

15679

RELATED CORRESPONDENCE

DOCKETED
USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'94 SEP -7 P3:36

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)
)
GULF STATES UTILITIES COMPANY) Docket No. 50-458-OLA
)
(River Bend Station, Unit 1))

GULF STATES UTILITIES COMPANY'S OBJECTIONS
TO CAJUN ELECTRIC COOPERATIVE, INC.'s
INTERROGATORIES DATED AUGUST 22, 1994

I. INTRODUCTION

Gulf States Utilities Company ("GSU") hereby objects to Cajun Electric Cooperative, Inc. ("Cajun") Interrogatories 1 through 7 of Cajun's "Requests For Production Of Documents And Interrogatories Of Cajun Electric Power Cooperative, Inc., To Gulf States Utilities Company, Entergy Operations, Inc., And All Affiliated Companies," dated August 22, 1994. These Interrogatories relate to a Contention dismissed by the Board (Contention 5), and are therefore outside the scope of discovery. In addition, GSU objects to General Instruction B of Cajun's Requests for Production of Documents and Interrogatories because the instruction is inconsistent with the NRC provisions governing supplementation of responses contained in 10 C.F.R. § 2.740(e).

II. ARGUMENT

A. Cajun's Interrogatories 1-7 Relate To A Contention Dismissed By The Board And Are Therefore Outside The Scope Of Discovery For This Proceeding

Under the provisions of 10 C.F.R. § 2.740(b)(1), discovery "shall relate only to those matters in controversy which

DS03

have been identified by the Commission or the presiding officer in the prehearing order entered at the conclusion of th[e] prehearing conference." NRC precedent reinforces this rule, holding that "discovery on the subject matter of a contention [can] be obtained only after the contention [has] been admitted to the proceeding." Wisconsin Electric Power Company (Point Beach Nuclear Power Plant, Unit 1), ALAB-696, 16 NRC 1245, 1263 (1982) (brackets in original), citing Duke Power Company, (Catawba Nuclear Station, Units 1 and 2), ALAB-687, 16 NRC 460, 467 (1982). Pursuant to these principles, Cajun may obtain discovery only on the subject matter of its one admitted contention (Contention 2): that there is a potential safety risk caused by the alleged underfunding of River Bend's operator.

Cajun Interrogatories 1 through 7, however, request GSU to state its position on the seven license conditions requested by Cajun in Contention 5. The Board dismissed Contention 5 because that contention concerned non-safety related contractual matters between co-owners of a nuclear facility and the Board did not have jurisdiction over such matters. Gulf States Utilities (River Bend Station, Unit 1), LBP-94-3, 39 NRC 31, 43 (1994). Thus, Interrogatories 1-7 seek discovery on the subject matter of a contention not admitted to the proceeding. These interrogatories are therefore irrelevant and outside the proper scope of discovery.

Moreover, Interrogatories 1-7 are not "reasonably calculated to lead to the discovery of admissible evidence" as

required by 10 C.F.R. § 2.740(b)(1). For guidance in interpreting NRC discovery regulations such as 10 C.F.R. § 2.740(b)(1), the NRC Atomic Safety and Licensing Board ("ASLB") looks to Federal Court constructions of Rule 26 of the Federal Rules of Civil Procedure. See Boston Edison Company (Pilgrim Nuclear Generating Station, Unit 2), LBP-75-30, 1 NRC 579, 581 (1975). In particular, licensing boards have upheld objections to interrogatories based upon Federal Court precedent holding that

. . . parties should not be permitted to roam in shadow zones of relevancy and to explore matter which does not presently appear germane on the theory that it might conceivably become so.

Allied General Nuclear Services (Barnwell Fuel Receiving and Storage Station), LBP-77-13, 5 NRC 489, 492 (1977), quoting Broadway & Ninety-Sixth St. Realty Co. v. Loew's Inc., 21 F.R.D. 347, 352 (S.D.N.Y. 1958).

The information sought by Cajun in Interrogatories 1-7 relates solely to contractual disputes between the co-owners and therefore would not lead to discovery of any admissible evidence concerning the safety of the River Bend facility. The Board should not permit Cajun to "roam in the shadow zones" of these contractual disputes when the Board has already found that the license conditions which are the subject of Interrogatories 1-7 do not appear necessary for the plant's safe operation. Gulf States Utilities, 39 NRC at 43. GSU's "position" on these license conditions -- the information requested by Cajun -- is irrelevant to a determination of whether River Bend may be safely operated.

Thus, a statement of GSU's position concerning the license conditions would not lead to the discovery of admissible evidence relevant to Cajun's one admitted contention.

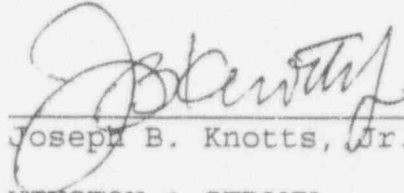
Nonetheless, in order to attempt to be cooperative, GSU will answer Cajun's Interrogatories 1-7. GSU is not thereby waiving its rights to object. GSU specifically reserves the right to object to any followup discovery based upon the information provided in such answers and to the admissibility of that information.

B. Cajun General Instruction B Is Inconsistent With NRC Regulations Governing Supplementation Of Responses

GSU also objects to General Instruction B of Cajun's Requests For Production Of Documents And Interrogatories. This provision informs GSU that the requests for documents and responses are continuing in character and instructs GSU to file supplemental answers if it obtains further or different information before or after the hearing. NRC regulations at 10 C.F.R. § 2.740(e), however, contain precise instructions regarding supplementation of responses, which impose a duty upon a party to amend its response only under certain specific circumstances. Cajun's Instruction B is inconsistent with these regulations and is therefore objectionable because the instruction would impose a continuing duty to supplement beyond that contained in the NRC regulations

governing this proceeding. GSU will abide by the procedures of 10
C.F.R. § 2.740(e).

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "J. B. Knotts, Jr.", is written over a horizontal line.

Joseph B. Knotts, Jr.

WINSTON & STRAWN
1400 L Street, N.W.
Washington, D.C. 20005
(202) 371-5700

Attorneys for Gulf States
Utilities Company

Dated at Washington, D.C.
this 6th day of September, 1994

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

'94 SEP -7 P3:36

In the Matter of)	
GULF STATES UTILITIES COMPANY)	Docket No. 50-458-OLA
(River Bend Station, Unit 1))	Re: License Amendment
)	(Transfer of Ownership and
)	Control)

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

CERTIFICATE OF SERVICE

I, Mark J. Wetterhahn, hereby certify that on this 6th day of September, 1994, I served on the following, by first class mail, postage pre-paid, copies of:

1. Gulf States Utilities Company's Objections to Cajun Electric Cooperative, Inc.'s Interrogatories dated August 22, 1994
2. Gulf States Utilities Company's Responses to Interrogatories dated August 22, 1994

* B. Paul Cotter, Jr., Esq.
Chairman, Atomic Safety
and Licensing Board
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Docketing and Services
Branch
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

* Dr. Richard F. Cole
Atomic Safety and Licensing
Board
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Ann P. Hodgdon, Esq.
Mitzi A. Young, Esq.
Office of the General
Counsel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

* Dr. Peter S. Lam
Atomic Safety and Licensing
Board
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

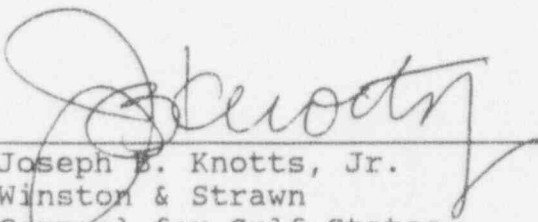
James D. Pembroke, Esq.
Thomas L. Rudebusch
Duncan, Weinberg, Miller &
Pembroke, P.C.
1615 M Street, N.W.
Suite 800
Washington, D.C. 20036

* Hand Delivery

Victor J. Elmer
Vice President - Operations
Cajun Electric Power
Cooperative, Inc.
10719 Airline Highway
Baton Rouge, LA 70895

Robert B. McGehee, Esq.
Wise Carter Child & Caraway
600 Heritage Building
P. O. Box 651
Jackson, Mississippi 39205

Office of the Executive
Director for Operations
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555



Joseph E. Knotts, Jr.
Winston & Strawn
Counsel for Gulf States
Utilities Company

September 6, 1994