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RELATED CORRESPONDENCE

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

94 SEP 23 P3:19

In the Matter of)

GULF STATES UTILITIES COMPANY)

(River Bend Station, Unit 1))

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Docket No. 50-458-OLA

GULF STATES UTILITIES COMPANY'S OBJECTIONS
TO CAJUN ELECTRIC POWER COOPERATIVE, INC.'s
SECOND SET OF INTERROGATORIES DATED SEPTEMBER 8, 1994

I. INTRODUCTION

Gulf States Utilities Company ("GSU") hereby objects to Cajun Electric Power Cooperative, Inc. ("Cajun") Interrogatories 2-2, 2-5, 2-8, 2-9 and 2-10 of Cajun's "Second Set of Interrogatories of Cajun Electric Power Cooperative To Gulf States Utilities Company, Entergy Operations, Inc., And All Affiliated Companies," dated September 8, 1994. These interrogatories are overbroad, burdensome, and not reasonably calculated to lead to the production of admissible evidence. GSU also renews its objection to General Instruction B of Cajun's "Requests for Production of Documents and Interrogatories" dated August 22, 1994 to the extent that this instruction carries over to Cajun's Second Set of Interrogatories.

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II. ARGUMENT

A. Cajun's Interrogatories Are Overbroad, Burdensome And Not Calculated To Lead To The Discovery Of Admissible Evidence

Cajun Interrogatories 2-2, 2-5, 2-8, 2-9 and 2-10 essentially redirect at GSU, almost word-for-word, GSU Interrogatories 1, 4, 7, 8 and 9 originally posed to Cajun in "Gulf States Utilities Company's First Set Of Interrogatories And Request For Production Of Documents To Cajun Electric Power Cooperative, Inc." dated August 26, 1994. GSU narrowly framed these interrogatories with the objective of obtaining any bases for Cajun's claim that the margin of safety of the River Bend Station might be compromised. Such interrogatories were reasonably limited in scope when viewed in the context of response by a co-owner with no operating or safety responsibilities. For example, GSU Interrogatory 1, which asked Cajun to identify safety issues raised by Cajun, was intended to elicit evidence concerning Cajun's knowledge of and ability to raise safety issues at River Bend that would substantiate Cajun's claims that its concerns were more than pretextual.

Redirected at GSU, however, these Interrogatories are overbroad, burdensome and not intended to lead to the discovery of admissible evidence as required by 10 C.F.R. § 2.740(b)(1). For example, when Cajun rephrased GSU Interrogatory 1 as Cajun Interrogatory 2-2 to GSU, Cajun asked for details concerning each and every safety issue, concern or allegation related to the

operation of River Bend station that has ever been identified or raised by GSU to Cajun, Entergy Operations, Inc. ("EOI"), or the NRC. In actuality, Cajun is asking for a rehearsal of the entire operating history of the River Bend Station prior to the turnover of operating responsibility to EOI on December 31, 1993. This information is and has always been available to Cajun. GSU should not be required to respond to such a wide-ranging and burdensome request with no connection to the admitted contention in this proceeding.

Like Interrogatory 2-2, Cajun Interrogatory 2-8 which seeks information about every meeting between GSU, EOI and the NRC, and Interrogatory 2-9 which inquires as to all GSU and EOI communications with the NRC, call for detailed information covering the entire history of the operation of River Bend. Interrogatory 2-5 is a word-for-word restatement of GSU interrogatory 4 to Cajun seeking information that is likely to be available only to Cajun in the form requested. Cajun Interrogatory 2-10 seeks information concerning any systematic plan or procedure for review by EOI or its consultants of safety matters arising at River Bend. While the amount of material that would need to be considered in responding to GSU's original interrogatory to Cajun was limited in scope due to Cajun's passive role regarding operation of River Bend, when directed at GSU, this question becomes overly broad. These interrogatories, as directed at GSU and EOI, are far too broad in that they cover any safety matter raised at any time, rather than

being limited to information specifically related to Cajun's admitted contention.

Federal court and NRC precedent support the conclusion that these interrogatories are overbroad and burdensome. Atomic Safety and Licensing Boards have found that the legal authorities and federal court decisions involving Rule 26 of the Federal Rules of Civil Procedure provide appropriate guidelines for interpreting the discovery standards set forth in the Commission's rules. See Boston Edison Company (Pilgrim Nuclear Generating Station, Unit 2), LBP-75-30, 1 NRC 579, 581 (1975). Under the Federal Rules:

. . . parties have a correlative obligation to tailor interrogatories to suit the particular exigencies of the litigation. They ought not to be permitted to use broadswords where scalpels will suffice, nor to undertake wholly exploratory operations in the vague hope that something helpful will turn up.

Mack v. Great Atlantic and Pacific Tea Company, Inc., 871 F.2d 179, 187 (1st Cir. 1989) (party was not required to respond to interrogatories requiring it to cull through 4 years of personnel records of hundreds of employees when a lesser time would plainly have sufficed). Thus, courts will not require parties to respond to interrogatories and requests for documents, such as those posed by Cajun, that are overly broad and unduly burdensome in light of the facts of the case. Stabilus v. Haynsworth, Baldwin, Johnson & Greaves, 144 F.R.D. 258, 266 (E.D. Pa. 1992) (interrogatory in which law firm asked employer for all employee performance evaluations going back as much as 10 years for all employees

participating in any way in labor negotiations was overly broad and unduly burdensome in legal malpractice suit arising from legal advice to employer during negotiations); see also Georgia Power Co. v. EEOC, 295 F. Supp. 950 (N.D. Ga. 1968), aff'd 412 F.2d 462 (5th Cir. 1969) (court limited discovery to five years before alleged unlawful acts); General Insurance Co. v. EEOC, 491 F.2d 133 (9th Cir. 1974) (denial of discovery that sought to reach back in time eight years). Furthermore, aside from imposing heavy burdens on GSU and EOI, repetition of GSU's interrogatories by Cajun could be viewed as being interposed for purposes other than legitimate discovery. This Board should heed the warning of the federal courts that "caution must be exercised to assure that discovery techniques are not made instruments of oppression." Carlson Companies, Inc. v. Sperry & Hutchinson Co., 374 F. Supp. 1080, 1088 (D. Minnesota 1974).

Cajun's interrogatories also fail to meet the standard set forth in 10 C.F.R. 2.740(b)(1) requiring that discovery requests be "reasonably calculated to lead to the discovery of admissible evidence." Atomic Safety and Licensing Boards have followed the federal courts in sustaining objections to interrogatories seeking information that is irrelevant to the issues in the proceeding. See Allied General Nuclear Services (Barnwell Fuel Receiving and Storage Station), LBP-77-13, 5 NRC 489, 492 (1977) (intervenor questions regarding reprocessing irrelevant to spent fuel storage proceeding), citing Massachusetts

Bonding & Ins. Co. v. Harrisburg Trust Co., 2 F.R.D. 197, 198 (M.D. Pa. 1941); Dunbar v. United States, 502 F.2d 506, 509-10 (5th Cir. 1974); Goodman v. International Business Machine Corp., 59 F.R.D. 278, 279 (N.D. Ill. 1973); Griffin v. Memphis Sales & Manufacturing Co., 38 F.R.D. 54, 57 (N.D. Miss. 1965). As we noted in our objections to Cajun's First Set of Interrogatories, the Allied General licensing board upheld objections to interrogatories based on federal court precedent holding that

practical considerations dictate that the 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.

5 NRC at 492, quoting Broadway & Ninety-Sixth St. Realty Co. v. Loew's Inc., 21 F.R.D. 347, 352 (S.D.N.Y. 1958).

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

Cajun's General Instruction B as stated in its Requests For Production Of Documents And Interrogatories dated August 22, 1994 carries over to Cajun's Second Set of Interrogatories. For the reasons stated in "Gulf States Utilities Company's Objections to Cajun Electric Cooperative, Inc.'s Interrogatories dated August 22, 1994" (dated September 6, 1994) at 4-5, which is hereby incorporated by reference, GSU renews its objection to this instruction.

III. CONCLUSION

For the reasons stated herein, GSU objects to the identified interrogatories and Cajun General Instruction B.

Nonetheless, in order to attempt to be cooperative and to expedite the proceeding, GSU will respond to the disputed interrogatories. 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.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Mark J. Wetterhahn".

Mark J. Wetterhahn

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Dated at Washington, D.C.
this 22nd day of September, 1994

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

'94 SEP 23 P3:19

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)

CERTIFICATE OF SERVICE

I hereby certify that copies of "Gulf States Utilities Company's Responses to Cajun Electric Power Cooperative, Inc.'s Second Set of Interrogatories dated September 8, 1994" and "Gulf States Utilities Company's Objections to Cajun Electric Power Cooperative, Inc.'s Second Set of Interrogatories dated September 8, 1994" were both served on the following, by first class mail, postage pre-paid, this 22nd day of September, 1994:

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