

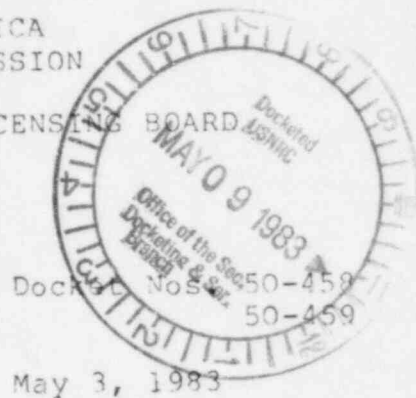
UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

Gulf States Utilities Co.,  
et al.

(River Bend Station, Units 1 & 2)



May 3, 1983

RESPONSE TO STAFF'S AND APPLICANTS' ANSWER TO  
CONTENTIONS OF THE STATE OF LOUISIANA

I. INTRODUCTION

Responding to the Licensing Board's Order of December 21, 1982, the State of Louisiana on March 15, 1983 filed a "Supplemental Petition" setting forth proposed contentions in this proceeding. The NRC Staff and Applicants have answered and the State of Louisiana now responds.

II. DISCUSSION

A. Rules Governing Admissibility of Contentions

i. In General

10 CFR 2.714(b) states in part that, prior to the special pre-hearing conference, petitioners must file "Contentions which petitioners seek to have litigated in the matter, and the bases for each contention set forth with reasonable specificity."

According to a Licensing Board decision in the Perry proceeding,<sup>1</sup> "Reasonable specificity" . . . require[s] that

<sup>1</sup>Cleveland Electric Illuminating Company, et al. (Perry Nuclear Power Plant Units 1 & 2), LBP- 81-24, 14 NRC 175 (July 28, 1981).

intervenor show enough understanding of the filed materials to indicate that a hearing will have a substantial chance of adding to the preexisting process. Hence, it is reasonable to require that contentions show an understanding of the materials already filed by Applicant about its reactor."<sup>2</sup> The Licensing Board in that proceeding also stated that "The degree of specificity required of a contention depends in part on the nature of the challenge to its admissibility."<sup>3</sup>

Additional guidance is found in the recent Maine Yankee proceeding.<sup>4</sup> There, the Licensing Board stated:

"It is incumbent upon the Petitioner to (1) set forth contentions which are sufficiently detailed and specific to demonstrate that the issues are admissible and that further inquiry is warranted, and to put the other parties on notice as to what they will have to defend against or oppose and (2) set forth the reasons (basis) for each of the contentions without having to detail the evidence which would later be offered in support of each contention."<sup>5</sup>

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<sup>2</sup> Id., p. 182.

<sup>3</sup> Id., p. 183.

<sup>4</sup> Maine Yankee Atomic Power Company (Maine Yankee Atomic Power Station), LBP-82-4, 15 NRC 199 (January 22, 1982).

<sup>5</sup> Id., p. 206.

It is respectfully submitted that the State of Louisiana has in its "Supplemental Petition" shown an understanding of the materials filed by the Applicants, has demonstrated that the issues raised by its contentions are admissible, has put the other parties on notice, and that Louisiana is not required to detail evidence in support of its contentions.

2. Prematurity

Applicants and Staff oppose the admission of certain contentions (specifically Nos. 2 and 5) on the ground that they are premature. The State of Louisiana need not, I trust, go into detail on the obvious "Catch 22" in trying to frame specific questions when certain documents necessary to do so have not yet been written. On this matter, Louisiana urges that this Honorable Board read the recent Catawba<sup>6</sup> decision for an excellent discussion of this issue, which is highly relevant in the instant case. Although to quote extensively from this decision would serve no useful purpose, Louisiana nevertheless believes a few quotes are appropriate here to the general objection of prematurity:

"The specificity requirement is a perfectly reasonable one, so long as the factual

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<sup>6</sup>Duke Power Company, et al., (Catawba Nuclear Stations Units 1 and 2), LBP-82-16, 15 NRC 566 (March 5, 1982).

information necessary for specificity is available to an intervenor. Unfortunately, because of the way the hearing process is structured that is often not the case, particularly in the early stages of the proceeding.

\* \* \*

"That is the situation here. Of the key documents just mentioned, only the Applicants' FSAR (most of it) and Environmental Report are now available for public inspection. The Staff's SER and impact statement, most of the off-site emergency plans and portions of the FSAR have not yet been written.

\* \* \*

"The Applicants and the Staff nevertheless argue that the Intervenor should be required to plead all of their contentions with reasonable specificity by the first prehearing conference, even contentions in areas like emergency planning, where the documents necessary for informed pleading are not yet available.

\* \* \*

"The Board believes that the Applicants' and Staff's stated position on this question is (1) not required by the rules as written or by prior decisions, (2) unreasonable, and (3) probably in conflict with governing statutes.

\* \* \*

"Indeed, we think that the Applicants' and Staff's position on the specificity question is, as they would have us apply it here, of very questionable legality . . . ."<sup>7</sup>

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<sup>7</sup>Id., pp. 570-573.

B. Contentions of the State of Louisiana

1. Contention 1 - Table S-3

As this Honorable Licensing Board knows Louisiana is well aware of the events surrounding the litigation of the Table S-3 Rule, as reflected in the NRDC case,<sup>8</sup> and of the Commission's Statement of Policy of November 1, 1982. The State is also aware that the Supreme Court has already heard oral argument in the matter, and anxiously awaits, as do thousands of others, the announcement of the decision. The opinion of the Court in this matter will no doubt influence the State of Louisiana to either abandon or expand this contention.

2. Contention 2 - Emergency Planning

Louisiana suggests that its contention has been "set forth with reasonable specificity" considering the lack of available information on emergency planning. Here, both the Applicants and the Staff urge that this contention is premature. In response, Louisiana respectfully urges this Board to consider the reasoning of the Licensing Board in the Catawba proceeding, supra, as outlined in Section II, A., 2., above, at page 3, note 6.

3. Contention 3 - Drinking Water Supplies

Both the Applicants and the Staff state that Louisiana has failed to specify any inadequacies in the FSAR with respect

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<sup>8</sup>NRDC v. NRC, 685 F.2d 459 (D.C. Cir. 1982), cert. granted, 51 U.S.L.W. 3419 (November 29, 1982).

to discharge as demonstrated in Section 2.4.12 and 2.4.13 of the FSAR. Louisiana respectfully shows, with respect to accidental discharges into surface water supplies, in particular the Mississippi River, "the postulated extreme minimum flow of 100,000 cfs" which was assumed in the FSAR Section 2.4.12 and elsewhere in the FSAR is in error if the Old River Control Structure should fail, as will be described more particularly in Subsection 4, below.

Louisiana also specifically takes issue with Applicants' plans "Not . . . to monitor the chemical and radionuclide content of the groundwater because the potential for affecting local water use is small" (FSAR Section 2.4.13.4 "Monitoring") and respectfully suggests the necessity for groundwater monitoring, especially when one balances the relatively low cost of monitoring as balanced against the potential costs of human consumption of potentially radioactive, unmonitored water.

#### 4. Contention 4 - Old River Control Structure

With respect to Contention 4, and a possible failure of the Old River Control Structure, Staff states in its "Answer" on page 7 that "The applicant has analyzed this potential event and reported that analysis in Section 2.4.11.1 of the FSAR." With all due respect to the Staff, nowhere in Section 2.4.11.1 is there any "analysis" of the failure of the Old River Control Structure on the safe operation of River Bend Station. Not only is such failure not mentioned in Section 2.4.11.1, it

is further omitted in Section 2.4.4.1, "Potential Dam Failures - Mississippi River." Countering the possible suggestion that the "control structure" is not a "dam" and thus need not be analyzed in that section, the State of Louisiana points out that the following section on "Local Streams", Section 2.4.1.2, refers to "dams or similar watercontrol structures." Similarly, "Stream Control Structures" are specifically addressed in Section 2.4.1.2.2, "Local Streams," but are not addressed in the previous section, 2.4.1.2.1, "Mississippi River."

Further, Louisiana shows that throughout its analysis of low flow levels in the Mississippi River as they would affect the safe operation of River Bend Station, the Applicants have assumed that "the probable minimum flow rate . . . is not anticipated to be less than 100,000 cfs" (FSAR Section 2.4.11.1 et al.) The State of Louisiana is prepared to show that a failure of the Old River Control Structure will in all likelihood reduce the volume of water substantially below 100,000 cfs in a normal year, and respectfully reminds the Staff and Applicants that Section 2.714(b) does not require petitioners to detail the evidence which it intends to offer in support of its contention.

Applicants themselves concede the importance of the Old River Control Structure in their "Answer" on page 10 where they state: "The structure has such a significant effect on all downstream users, including the cities of Baton Rouge and New



Orleans, that the effects of the River Bend Station of its failure would be de minimis by comparison." Applicants appear to be saying that just because the effects would be worse elsewhere, they therefore do not have to worry about the effects at River Bend. With all due respect to Applicants, Louisiana suggests that this Honorable Licensing Board is not required to consider the effects of the failure of the structure elsewhere, no matter how catastrophic they may be, but would be well-advised to consider such failure with reference to River Bend Station.

5. Contention 5 - Unit 1/Unit 2

Both the Applicants and the Staff state that a contention based on the effect of construction of Unit 2 on the operation of Unit 1 is premature. The State of Louisiana respectfully reurges the discussion of prematurity as set out in the decision in the Catawba proceeding, above, at page 3, note 6.

6. Contention 6 - Infestation of Asiatic Clams

The State of Louisiana notes with approval that the Staff does not object to the admission of this contention.

Louisiana further notes that Applicants feel that "this contention is completely lacking in specificity and bases . . . ." ("Answer", p. 43). Louisiana respectfully believes that



its contention is specific and that it has a basis and further directs this Honorable Board's attention to EROLS page Q & R 3.4-i (Supplement 2):

"Question E29i.5 (3.4)

Indicate whether thermal and/or chemical treatments will be used in the backwash treatment of the intake structure.

Response

No design provision is included for thermal and/or chemical treatments in the backwash of the intake structure."

### III. Conclusion

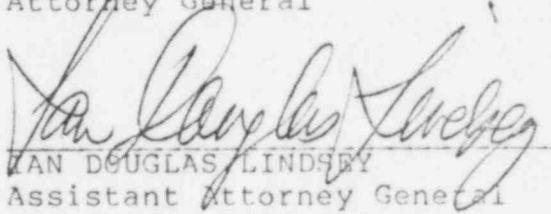
The State of Louisiana feels that it has satisfied the "reasonable specificity" requirements of 10 CFR 2.714(b) and urges that this Honorable Board accept its contention as filed and further urges this Board, should they find that contention 2 and 5 are premature, to accept them conditionally.

Respectfully submitted,

STATE OF LOUISIANA

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of "RESPONSE TO STAFF'S AND APPLICANTS' ANSWERS TO PROPOSED CONTENTIONS OF THE STATE OF LOUISIANA" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, this 3 day of May, 1983.

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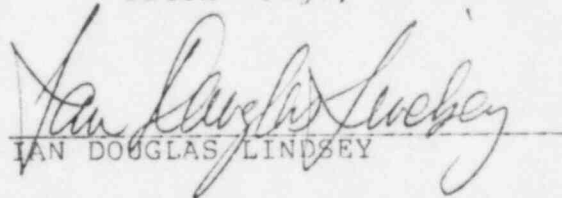
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