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July 23, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

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

Docket Nos. 50-458 OL
 50-459 OL

STAFF'S RESPONSE TO MOTION FOR
WITHDRAWAL OF APPLICATION FOR UNIT 2

I. INTRODUCTION

On July 2, 1984, Gulf States Utilities Company (Applicant) requested that the Licensing Board issue an order authorizing the withdrawal, without prejudice, of the operating license application for River Bend Unit 2 in the above captioned proceeding.^{1/} It included with its motion a report on its plans for site restoration. For the reasons stated herein, Staff does not object to the withdrawal of the application for Unit 2.

^{1/} On March 25, 1977 the NRC had issued a construction permit to Applicant for Unit 2. An application for an operating license for this unit was made on April 22, 1981.

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II. DISCUSSION

Licensing Boards are authorized to permit withdrawal of NRC license applications on such terms as they deem appropriate. As provided by 10 C.F.R. § 2.107(a):

The Commission may permit an applicant to withdraw an application prior to the issuance of a notice of hearing on such terms and conditions as it may prescribe, or may, on receiving a request for withdrawal of an application, deny the application or dismiss it with prejudice. Withdrawal of an application after the issuance of a notice of hearing shall be on such terms as the presiding officer may prescribe.

Although Boards are granted substantial leeway in these matters, ". . . (they) may not abuse this discretion by exercising their power in an arbitrary manner." Philadelphia Electric Co. (Fulton Generating Station, Units 1 & 2), ALAB-657, 14 NRC 967, 974 (1981).

Before granting a withdrawal of a license application for a nuclear unit, Boards will consider the altered state of the site as a result of any construction activities which have been performed. See, for example, Public Service Co. of Oklahoma et al. (Black Fox Station Units 1 & 2), LBP-83-10, 17 NRC 410, 412 (1983); Toledo Edison Co. et al. (Davis-Besse Nuclear Power Station, Units 2 & 3), LBP-81-33, 14 NRC 586 (1981). The proposed restoration of such alterations will be approved and its implementation monitored by the NRC staff. Public Service Co. of Oklahoma et al., 14 NRC at 412. For the instant application, Applicant has committed to repairing the River Bend Unit 2 site. See "Report on Termination of Construction Activities" ("Report") attached to Applicant's Motion. A certain amount of work had been done under Unit 2's Limited Work Authorization (issued September 1975) and Construction Permit

(issued March 25, 1977) which included: (1) the clearing, grading and excavation of the site area; (2) the installation of water wells and fire protection facilities; (3) the diversion of West Creek; and (4) the erection of certain construction support facilities to include warehouses, offices and shops. Construction at Unit 2 was subsequently suspended in the summer of 1977 and has not been resumed. The Applicant has committed to repairing this earlier work by back filling and, where appropriate, providing top soil and vegetative cover during the first year of Unit 1's commercial operation. Report at 3-5. The NRC staff will monitor to assure adequate work has been performed. With these assurances, Staff believes the River Bend Unit 2 site will be adequately restored.

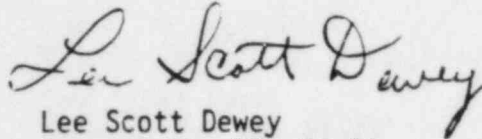
Once it has been decided that a nuclear unit's application can be withdrawn, the usual rule is its dismissal should be without prejudice. Puerto Rico Electric Power Authority (North Coast Nuclear Plant, Unit 1), ALAB-662, 14 NRC 1125, 1135 (1981). A dismissal with prejudice requires some showing of harm to either a party or the public interest in general. Id.; Philadelphia Electric Co. (Fulton Generating Station, Units 1, 2 & 3), LBP-82-81, 14 NRC 967, 978-979 (1982); see also Duke Power Co. (Perkins Nuclear Station, Units 1, 2, and 3), LBP-82-81, 16 NRC 1128, 1133-1139 (1982). There has been no showing of such harm with respect to the River Bend Unit 2 withdrawal.

III. CONCLUSION

Based upon the site restoration which will take place and the fact that there will be no harm by its withdrawal to other parties or the public interest, the Applicant should be permitted to withdraw its

operating license application for River Bend Unit 2 without prejudice.

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 23rd day of July, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)

GULF STATES UTILITIES CO.,)
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(River Bend Station, Units 1 & 2))

Docket Nos. 50-458
50-459

CERTIFICATE OF SERVICE

I hereby certify that copies of "STAFF'S RESPONSE TO MOTION FOR WITHDRAWAL OF APPLICATION FOR UNIT 2" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 23rd day of July, 1984:

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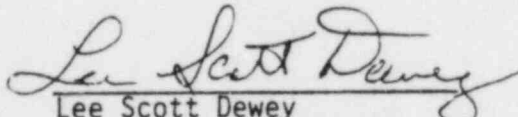
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