UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
GULF STATES UTILITIES COMPANY	)	Docket Nos. STN 50-510
	)	50-511
(Blue Hills Station,	)	
Units 1 and 2)	)	

APPLICANT'S REPLY TO "NRC STAFF PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND PROPOSED ORDER IN THE FORM OF A PARTIAL INITIAL DECISION"

On July 5, 1979, the Nuclear Regulatory Commission Staff submitted its proposed findings of fact and conclusions of law in the form of exceptions and modifications to certain of "Applicant's Proposed Findings of Fact and Conclusions of Law in the Form of a Partial Initial Decision," submitted on June 7, 1979. Pursuant to 10 C.F.R. §2.754(a)(3), the Applicant, Gulf States Utilities Company ("GSU"), submits this reply to certain of the matters raised in the NRC Staff's proposed findings.

The Staff has offered a finding in substitution of finding 103 as submitted by the Applicant relating to the site selection process leading to the identification of the Blue Hills site as the optimal location for a nuclear power station. As discussed below, certain aspects of the Staff's proposed finding are not warranted by the record or required

918058

7909060471

by the Commission's regulations and precedents concerning early site review and site selection.

Initially, the underlying premise of the Staff's proposed finding, that the Applicant limited its site selection process to the "East Texas - West Louisiana part of its service territory,"[1/] is erroneous and without foundation in the record. To the contrary, as discussed in Applicant's findings at paragraph 103, the site selection process was thorough and encompassed an areal extent which fulfills all Commission requirements. As pointed out in the Applicant's findings on this matter, specific sites in the Central or Lake Charles region of Applicant's service territory, i.e., outside the Western region, were considered. Moreover, the siting of a plant along the Atchafalya River on the eastern portion of the Applicant's service area region was considered and rejected as a result of safety and environmental considerations (Applicant's Exhibit 3, Environmental Report at R-57 - R-58). Moreover, sites outside the Applicant's service territory were among those examined (Tr. 220). Accordingly, contrary to the unsupported assertion of the Staff, the boundaries of Applicant's service territory did not form an arbitrary barrier for examination of alternate sites. Indeed, the Blue Hills site is not within the retail service territory of the Applicant.

1/ Staff's proposed findings at 3.

918059

That is not to say that anticipated load growth in the Western area was not a consideration in the review of alternate sites. This has been recognized by the Staff throughout this proceeding as a legitimate factor in the site selection process. Indeed, it is a necessary factor. (See, for example, Tr. 172-3). If the Applicant had not taken this factor into account, even the most detailed review of alternate sites would lead to a meaningless outcome.

There is no doubt that the question of the overall need for power, i.e., the need for additional generation in the Applicant's service territory, is a matter which is to be considered at the construction permit stage.[2/] The need for power is the fundamental requirement for further consideration of an application. If there is no demonstrated need for new generation, no further consideration of the application need be given.[3/] However, once the need for nuclear-generated power has been established, there is no need or requirement to begin a de novo review of the early site review Partial Initial Decision in order to make a determination as to "whether the circumstances at that time (particularly in terms of costs, environmental impact and system reliability) associated with the then existing

---

2/ See NUREG-180 (May 1977), Early Site Reviews for Nuclear Power Facilities - Procedures and Possible Technical Review Options, at A-VIII-1.

3/ See Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-422, 6 NRC 33, 90 (1977) and cases cited therein.

918060

transmission lines weigh against consideration of distant sites."[4/] Such requirement advocated by the Staff will undoubtedly require repetitive consideration and evaluation of matters already examined and decided at the early site review stage, a result which is clearly contrary to the Commission's intent in promulgating the early site review regulations.[5/] The record here is uncontradicted that all factors, including the rationale for excluding sites based on distance, have been adequately considered; no reason to restart the process from the very beginning at the construction permit stage has been shown by the Staff.

There are built in checks in the licensing process established by the Commission which permit a review of the continuing validity of findings made at the early site review stage. Pursuant to 10 C.F.R. §2.606(b)(2), any issue may be reopened if the Commission, Atomic Safety and Licensing Appeal Board or Atomic Safety and Licensing Board decides, sua sponte, or upon motion of any party to the proceeding, finds that there exists significant new information that substantially affects the earlier conclusions made at the early site review stage. The courts have recognized the

---

4/ The Staff has testified in this proceeding that transmission lines on the order of 200 miles could cause economic and reliability problems (Tr. 173).

5/ The Commission has stated that the purpose of the early site review regulations is to "obtain resolution of important site-related issues which may prove dispositive of an application to construct a facility at a particular site well in advance of any substantial commitment of resources." 42 Fed. Reg. 22832 (May 5, 1977).

necessary imprecision of the cost-benefit analyses involved in the site selection process and the fact that the proposed site (in this case, Site G) will inevitably have been subjected to far closer scrutiny than any other alternative site. Specifically, with regard to alternative site analysis in the context of NRC decisionmaking, the Court of Appeals for the First Circuit has stated that:

> NEPA does not require that a plant be built on the single best site for environmental purposes. All that NEPA requires is that alternative sites be considered and that the effects on the environment of building the plant at the alternative sites be carefully studied and factored into the ultimate decision. 6/

The Staff implies that the record is devoid of information regarding "[t]he need for additional power in the East Texas area" 7/ of the Applicant's service territory and that "this assertion remains to be determined." 8/ This thesis is unsupportable in the record.

The Staff's Final Environmental Statement, Exhibit 7, notes at 9-8 that during the course of its review, the Staff demanded clarification of the Applicant's arguments for selecting the East Texas region for the site of the station. The Staff concluded that the Applicant's site selection

---

6/ New England Coalition on Nuclear Pollution v. NRC, 582 F.2d 87, 95 (1st Cir. 1978).

7/ Staff's proposed findings at 4.

8/ Id. at 5.

methodology, reconnaissance level information, selection criteria and selection process were adequate to identify candidate sites that were among the best that could have been found for the proposed nuclear plant and to determine whether there are alternative sites that were obviously superior to the proposed site.[9/]

The only reservation in the Staff's conclusions regarding site selection was regarding alternative energy sources. There is no contest that such comparison between alternative methods for satisfying a need for power, e.g., coal, oil, and gas, will have to be made at the construction permit stage. Aside from this single reservation, the Staff conclusion is unequivocable that "there is no site obviously superior to site G, the Applicant's proposed site."[10/]

In its findings, the Staff states that "[n]o major flaw was found in the site and the site appears [to be] a good site for a nuclear facility if appropriate action, particularly in regard to socioeconomic impacts, is taken before a construction permit is issued." (Staff findings at 4). It should be noted that the Staff is presuming that mitigating action with regard to socioeconomic effects will have to be taken. It is far too early to make such a statement. In such regard, Applicant's finding 84 is more appropriate, and it fully complies with the Staff's recommendations as set

---

9/ Exhibit 7 at 9-8.

10/ Id.; Tr. 175.

forth in Paragraph 4 of Section 4.5.2 of the FES (Staff Exhibit 7). For such reasons, if any part of Staff proposed finding 103 is accepted by the Board, the clause in the Staff's proposed version which states ". . . if appropriate mitigation action, particularly in regard to socioeconomic impacts, is taken before a construction permit is issued" should be omitted.

Further insight into the Staff's methodology regarding its independent review of alternate sites is found in the transcript where the Staff's witness reviewed the site selection criteria and specifically stated that the Staff "examined his [the Applicant's] selecting East Texas as his candidate area that he would select for sites."[11/] The Staff specifically notes that additional information was requested by the Staff; the Staff witness then discussed in some detail the manner in which its review was conducted which led to its unequivocal conclusion.

In summary, the Commission's mandate that a "rule of reason" be applied to consideration of alternative sites has been met and the factors that went into the selection of the Blue Hills site have been adequately set forth.[12/] As heretofore discussed, the only remaining factor that need be reviewed at the construction permit stage is whether there exists significant new information that substantially affects the earlier conclusions regarding the predicted load

---

918064

11/ Tr. 172.

12/ Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), CLI-77-8, 5 NRC 503, 540 (1977).

growth and general area of need made at the early site review stage. It appears to be clear from the Commission's early site review regulations that, considering the facts of this case, no further review of alternate sites is required unless the trigger finding of "significant new information that substantially affects the earlier conclusions" is made.

In a footnote at the end of the Staff's proposed finding regarding the site selection process,[13/] it is suggested that there are a number of existing nuclear plant sites outside of the Applicant's service area in varying proximity to the East Texas - West Louisiana area which were not considered. As is obvious from the record of the proceeding, at no time did the Staff consider it necessary during the entire course of its independent review of the site selection process to consider these sites. It is not clear to what end that these findings submitted by the Staff recite these sites as possibilities for review. While the Staff in its findings points to the Commission's decision which requires that a rule of reason be applied to the site selection process,[14/] the Staff has seemingly not consistently applied this concept with regard to their proposed finding 103. Consideration of any of these sites is clearly unreasonable. For example, it is appropriate for this Board to take official

---

13/ Staff's proposed findings at 7, n.2.

14/ Id.

notice of the fact that the Waterford Station is located far beyond the eastern end of the Applicant's service territory; the Comanche Peak Station is 256 miles from the Applicant's nearest 500 kv transmission line; the Allens Creek Station is over 147 miles from the Applicant's nearest 500 kv line; and the South Texas Station is 171 miles from Applicant's nearest 500 kv line. Considering the 400 mile service area of this Applicant and the manner in which alternate sites were examined, it should be evident that the site selection process has been adequate, and the Staff has not applied the rule of reason in suggested finding 103.

Thus, to the extent that the Staff's conclusions regarding the site selection process differ from the Applicant's, they have no foundation in fact or law and should be disregarded in the Board's formulation of its partial initial decision. The Board should adopt the Applicant's finding 103.

It follows from the above discussion that the third subparagraph of the Staff's proposed finding 108 should be clarified. Such subparagraph states:

> (3) Sufficient information to permit a re-evaluation of the need-for-station and consideration of alternatives, including alternative energy sources and alternate site locations 15/ based on a specific

---

15/ It must be noted that this reference to "alternate site locations" is not contained in the corresponding condition in the FES. See Paragraph (3) of FES §10.5 at 10-6.

> date for commencement of commercial operation and revised time sensitive information (e.g., load forecasts, cost estimates, etc.). Unless significant new information is obtained that substantially affects the conclusion reached on alternate sites, no new evaluation of this subject will be required.

Initially, the first sentence would require a re-evaluation of the need for the station. As is conceded by all, no overall need for power evaluation has been conducted. Similarly, alternate energy sources would be considered for the first time at the construction permit stage. The remainder of the condition essentially repeats the early site review regulations regarding significant new information; inasmuch as this rule applies to all findings made at the early site review stage, there is no need to single out this aspect of the evaluation. This subparagraph should be stricken or limited to the review of the need for the station and consideration of generation alternatives and all references to "alternate site locations" and to "alternate sites" should be deleted. Similarly, in Paragraph 112C of the Staff's proposed findings at line 9, delete "with respect to the factors reviewed" as having no basis in law or fact.

At page 2 of the Staff's proposed findings, Paragraph 6, the Staff would add a sentence to Finding 84 to the effect that the Applicant's report regarding socioeconomic effects will be submitted for NRC approval prior to issuance of a L.W.A. or C.P. Applicant's Finding 84 already states

that the report will be submitted at the construction permit stage. It would be premature for this Board to decide at this time whether the NRC could impose additional conditions in this area absent the consent of the Applicant. This matter should be left for negotiation among the parties and questions of jurisdiction should be decided only at the construction permit stage if specific issues are presented at that time. Also with regard to this issue, the wording of item (14) on page 9 of the Staff's proposed findings should be changed to:

> (14) Results of planning negotiations among the applicant, local officials, and regional planners (Sect. 4.4).

to conform with the FES, §10.5 at 10-6. In addition, the last sentence of Item (29) on page 13 of the Staff's proposed findings should be changed to reflect the Applicant's commitment contained in Paragraph 84 of its proposed findings to the effect that the report on socioeconomic effects will be submitted at least six months prior to the time that application for construction permits is made.

As a final matter, Staff proposed finding 109(5) (Paragraph 10 at 9) appears to have been garbled. In accordance with FES §4.5.1 at 4-20 (Staff Exhibit 7), this paragraph should read as follows:

> (5) To minimize disturbance to the reservoir, excavation and construction of the makeup intake

structure will take place behind a sheet piling wall. Excavated and dredged material from construction of the makeup intake and makeup channel will be removed to a spoil area on the peninsula; material dredged for the discharge pipe will be deposited adjacent to the discharge pipe.

Respectfully submitted,

CONNER, MOORE & CORBER

Mark J. Wetterhahn
Counsel for the Applicant

July 20, 1979

918069

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
GULF STATES UTILITIES COMPANY	)	Docket Nos. STN 50-510
	)	50-511
(Blue Hills Station,	)	
Units 1 and 2)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicant's Reply to 'NRC Staff Proposed Findings of Fact, Conclusions of Law and Proposed Order in the Form of a Partial Initial Decision," dated July 20, 1979, in the captioned proceeding, were served upon the following by deposit in the United States mail this 20th day of July, 1979:

Marshall E. Miller, Esq.
Chairman, Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Mr. Lester Kornblith, Jr.
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. Linda W. Little
Member, Atomic Safety and Licensing Board Panel
5000 Hermitage Drive
Raleigh, North Carolina 27612

John L. Hill, Esq.
Attorney General of Texas
Post Office Box 12548
Capitol Station
Austin, Texas 78711

Richard Lowerre, Esq.
Assistant Attorney General
Environmental Protection Division
Post Office Box 12548
Capitol Station
Austin, Texas 78711

Stanley Plettman, Esq.
Orgain, Bell and Tucker
Beaumont Savings Building
Beaumont, Texas 77701

Colleen P. Woodhead, Esq.
Office of the Executive Legal Director
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

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

918070

Mark J. Wetterhahn