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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:
B. Paul Cotter, Jr., Chairman
Dr. Richard F. Cole
Gustave A. Linenberger

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In the Matter of:

GULF STATES UTILITIES COMPANY, et al.

(River Bend Station, Units 1
and 2)

NRC Docket Nos. 50-458-OL
50-459-OL

(ASLBP No. 82-468-01 OL)

November 20, 1984

MEMORANDUM AND ORDER
(Terminating Proceeding)

I. INTRODUCTION

On October 9, 1984, a prehearing conference was convened in Baton Rouge, Louisiana, preparatory to commencing the first phase of hearings on the remaining safety contentions in this operating license proceeding. As a result of motions made at that time, all remaining issues in the proceeding are resolved in this decision, and the proceeding is terminated as to both units.

II. PROCEDURAL HISTORY

The proceeding arises out of petitions to intervene in the application by Gulf States Utilities and Cajun Electric Power

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Cooperative (Applicants) for a license to possess, use, and operate two boiling water reactors known as River Bend Station Units 1 and 2. The reactors are located in West Feliciana Parish three miles southeast of St. Francisville on the Mississippi River and approximately 24 miles north-northwest of Baton Rouge. Each reactor is designed to operate at a power level of 2,894 megawatts thermal with an equivalent electrical output of approximately 936 megawatts. Construction was authorized on March 25, 1977. Approximately 87% of Unit 1 was completed by April 30, 1984 with fuel load now scheduled for April 1985. Report on Termination of Construction Activities, page 1, attached to Motion for Withdrawal of Application for Unit 2. On or about April 15, 1983, Applicants halted construction on Unit 2 which was less than 1% complete. In the Matter of Gulf States Utilities Co., 18 NRC 265, 267 (LBP-83-52A, 1983).

Notice of the Applicants' request for a facility operating license was published on September 4, 1981 in the Federal Register. 46 Fed. Reg. 44,539 (1981). Petitions to intervene were filed by the Louisiana Consumers League, Inc. (LCL), Louisianans for Safe Energy, Inc. (LSE), and Gretchen Reinike Rothschild, individually. The two corporate petitioners and the single individual petitioner were admitted to the proceeding and consolidated as Joint Intervenors. The State of Louisiana also petitioned to participate both as a party to the proceeding, and as an interested state pursuant to 10 C.F.R. § 2.715 (1981). Louisiana was admitted as an interested state, but a ruling on

its status as a party was deferred. In the Matter of Gulf States Utilities, supra at 267.

The parties filed some 33 contentions of which five were rejected at the outset, eight were withdrawn, several were consolidated, and two were admitted for hearing. A ruling on the balance, including 14 contentions concerning emergency planning, was deferred pending negotiations among the parties. Prior to the October 9, 1984 prehearing conference, the parties filed written testimony as well as proposed findings of fact and conclusions of law which they exchanged and commented on pursuant to this Board's direction. All parties were extremely cooperative in following this board's instruction to seek a negotiated,¹ rather than a litigated, resolution of the deficiencies and concerns underlying the contentions filed.

III. RESOLUTION OF CONTENTIONS

A. Old River Control Structure

The Old River Control Structure is a barrier approximately 70 miles north of Baton Rouge, maintained by the U.S. Army Corps of Engineers to

¹Since the Applicants' Final Safety Analysis Report was docketed in 1981, it has been amended, revised or supplemented at least 13 times.

prevent the Mississippi River from diverting some portion of its flow into the Atchafalaya River. All Intervenors contended initially that Applicants had not adequately considered the effect of a failure of the structure on the safe operation of the plant. They contended that the structure's failure would divert the Mississippi River to the present course of the Atchafalaya River and thus: (1) the volume of the Mississippi River would be greatly diminished; and (2) there would be an increase in salt content in the waters due to the intrusion of more saline waters from the Gulf of Mexico. The State raised this matter because it had received virtually no treatment in the FSAR and the State wanted the Board to know of this potentially significant event.

At the prehearing conference, the Joint Intervenors and Louisiana filed a motion to withdraw their contention concerning the possible failure of the Old River Control Structure. The motion states:

After discussions among the parties, review of the proposed testimony of the parties, and in consideration of the agreement of Gulf States Utilities Company to monitor the River Bend Station intake water for conductivity on a monthly basis and to establish procedures to receive information on a quarterly basis from the Corps of Engineers on the location of the salt wedge in the Mississippi River, the concerns raised by this contention have been resolved.

No other party objected to the motion. Tr. 272-275.² We concur that the agreement described in the motion resolves the concerns raised in the motion, and it shall be granted.

B. Asiatic Clams

Intervenors initially contended that:

Applicants have failed to provide adequate assurance that the River Bend Station components and systems relying on Mississippi River water for their operation will be adequately protected against infestation of the Asiatic Clam (*Corbicula leana*). See I & E Bulletin 81-03, "Flow Blockage of Cooling Water to Safety System Components by Corbicula sp. (Asiatic Clam) and Mytilus sp. (Mussel)."

Asiatic clams are small fresh water shellfish that survive in low salinity water and multiply at enormous rates. First identified in the northwest corner of the United States in the late 19th century, the creature now inhabits 35 of the contiguous United States. The Asiatic clam was first noticed in Louisiana in the late 1960s. Applicants' Proposed Findings of Fact 1-4. In 1980, Arkansas Nuclear One was shut down due to extensive plugging of containment cooling units caused by the entry of Asiatic clams through the service water supply. Consequently, IE Bulletin No. 81-03 required utilities to determine

²Transcript references are to the October 9, 1984 prehearing conference.

whether the shellfish are present, identify what components they might threaten, and describe the prophylactic actions that would be taken. Thus, Asiatic clams present a generic safety issue. Staff Proposed Findings 4 and 5.

Following discussion among the parties and review of proposed testimony, Joint Intervenors filed a motion to withdraw their contention related to the Asiatic clam based on an agreement as to certain actions Gulf States Utilities would take. Tr. 288-293. The agreement prescribes a periodic exchange of information and reports satisfactory to the parties. Id. The Board finds that the agreement adequately resolves the concern raised and will grant the motion.

C. Emergency Planning Contentions

On September 28, 1984, Joint Intervenors served a Motion to Withdraw Emergency Planning Contentions. The motion recited, inter alia, that following discussions with Louisiana emergency planning officials, the contentions were resolved by

... the enactment of legislation (State of Louisiana Acts 1984, No. 825), and by revisions which are to be made to the Louisiana Peacetime Radiological Response Plan ("Plan"). Plan revisions, which have been agreed to by the Louisiana Nuclear Energy Division, Louisiana Department of Environmental Quality, which is responsible for fixed nuclear facility emergency planning within the State of Louisiana, will be incorporated into the plan at an appropriate future time.

Motion to Withdraw, page 1-2. Attached to the motion is a statement of the response to seven of the contentions and the action taken. These matters range from updating the response plan in light of the reorganization of state government agencies, to provision for an injunction to enforce an evacuation order, to provision for additional transportation. The motion recites that no other parties object to it. Motion to Withdraw, page 2; Tr. 271-272, 275-287. This motion, too, shall be granted.

IV. WITHDRAWAL OF APPLICATION TO CONSTRUCT UNIT 2

On July 2, 1984 Applicants filed a Motion for Withdrawal of Application for Unit 2. The motion states that Gulf States, for itself and as agent for Cajun Electric, requests the issuance of an order authorizing the withdrawal without prejudice of the application for an operating license. The motion was based on notice to this licensing board on January 6, 1984 that the Board of Directors of Gulf States Utilities had voted not to build Unit 2 and a report submitted with the motion on termination of construction activities for the unit. The report describes Gulf States'

... commitment to return disturbed site areas to an acceptable state under a program to be approved and supervised by the NRC Staff.

Motion at 2. The motion cited Public Service Company of Oklahoma, 17 NRC 410 (LBP-83-10, 1983) as precedent for the relief requested.

The report describes a variety of site restoration activities to be completed in the first year, most having to do with restoration of areas excavated, for example the Unit 2 reactor and related buildings, as well as the disposition of related structures and equipment. Unit 2 was located on the same site as Unit 1.

The only response to Applicants' motion to withdraw came from the Staff who did not object to the motion. After describing the limited amount of work that had been performed at the site pursuant to a September 1975 Limited Work Authorization and the 1977 Construction Permit, Staff asserted that Applicants' commitment to repairs, monitored by the Staff, assured adequate site restoration. Staff's Response to Motion for Withdrawal of Application for Unit 2. We agree. The Board has personally inspected the site and finds that Applicants' commitment to perform restoration work, which will be monitored by the Staff, is adequate. Accordingly, the motion will be granted. Public Service Co. of Oklahoma, 17 NRC 410 (LBP-83-10, 1983).

V. CONCLUSION

For all the foregoing reasons and upon consideration of the entire record in this matter, the foregoing motions are granted and this

proceeding is terminated as to both Unit 1 and Unit 2, subject to NRC Staff monitoring and approving implementation of the site restoration work for Unit 2 described in Applicants' Report on Termination of Construction Activities dated June 1984.

ORDER

Upon consideration of the findings and conclusions in the foregoing Memorandum and the entire record in this matter, and pursuant to the authority contained in 10 C.F.R. Part 2, it is, this 20th day of November 1984

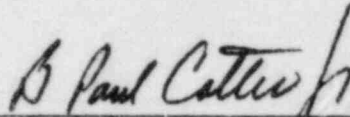
ORDERED

1. That Applicants' request to withdraw without prejudice the application to operate River Bend Station Unit 2 is granted, and the proceeding is terminated as to Unit 2, subject to NRC Staff approval of the implementation of site restoration work described in Applicants' June 1984 Report on Termination of Construction;

2. That the Director of Nuclear Reactor Regulation shall cause to be published in the Federal Register in accordance with 10 C.F.R. 2.107(c) a notice of the withdrawal of the application for a construction permit for River Bend, Unit 2;

3. That Joint Intervenors' motions to withdraw their contentions concerning the Old River Control Structure, infestation by Asiatic clams, and emergency planning are granted, and this proceeding is terminated as to Unit 1.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD



B. Paul Cotter, Jr. Chairman
ADMINISTRATIVE JUDGE

Bethesda, Maryland

November 20, 1984