



GULF STATES UTILITIES COMPANY

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March 22, 1993
RBG- 38, 261
File Nos. G9.5, G9.42

U. S. Nuclear Regulatory Commission
Document Control Desk
Washington, D. C. 20555

Gentlemen:

River Bend Station - Unit 1
Docket No. 50-458

In a conversation with Mr. L. A. England of Gulf States Utilities (GSU) on February 26, 1993, you requested that we provide the basis for GSU's authority to file, on behalf of Cajun Electric Power Cooperative (Cajun) as well as itself, a request for an amendment to the River Bend license to permit Entergy Operations, Inc. (EOI) to assume operating authority for the unit (RBG-37,989)¹. At a meeting with representatives of the Nuclear Regulatory Commission (NRC) held on February 4, 1993 and in a letter dated February 19, 1993, Cajun, the minority owner (30%) of the facility, questioned GSU's filing of this amendment request on its behalf.

Cajun's motive apparently is not to prevent EOI from becoming the operator of River Bend but instead appears to be to apply leverage to obtain additional concessions from GSU. This motive is indicated in the wording of Cajun's February 19, 1993 letter. In its letter, Cajun states that it is not opposed to the proposed license amendment (emphasis added), provided that such amendment is made under terms and conditions which are just and reasonable to Cajun and which protect the public interest.

It is the position of GSU that there is no real issue as to its authority to file the application for amendment. Certainly, there is no issue raised which relates to the fundamental jurisdiction of the NRC, i.e., the protection of the public health and safety. For well over a decade, GSU has been filing documents with this Commission as agent for and on behalf of Cajun without any objection. GSU therefore respectfully requests that the NRC continue its prompt processing of this application.

¹GSU's filing relating to its proposed merger with Entergy Corporation (RBG-37,988) was made on behalf of Cajun and therefore, is not addressed in this response.

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The Joint Ownership Participation and Operating Agreement (JOPOA), which governs the relationship of GSU and Cajun regarding River Bend, clearly grants GSU extremely broad authority and latitude regarding the operation of the unit, including the discretion to file the subject amendment. A copy of the JOPOA is enclosed for your information.² For instance, Section 4.1B of the JOPOA expressly permits the execution and filing with the NRC of applications, amendments, reports and filings required in connection with the licensing and other regulatory matters "which GSU in its absolute judgment deems necessary or appropriate" (emphasis supplied).

Section 4.1 of the JOPOA authorizes GSU to act in the name and on behalf of Cajun to take all actions, in the absolute discretion and judgment of GSU, which shall not be exercised unreasonably, which are deemed necessary or advisable to effect the licensing, maintenance, operation, security, surveillance, and decommissioning of the unit. Section 8.2 of the JOPOA further provides that GSU shall have plenary authority to manage, control, maintain and operate the unit and shall take all steps which GSU deems necessary or appropriate for that purpose. The Section goes even further to provide that GSU will manage, control, maintain and operate the facilities in all respects as if GSU were the sole owner of the facilities. Certainly a sole owner could enter into the proposed arrangements. Also, Section 4.4 of the JOPOA expressly authorizes GSU to contract for the performance of services with any of its affiliates (which upon consummation of the merger will include EOI) in connection with River Bend. The proposed action of contracting with EOI for operating services clearly falls within this authority. The NRC has approved EOI as an operator of four other licensed nuclear units. By any standard, EOI has successfully operated these units. Cajun's position that it is not a reasonable exercise of GSU's judgment and discretion to permit EOI to fulfill such operating responsibilities for River Bend is totally arbitrary, contrary to all common sense, and unreasonable. The standard to which GSU is held as agent is one of good faith and good utility practice (JOPOA, Section 4.2). Certainly that standard would be met by the proposed action. The significant prospective benefits from operation of the plant by EOI have been fully described in filings with this and other agencies having jurisdiction over elements of this transaction (see, for example, GSU's January 13, 1993 filing (RBG-37,989) at 11-12 of 20) and will be reviewed by each. Cajun has intervened in such other proceedings and will have adequate opportunity to raise any questions it may have regarding such arrangements.

In its submittal to the NRC, Cajun seems to suggest that it can terminate GSU's agency authority under the JOPOA. The specific issue raised by Cajun is whether or not, under Louisiana law, the agency authority of GSU is an irrevocable "power coupled with an interest." If it is not, Cajun argues that the agency authority of GSU may be revoked at will. The JOPOA contemplates the construction and operation of River Bend for the mutual benefit of both Cajun and GSU and constitutes a bilateral contract pursuant to which both parties have reciprocal rights and obligations. (See La. C. C. Arts. 1908 and 1911.) Under Louisiana law, a party to a bilateral contract may not unilaterally revoke that contract. Further, GSU owns an undivided seventy percent (70%) interest in River Bend and, therefore, GSU's authority to act as Cajun's agent pursuant to the term of the JOPOA is a "power coupled with an interest" in the property that is subject to the mandate, to wit: River Bend. As such, GSU's authority to act is irrevocable. [See *Montgomery v. Foreman*, 410 So. 2d 1160 (La. App. 3d Cir., 1982).] Despite Cajun's statements to the contrary, this irrevocable right of GSU is established pursuant to Louisiana law existing now and at the time the JOPOA was executed, and such right of GSU is fundamental to the purpose and intent of the JOPOA.

²A copy of the JOPOA had previously been filed with the NRC as Exhibit A to GSU's October 26, 1979 letter to the NRC (RBG-6838) relating to its application to amend the River Bend construction permit to include Cajun as a co-owner.

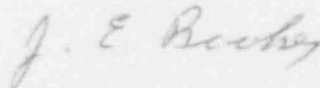
Any purported termination by Cajun of GSU's agency authority would clearly be a breach of the JOPOA. Section 4.1 expressly provides that the "appointment of GSU as agent shall be irrevocable" unless GSU's ownership interest falls below 50% or GSU becomes a defaulting Co-owner. Neither of such circumstances exist. To reiterate, there is simply no basis under Louisiana law or the JOPOA for the assertion that the agency authority of GSU may be revoked at will by Cajun.

With GSU remaining as the party contractually responsible as operator to Cajun, there is no barrier between Cajun and the operator as asserted. Cajun remains in the same contractual position as now provided by the JOPOA with respect to liabilities, responsibilities, budgeting, planning, costs, and in all other respects. Cajun's rights relating to River Bend are specifically recognized in the proposed Operating Agreement for River Bend between GSU and EOI.


In summary, under the terms of the JOPOA, applicable law, and as evidenced by the past conduct of the parties, GSU has clear authority to file, on behalf of Cajun, the application to have EOI operate the River Bend Station. Further, Cajun has not shown any valid reason why such amendment request is adverse to the public health and safety, and its arguments are not germane to the issues the NRC needs to consider to approve this application. Cajun has adequate avenues to address any financial harm it perceives in the underlying transaction and is aggressively pursuing them before the agencies having the appropriate jurisdiction.

If you have any additional questions, please contact Mr. L. A. England of my staff at (504) 381-4145.

Sincerely,



J. E. Booker
Manager-Safety Assessment and
Quality Verification


LAE/ch

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