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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

'94 SEP 30 P4:09

In the Matter of  
  
GULF STATES UTILITIES COMPANY  
  
(River Bend Station, Unit 1)

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Docket No. 50-456-OLA  
ASLBP No. 93-680

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

GULF STATES UTILITIES COMPANY'S  
MOTION TO COMPEL ANSWERS TO INTERROGATORIES  
AND DOCUMENT PRODUCTION REQUESTS AND FOR OTHER RELIEF

I. INTRODUCTION

On September 9, 1994, Intervenor Cajun Electric Power Cooperative, Inc. ("Cajun") responded to Gulf States Utilities Company's ("GSU") "First Set of Interrogatories and Request for Production of Documents to Cajun Electric Power Cooperative, Inc.," dated August 26, 1994. Cajun responded to 17 out of 40 of GSU's interrogatories by noting that it was still compiling information and had not completed its efforts in the time allowed, but would "update this response in accordance with 10 C.F.R. § 2.740(e)."

Cajun responded to GSU's associated document production request merely by stating "object." Cajun apparently bases its objection on the argument that GSU had provided Cajun with the document production request 28 days prior to the date the Board specified for the close of discovery, and that Cajun therefore did not have 30 days in which to respond as specified in 10 C.F.R. § 2.741 before discovery closed. In effect, Cajun unilaterally declared that it had no obligation to respond to this discovery

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request or to inform GSU or the Atomic Safety and Licensing Board ("Licensing Board") of the basis for its position.<sup>1/</sup>

GSU hereby moves the Board to compel Cajun to expeditiously respond to GSU's interrogatories and document production request. Cajun's mere assertion of the word "object" in its "response" to the document request violates the requirement of 10 C.F.R. § 2.741(d) that parties state timely, specific reasons for objections in writing. With regard to GSU's interrogatories, the Board should compel Cajun to answer because Cajun has misapplied § 2.740(e) dealing with supplementation of responses and failed to respond within the time frame specified by 10 C.F.R. § 2.740b, and still has not responded. In addition, GSU moves the Licensing Board for additional time to conduct follow-up discovery after Cajun has responded to GSU's interrogatories and document production request.

GSU has made every effort to cooperate in the discovery process and has provided responses to all Cajun discovery requests within the time allotted by the Commission's Rules of Practice. GSU has also shown its flexibility by agreeing with the NRC Staff to provide for additional time responding to its discovery requests. The Board should not permit Cajun to flout the Commission's rules by simply not responding to discovery which GSU

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<sup>1/</sup> See the attached letter from Douglas E. Levanway to Thomas L. Rudebusch dated September 27, 1994. As of the filing of this pleading, no additional responses to interrogatories have been received.

is entitled to and which is necessary to the proper preparation of its case.

## II. FACTUAL BACKGROUND

GSU filed "Gulf States Utilities Company's First Set of Interrogatories and Request for Production of Documents to Cajun Electric Power Cooperative, Inc." on August 26, 1994. This was only three days after the service of the Nuclear Regulatory Commission's Memorandum and Order denying GSU's appeal of the Licensing Board's grant of intervention. Gulf States Utilities (River Bend Station, Unit 1), CLI-94-10 (August 23, 1994). On September 9, 1994, Cajun answered 17 out of 40 of GSU's interrogatories with the following response:

Cajun is compiling this information and has not completed its efforts in the time allowed. Cajun will update this response in accordance with 10 C.F.R. § 2.740(e).<sup>2/</sup>

GSU had also requested that Cajun provide all documents identified in its responses to GSU interrogatories. Cajun's response to GSU's document production request was simply "object," with no explanation whatsoever.<sup>3/</sup>

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<sup>2/</sup> "Cajun Electric Power Cooperative, Inc.'s Response to First Set of Interrogatories of Gulf States Utilities Company," dated September 9, 1994. See response to GSU Interrogatories 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 13, 15, 16, 17, 18, 22, 40.

<sup>3/</sup> Cajun Response to GSU Document Production Request D-1 (appended to "Cajun Electric Power Cooperative, Inc.'s Response to First Set of Interrogatories of Gulf States Utilities Company," dated September 9, 1994).

When contacted on September 26, 1994 by telephone, Cajun's counsel informed GSU that it intended to answer the interrogatories at an unspecified future date, but did not intend to further respond to the document production request. GSU was told that, based upon the date set by the Board for the end of discovery, GSU had provided Cajun with only 28 days to respond to the document production requests instead of 30 days as specified in 10 C.F.R. § 2.741 before the close of discovery. GSU has never received any written explanation of Cajun's reasons for objection, nor has Cajun filed any specific explanation for its objection or a motion for a protective order with the Board. In addition, Cajun has still not responded to the 17 interrogatories noted above.

### III. ARGUMENT

#### A. The Board Should Compel Cajun To Answer GSU's Document Production Request Because Cajun Never Offered A Timely, Specific Explanation Of The Basis For Its Objection

NRC regulations provide that if a party objects to a document request, "the reasons for objection shall be stated" in the written response to the request. 10 C.F.R. § 2.741(d) (emphasis added). Licensing Board precedent makes clear that a response to a document request must state, with respect to each item or category, "either that inspection will be permitted or that the request is objectionable for specific reasons." (Emphasis added) Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-82-82, 16 NRC 1144, 1152 (1982). Quoting the language of 10 C.F.R. § 2.740(f)(1), that decision made clear that "an

evasive or incomplete answer or response shall be treated as a failure to answer or respond." Id. at 1146. As another Licensing Board explained, in the context of addressing objections to interrogatories:

[O]bjections should be plain enough and specific enough so that the court can understand in what way the interrogatories are claimed to be objectionable . . . [G]eneral objections are insufficient . . . [T]he burden of persuasion is on the objecting party to show that the interrogatory should not be answered -- that the information called for is privileged, not relevant, or in some way not the proper subject of an interrogatory.

(Emphasis added, brackets and ellipsis in original), Duke Power Company (Catawba Nuclear Station, Units 1 and 2), LBP-82-116, 16 NRC 1937, 1944 (1982). Thus, parties to an NRC proceeding are under a duty to provide the specific bases for objections to discovery requests.

Under the NRC regulation and precedent cited above, Cajun's one-word response "object" to GSU's document production request was clearly insufficient. Cajun's response was both evasive and incomplete and flies in the face of the requirement that parties state reasons for objection with specificity. Neither has the Licensing Board received a written explanation of Cajun's objection as required pursuant to 10 C.F.R. § 2.741(d). As noted above, Cajun now apparently claims that because it received GSU's document production request 28 (rather than 30) days prior to the date set by the Board for the end of the discovery period, it is entirely relieved from responding to the request. Cajun made no

attempt to contact GSU to request an additional two days, or any other extension. In light of these considerations, and the lack of specificity in Cajun's objection, the Board should compel Cajun to respond to GSU's document production requests.

B. The Board Should Compel Cajun To Answer GSU's Document Production Request Because Cajun Should Not Be Permitted To Frustrate The Purpose Of Discovery With Mere Technicalities

Discovery of the foundation upon which a contention is based is necessary for an applicant's preparation for hearing. Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), LBP-83-17, 17 NRC 490, 494 (1983); Kerr-McGee Corp. (West Chicago Rare Earths Facility), LBP-86-4, 23 NRC 75, 81 (1986). Discovery rules are to be construed very liberally. Illinois Power Co. (Clinton Power Station, Unit 1), LBP-81-61, 14 NRC 1735, 1742 (1981); Pacific Gas & Electric Company (Stanislaus Nuclear Project, Unit 1), LBP-78-20, 7 NRC 1038, 1040 (1978). GSU, as an applicant, is entitled to discovery. As the Atomic Safety Licensing Appeal Board stated:

The Applicants in particular carry an unrelieved burden of proof in Commission proceedings. Unless they can effectively inquire into the position of the intervenors, discharging that burden may be impossible. To permit a party to make skeletal contentions, keep the bases for them secret, then require its adversaries to meet any conceivable thrust at hearing would be patently unfair, and inconsistent with a sound record.

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Pennsylvania Power and Light Co. and Allegheny Electric Cooperative, Inc. (Susquehanna Steam Electric Station, Units 1 and 2) ALAB-613, 12 NRC 317, 338 (1980).

Given GSU's need for the requested material to determine the basis for Cajun's contention, and the liberal nature of the NRC's discovery rules, the Board should not permit Cajun to escape responding to GSU's document production request by hiding behind the technicality that it had 28 days, rather than 30, to respond to the document production request prior to the Board-specified end of discovery.

GSU's request was not "last minute." GSU clearly did not propound this request for the purposes of delaying this proceeding or placing an undue burden on Cajun. We have no explanation from Cajun as to why 28 days was insufficient whereas 30 days would have been. Importantly, Cajun has not undertaken to respond to even any part of the request for document production in the time available, but chooses to sit back and do absolutely nothing. Based upon its interactions with NRC Staff on discovery deadlines, GSU would have offered Cajun the additional two days to provide a complete response to the document request. This is particularly true since none of the parties began discovery until after the issuance of Commission's Memorandum and Order of August 23, 1994. Cajun has not alleged that the two days involved have any effect on the hearing which is not even scheduled to begin until next year. Thus, to ensure fairness to GSU and to ensure that the Board



develops an adequate administrative record, the Board should compel Cajun to respond to GSU's document production request.

**C. The Board Should Compel Cajun To Answer GSU's Interrogatories And Provide GSU With Additional Time To Conduct Follow-Up Discovery Based On Cajun's Responses**

Regardless of the disposition of Cajun's untimely and non-specific objection to GSU's document production request, Cajun nonetheless remains under an obligation to respond to GSU's interrogatories. Long after the deadline for response established in 10 C.F.R. § 2.740b, and after the close of discovery, Cajun still has not responded to 17 out of 40 of GSU's interrogatories. Cajun stated that it would supplement its response in accordance with 10 C.F.R. § 2.740(e). This provision relates to supplementation once initial responses have been provided, but does not excuse failure to provide an initial response in a timely manner. In the same time span, GSU has responded to Cajun's first set of interrogatories and Cajun's second set of follow-up interrogatories.

In the interest of fairness, GSU moves the Board to compel Cajun to answer GSU's first set of interrogatories within 10 days and to provide GSU an additional ten days after receipt of all outstanding discovery requests to conduct follow-up discovery.

**IV. CONCLUSION**

For the foregoing reasons, GSU asks the Board to: (1) compel Cajun to respond to GSU's document production request; (2) compel Cajun to respond to GSU's first set of interrogatories; and



(3) grant GSU additional time to conduct follow-up discovery based on Cajun's responses to GSU's interrogatories and document requests.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Mark J. Wetterhahn', with a stylized, cursive script.

Mark J. Wetterhahn

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Attorneys for Gulf States  
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Dated at Washington, D.C.  
this 29th day of September, 1994

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September 27, 1994

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via facsimile  
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Re: In the Matter of Gulf States Utilities Company  
(River Bend Station, Unit 1)  
Docket No. 50-458-OLA  
ASLEP No. 93-680  
Our File No. 1550-21751

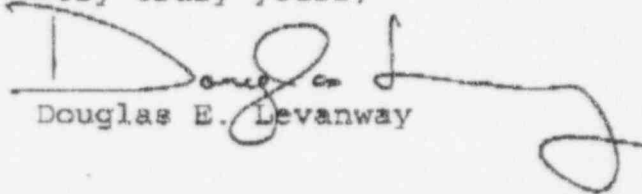
Dear Tom:

This will confirm our telephone conversation of yesterday, September 26, 1994. I informed you that I represent Gulf States Utilities Company in the above-referenced matter. I then inquired about the status of Cajun's responses to Gulf States Utilities Company's Interrogatories and Requests for Production of Documents. You stated that you hoped to get some responses out on Tuesday, September 27, 1994, but that, more than likely, the responses would be received by Gulf States by overnight mail on Wednesday morning, September 28, 1994.

I also asked whether this included the documents which were requested by Gulf States, and you stated that you intended to object to the Requests for Production of Documents as untimely, because the responses to the Requests would not be due until after the discovery period was over.

If I have incorrectly stated the substance of our conversation, please let me know.

Very truly yours,

  
Douglas E. Levanway

Thomas L. Rudebusch, Esquire  
Duncan, Weinberg, Miller & Pembroke, P.C.  
September 27, 1994  
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cc: Administrative Judges -

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DOCKETED  
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

'94 SEP 30 P4:09

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

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

CERTIFICATE OF SERVICE

I hereby certify that copies of "Gulf States Utilities Company's Motion to Compel Answers to Interrogatories and Document Production Requests and For Other Relief" were served on the following, by first class mail, postage pre-paid, this 29th day of September, 1994:

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