

issuance of the SER in the midst of the proceeding is fully contemplated by existing hearing procedures. This fact is therefore not sufficient to delay the submission of contentions. Likewise, it is routine that supplements to the application and responses to NRC Staff questions will be filed inasmuch as there is a continuing technical dialogue between the Staff and applicants. To the extent that any new information is submitted at a later time which was not available to the State, the Commission's case law provides adequate relief by way of late filed contentions.<sup>13/</sup>

For these reasons, the deadline for the submission of contentions set by the Licensing Board was reasonable and provided sufficient time for their preparation. The State's motion should be denied.

Respectfully submitted,

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December 17, 1982

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<sup>13/</sup> In Ohio Edison Company (Erie Nuclear Plant, Units 1 and 2) "Order Subsequent to the First Prehearing Conference" (August 18, 1977) (slip op. at 6), the Board pointed out that a "petition can be amended only if new information is available and good cause is established to show that it was not available to petitioner not just new to the petitioner."

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GULF STATES UTILITIES	)	Docket Nos. 50-458 OL
COMPANY, <u>et al.</u>	)	50-459 OL
	)	
(River Bend Station, Unit 1	)	
and 2	)	

SERVICE LIST

I hereby certify that copies of "Applicant's Answer to State of Louisiana's Motion for Extension of Time Within Which to File Contentions" dated December 17, 1982, in the captioned matter, have been served upon the following by deposit in the United States mail this 17th day of December, 1982:

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