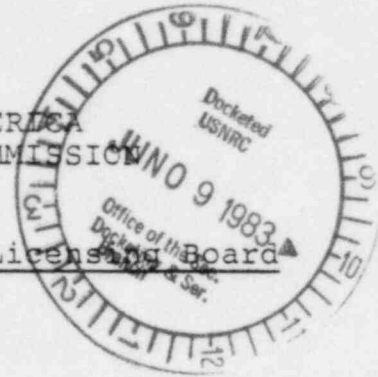


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board



In the Matter of)
)
Gulf States Utilities Company,) Docket Nos. 50-458
 et al.) 50-459
)
(River Bend Station, Units 1)
 and 2))

APPLICANTS' ANSWER TO FIRST AMENDED AND
SUPPLEMENTED CONTENTIONS BY JOINT INTERVENORS

Preliminary Statement

On May 31, 1983, joint intervenors Louisiana Consumer's Leak, Inc., Louisianans For Safe Energy, Inc. and Gretchen Reineke Rothchild ("joint intervenors") filed in this proceeding what purports to be an amended and supplemented list of contentions in addition to those previously filed on December 13, 1982. No basis or good cause for filing this new pleading was asserted. Applicants, Gulf States Utilities, et al., oppose this unauthorized filing, which seeks to add new contentions and amend earlier contentions beyond the time prescribed by the Atomic Safety and Licensing Board ("Licensing Board" or "Board") in its Order dated December 1, 1982. In any event, the new proposed contentions are without merit and should be denied.

Argument

I. The New And Amended Contentions Proposed
By Joint Intervenor's Are Untimely And No
Good Cause Has Been Shown For Lateness.

In response to a motion filed by then newly appointed counsel for the State of Louisiana, the Licensing Board found good cause for an extension of time within which intervenors would be permitted to file contentions in this proceeding. The Licensing Board therefore ordered that its earlier schedule be amended such that "[c]ontentions shall be filed on or before March 15, 1983. The Board further ordered "[t]hat absent extraordinary circumstances, no further extensions of time shall be granted for initial filing of contentions" ^{1/}

The Applicants vigorously opposed the further extension of time given petitioners to file proposed contentions. ^{2/} Moreover, the further extension granted by the Licensing Board was occasioned by the recent appointment of counsel for the State of Louisiana to the proceeding, not at the request of joint petitioners for any particular problem they faced. Although the Board's newly designated schedule in its Order of December 21, 1982 superseded the provisions of

^{1/} Order at 2 (December 21, 1982).

^{2/} See Applicant's Answer to State of Louisiana's Motion for Extension of Time Within Which to File Contentions (December 17, 1982).

10 C.F.R. §2.714(b) for the filing of contentions,^{3/} joint petitioners' submission would have been late even under those provisions.^{4/}

Accordingly, admission of the new contentions and amended portions of earlier contentions proffered by joint petitioners^{5/} would be contrary to the scheduling Order of the Licensing Board. It would also be contrary to the specific guidance from the Commission that Licensing Boards should "set and adhere to reasonable schedules for proceedings," and satisfy themselves that "good cause" exist for adjusting times fixed by the Board or otherwise prescribed

^{3/} It is clearly within the authority of the Licensing Board to shorten or otherwise alter the prescribed time limits under Section 2.714(b) for filing of proposed contentions. See Houston Lighting & Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-565, 10 NRC 521, 523 (1979).

^{4/} See Houston Lighting & Power Company (South Texas Project, Units 1 and 2), LBP-82-91, 16 NRC ____ (October 15, 1982). In that decision, the Licensing Board ruled that contentions filed later than 15 days prior to the special prehearing conference are deemed late even if previously proffered by another intervenor who withdrew from the proceeding.

^{5/} Applicants' review of joint petitioners' pleading indicates that proposed Contentions 12, 13 and 14 are new, while Contentions 3, 6 and 7, as previously proposed, have been substantially amended. It also appears that prior Contentions 3, relating to induced seismic activity, and 10, relating to the state of construction (as originally numbered), have been dropped. Portions of proposed Contention 9, relating to the use of potassium iodide tablets, have been deleted. Applicants have no objection to the withdrawal of proposed contentions or portions thereof by joint petitioners.

by the Rules of Practice before granting an extension of time.^{6/}

In this regard, joint petitioners have wholly failed to show, and have not even attempted to demonstrate, satisfaction of the requirements for submission of late contentions under 10 C.F.R. § 2.714 (a) (1) (i) - (v). The failure to address these criteria is therefore fatal to the proffer. See Duke Power Company (Perkins Nuclear Station, Units 1, 2 & 3), ALAB-615, 12 NRC 350, 352-53 (1980); Houston Lighting & Power Company (Allens Creek Nuclear Generating Station, Unit 1), Docket No. 50-446CP "Order" (September 24, 1979).^{7/}

II. The New Proposed Contentions and
Amendments of Earlier Proposed
Contentions are Invalid.

Addressing first previously filed contentions, nothing which joint petitioners have sought to add renders any of those contentions acceptable under the NRC's rules. With regard to joint petitioners' Contention 3,^{8/} the new material does not change the fact that the acceptability of

^{6/} Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 454 (1981).

^{7/} In Maine Yankee Atomic Power Company (Maine Yankee Atomic Power Station), Docket No. 50-309-OLA, "Memorandum and Order" (December 30, 1981), the Licensing Board rejected an intervenor's submission of amendments to existing contentions as an improper circumvention of the rules governing late contentions.

^{8/} Applicants will follow the numbering sequence used by joint petitioners in their recent filing, which dropped two contentions.

an application for docketing under 10 C.F.R. §2.101(a)(2) is a matter for the NRC Staff, not this Licensing Board, to determine. In this respect, the Staff determines the propriety of expending "tax dollars" for review of the application.

The fact that joint petitioners must expend their personal resources if they choose to oppose the application is to be anticipated and presents no litigable issue. As the Commission itself stated, "the fact that a party may have personal or other obligations or possess fewer resources than others to devote to the proceeding does not relieve that party of its hearing obligations."^{9/}

In proposed Contention 6, relating to cracking of materials, joint petitioners have added an allegation relating to piping connected to the reactor pressure vessel, citing certain Inspection & Enforcement Bulletins relating to the detection of cracking in the heat-affected zone of welds in certain safe-ends of an operating reactor's coolant pressure boundary. The mere recitation of this problem at another plant is not a basis for speculating that the same problem may exist for River Bend.^{10/} To raise a litigable issue, a petitioner must do more than simply cite an

^{9/} Statement of Policy on Conduct of Licensing Proceedings, supra, at 454.

^{10/} See Applicants' Answer to the Contentions at 22-24 (filed April 15, 1983).

existing requirement and speculate that the applicant may be unable to comply. See Gulf States Utilities Company (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760, 773-74 (1977); Commonwealth Edison Company (Dresden Nuclear Power Station, Unit No. 1), Docket No. 50-10-OLA, "Memorandum and Order" (July 12, 1982) (slip op. at 9-10); Public Service Company of Oklahoma (Black Fox Station, Units 1 and 2), Docket Nos. STN 50-556CP, 50-557CP, "Memorandum and Order" (January 11, 1982).

In proposed Contention 7, relating to the postulated failure of the Old River Control Structure, joint petitioners have added an allegation premised on the "[c]ontinued operation" of the facility after the hypothetical dam failure. There is no regulatory requirement that an applicant speculate upon the quality of makeup water which might change following a hypothetical accident such as that asserted by joint petitioners. Obviously, if such a problem arose the continued operation of the facility would be a matter for consideration by the NRC and other cognizable agencies at the time. Whether increased salinity from the postulated accident would have any effect upon safety-related equipment, structures or components of the facility would be determined at that time.^{11/}

^{11/} The amended portion of the contention does not address or in any way refute Applicants' position that the safe
(Footnote Continued)

Applicants will now address the three new contentions proposed by the Joint Petitioners.

Contention 12

Asiatic Clams

Joint petitioners assert that Applicants have failed to provide adequate assurance that River Bend will be protected against infestation of the Asiatic Clam (Corbicula leana). Applicants have responded to the State of Louisiana's Contention 6 on this matter. This particular contention should be denied as similarly lacking in specificity and bases. Like the State of Louisiana, joint petitioners have failed to demonstrate, or even allege, how Applicants' response to the NRC is inadequate for dealing with this potential problem.

Contention 13

Fossil Plant Thermal Discharges

In this proposed contention, it is asserted that the intake for River Bend in the Mississippi River might be in close proximity to discharges from the Cajun Electric Cooperative's fossil fuel plants, which would render it "likely" that the temperature of the emergency service water for River Bend will be "excessive," thereby lessening the "effectiveness" of the residual heat removal system.

(Footnote Continued)

shutdown of the plant would not possibly be affected by any such accident since River Bend does not rely upon Mississippi River water as the ultimate heat sink.

Although speculative in the extreme,^{12/} the simple fact is that the contention on its face fails to raise any litigable safety issue. There is no assertion of a failure to comply with any NRC regulatory requirement, nor any allegation of a threat to the public health and safety. Moreover, there is no allegation that any applicable discharge standards for the Cajun plants have not been met.

As noted above and in Applicants' initial response,^{13/} the emergency service water system for River Bend utilizes deep wells rather than the Mississippi River as a source for makeup water. This proposed contention is therefore entirely without basis.

Proposed Contention 14

Synergistic Effects

In this contention, joint petitioners assert that there has been an inadequate assessment of synergistic and/or cumulative effects of radioactive releases from River Bend into the Mississippi River and the atmosphere in combination with existing chemical effluents. Here again, no basis for the contention is provided. Joint petitioners do not allege

^{12/} There is no specificity as to the proximity of the water resources involved, no quantification of the heat transfer between the Cajun plants' discharges and River Bend intake water which allegedly will occur, nor any specification as to what joint petitioners deem an "excessive" temperature for emergency service water.

^{13/} Applicants' Answer to the Contentions at 25 (filed April 15, 1983).

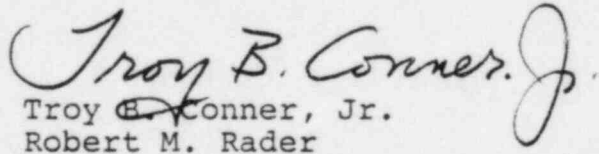
with any specificity which radioactive releases they contend will achieve some synergistic or cumulative effect with ambient effluents or what such effects, if any, might be. The admission of such a vague contention is simply improper under the Commission's rules. A petitioner does not have a right to proceed with such a contention in the hope of finding some support for it later. Duke Power Company (Catawba Nuclear Station, Units 1 and 2), ALAB-687, 16 NRC ____ (August 19, 1982) (slip op. at 9).

Conclusion

For the reasons discussed above, the Board should deny joint petitioners' request to admit new and amended contentions.

Respectfully submitted,

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June 7, 1983

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SERVICE LIST

I hereby certify that copies of "Applicant's Answer to First Amended and Supplemented Contentions by Joint Intervenor" dated June 7, 1983, in the captioned matter, have been served upon the following by deposit in the United States mail this 7th day of June, 1983:

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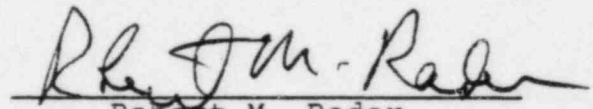
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