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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

'94 OCT 31 P3:15

In the Matter of

GULF STATES UTILITIES COMPANY

(River Bend Station, Unit 1)

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Docket No. 50-458-OLA

ASLBP No. 93-680

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

GULF STATES UTILITIES COMPANY'S OBJECTIONS TO
CAJUN ELECTRIC POWER COOPERATIVE, INC. FOLLOW-UP
DISCOVERY REQUESTS DATED OCTOBER 24, 1994 AND
MOTION FOR A PROTECTIVE ORDER

I. INTRODUCTION

Gulf States Utilities Company ("GSU") hereby objects to "Follow-up Discovery Requests Of Cajun Electric Power Cooperative, Inc., to Gulf States Utilities Company, Entergy Operations, Inc., and All Affiliated Companies" dated October 24, 1994, and moves for a protective order pursuant to 10 C.F.R. § 2.740(c) that such discovery not be had. Cajun Electric Power Cooperative Inc.'s ("Cajun") discovery requests relate to matters outside the proper scope of follow-up discovery, outside the scope of the one admitted contention, and are not reasonably calculated to lead to admissible evidence. Furthermore, Cajun's requests are overbroad, unduly burdensome and oppressive. Cajun is not only engaging in a fishing expedition, it is attempting to "drain the pond and collect the fish from the bottom."^{1/}

^{1/} See Amcast Industrial Corp. v. Detrex Corp., 138 F.R.D. 115, 121 (N.D. Ind. 1991), infra at 5.

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II. ARGUMENT

On October 24, 1994, Cajun sent GSU 52 multi-part follow-up discovery requests asking for detailed additional information concerning the "River Bend Nuclear Station Near-Term Performance Improvement Plan" and the "River Bend Nuclear Station Long-Term Performance Improvement Plan," which GSU had produced in response to a previous discovery request from Cajun. Specifically, Cajun's October 24, 1994 requests seek data regarding plant procedures, corrective action plans, self-assessments, personnel matters, root cause analyses, performance measure reports, and many other items considered in the performance improvement plans. These requests are extremely broad in scope, encompassing a vast quantity of documentation covering virtually every aspect of River Bend operation, with no demonstrated nexus to Cajun's single admitted contention. For the reasons discussed below, the Atomic Safety and Licensing Board ("Licensing Board" or "Board") should uphold GSU's objection to Cajun's follow-up discovery requests and grant a protective order pursuant to 10 C.F.R. § 2.740(c) that the discovery not be had.^{2/}

^{2/} Counsel for GSU and Cajun have discussed various ways to resolve the discovery dispute, but have not been able to reach agreement. Inasmuch as counsel for Cajun indicated his intention to submit additional discovery related to the performance improvement plans, this pleading is being submitted to expedite disposition of the issue.

A. Cajun's Discovery Request Is Beyond The Proper Scope Of Follow-up Discovery In This Proceeding

Discovery in this proceeding concluded on September 22, 1994. See Board Memorandum and Order dated March 24, 1994 at 2. At the prehearing conference in this matter, the Board required GSU to supplement Cajun Interrogatory 2-6. That interrogatory related to meetings between employees of GSU and those of Entergy and Entergy Operations, Inc. ("EOI") regarding safety matters. The Board stated in its ruling on the record:

The ruling is that GSU is to give Cajun in response to their interrogatory 2.6 the names and current affiliation of all Entergy, EOI, and EOI [sic] employees who attended meetings during the period September 1993 through December 31, 1993, and to describe the general subject matter of those meetings.

Prehearing Conference Transcript at 34-35 (October 4, 1994) (hereinafter cited as "Tr.").^{3/}

On October 14, 1994, GSU provided its supplemental response to, inter alia, Interrogatory 2-6.^{4/} Therein, GSU described the general subject matter of meetings between representatives of GSU and EOI and produced the near-term and long-term performance improvement plans for River Bend. Cajun pounced on the opportunity presented by the submission of these documents

^{3/} The ruling was slightly modified later in the prehearing conference to account for later events, but the scope of follow-up discovery remained the same. Tr. at 38.

^{4/} "Gulf States Utilities Company's Supplemental Responses To Cajun Electric Cooperative, Inc.'s Second Set of Interrogatories," dated October 14, 1994.

by GSU and propounded 52 multi-part interrogatories and requests for documents with the promise of more to come.

This discovery is not properly within the scope of supplemental discovery as permitted by the Board. Cajun would have the Board believe that these documents represent new information not previously available to it. To the contrary, Cajun has had copies of these documents since their issuance and has attended (or had the opportunity to attend) meetings during which they were discussed, including meetings with the Nuclear Regulatory Commission ("NRC") at which the public was present.^{5/} To the extent discovery regarding these documents was otherwise within the scope of the NRC's Rules of Practice,^{6/} Cajun could have pursued it during the six-month period of discovery in this proceeding.

Furthermore, the wide ranging requests do not represent supplementation of Interrogatory 2-6, which was related to the relationship of GSU and EOI in the three months prior to the merger. Only the general subject matter of meetings was required to be identified in accordance with the Board's ruling during the prehearing conference. Tr. at 34-35. The scope of Cajun's follow-up discovery requests is well beyond what the Board intended.

^{5/} The "River Bend Nuclear Station Near-Term Performance Improvement Plan" was submitted to the NRC on December 23, 1993. The "River Bend Nuclear Station Long-Term Performance Improvement Plan" was submitted to the NRC on March 28, 1994.

^{6/} See Sections II.B and II.C, infra.

B. Cajun's Discovery Requests Are Outside The Scope Of Discovery For This Proceeding And Not Reasonably Calculated To Lead To The Discovery Of Admissible Evidence

Applicable NRC regulations state that discovery "shall relate only to those matters in controversy which have been identified by the Commission or the presiding officer in the prehearing order entered at the conclusion of [the] prehearing conference." 10 C.F.R. § 2.740(b)(1). Furthermore, NRC precedent dictates that discovery requests have at least "general relevance" to the matter in controversy. Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-81-25, 14 NRC 241, 243 (1981). Cajun's discovery requests, however, have no relevance whatsoever to the one admitted contention in this proceeding and to its bases: that alleged underfunding of River Bend resulting from the Entergy Operations/GSU merger could affect the margin of safety.

Cajun asks for information covering virtually every aspect of River Bend operation, but there is no discernible connection between this information and the merger or the issue of funding for River Bend. For example, Cajun discovery request 2-6.30 states:

Identify and describe all Procedure Change Notices. Identify and describe how the backlog of Procedure Change Notices has changed over the last three years. Identify and describe all documents which identify procedure weaknesses.

This request, similar to all of Cajun's October 24, 1994 requests, concerns general operations information and will not lead to the

discovery of any data relating to how a postulated change in funding or operation by EOI will affect future safety at River Bend.

The River Bend performance improvement plans were developed to increase operational performance beyond current levels.^{2/} Thus, in violation of 10 C.F.R. § 2.740(b)(1), Cajun's discovery requests regarding GSU's plans to improve performance even further are not reasonably calculated to lead to the discovery of admissible evidence concerning whether alleged underfunding of River Bend resulting from the merger will reduce the margin of safety from present, already acceptable levels.

C. The Board Should Issue A Protective Order That Discovery Not Be Had Because Cajun's Requests Are Overbroad, Oppressive And Unduly Burdensome

Pursuant to 10 C.F.R. § 2.740(c), the Board may issue a protective order that discovery not be had to protect a party from "oppression or undue burden and expense." With regard to Cajun's October 24, 1994 follow-up discovery requests, such a protective order is appropriate. Cajun's requests concerning the performance improvement plans would require GSU, at great expense in time and money, to produce thousands of documents related to plant procedures, self-assessments, corrective actions, root cause analyses, personnel matters, and dozens of other issues. Thus, the discovery requests would divert the resources of the very

^{2/} See "River Bend Nuclear Station Near-Term Performance Improvement Plan," at 1, and "River Bend Nuclear Station Long-Term Performance Improvement Plan," at 1.

individuals charged with operation of the facility and require such individuals to research minutiae irrelevant to this proceeding. Cajun has not attempted in any way to tailor its requests more narrowly to produce responses relevant to the impacts of the merger on the margin of safety at River Bend. Rather, Cajun's inquiries merely attempt to dissect the performance improvement plans and to probe every area possible, regardless of relevance. The response to this inquiry is required to be performed in a manner which can only be characterized as the most onerous for GSU and EOI. As noted previously, the NRC has reviewed these performance plans, and Cajun, as co-owner of the facility, had access to these documents long before it filed its voluminous requests on the last day of the extended discovery period designated by the Board. There is no justification for Cajun to subject GSU to such wide-ranging, oppressive discovery this late in the discovery process.

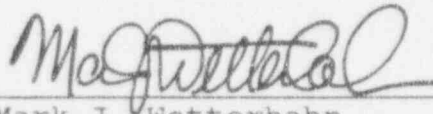
Under Rule 26 of the Federal Rules of Civil Procedure, responses sought by discovery requests "must comport with the traditional notions of relevancy and must not impose an undue burden on the responding party." Robbins v. Camden City Bd. Of Education, 105 F.R.D. 49, 55 (D.N.J. 1985). This principle is equally applicable to NRC proceedings because Federal Court constructions of Rule 26 of the Federal Rules provide appropriate guidelines for interpreting the discovery standards set forth in the NRC's rules. See Boston Edison Company (Pilgrim Nuclear Generating Station, Unit 2), LBP-75-30, 1 NRC 579, 581 (1975).

Contrary to the above principle, Cajun is not only engaging in a fishing expedition, Cajun is attempting to "drain the pond and collect the fish from the bottom." Amcast Industrial Corp. v. Detrex Corp., 138 F.R.D. 115, 121 (N.D. Ind. 1991), citing In re IBM Peripheral Devices Anti-Trust Litigation, 77 F.R.D. 39, 41-42 (N.D. Cal. 1977). Such an exercise "goes beyond the bounds set by the discovery rules." In re IBM Peripheral Devices Anti-Trust Litigation, 77 F.R.D. at 42. Thus, the Board should grant a protective order that discovery on Cajun's irrelevant follow-up requests not be had.

III. CONCLUSION

For the foregoing reasons, GSU respectfully requests that the Board uphold GSU's objections to Cajun's October 24, 1994 follow-up discovery requests and grant a protective order that discovery on those requests, or other similar requests, not be had.

Respectfully submitted,



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Dated at Washington, D.C.
this 28th day of October, 1994

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

DOCKETED
USNRC

'94 OCT 31 P3:54

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)

CERTIFICATE OF SERVICE

I hereby certify that copies of "Gulf States Utilities Company's Objections to Cajun Electric Power Cooperative, Inc. Follow-up Discovery Requests dated October 24, 1994 and Motion for a Protective Order" were served on the following, by first class mail, postage pre-paid, this 28th day of October, 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
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