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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSIONBefore the Atomic Safety and Licensing Board

In the Matter of)	
)	
Gulf States Utilities Company,)	Docket No. 50-458
<u>et al.</u>)	50-459
)	
(River Bend Station, Units 1 and 2))	

APPLICANTS' ANSWER TO THE CONTENTIONS FILED BY
JOINT INTERVENORS ON OFFSITE EMERGENCY PLANNINGPreliminary Statement

In its Memorandum of August 26, 1983, the Atomic Safety and Licensing Board ("Licensing Board" or "Board") designated to preside over this operating license proceeding allowed Louisiana Consumers League, Inc.; Louisianans for Safe Energy, Inc.; and Gretchen Reinike Rothschild ("Joint Intervenors") to file offsite emergency planning contentions after submission of the emergency plan.^{1/} By letter of February 13, 1984, the NRC Staff advised the Board of the decision of the parties to agree to the filing of such contentions on March 9, 1984.^{2/} On that day, Joint Intervenors filed twelve offsite emergency planning

1/ Gulf States Utilities Company (River Bend Station, Units 1 and 2), Docket Nos. 50-458 and 50-459, "Memorandum" (August 26, 1983) (slip op. at 5-6 and 25).

2/ Letter to Licensing Board from D.A. Repka (February 13, 1984).

contentions.^{3/} The State of Louisiana advised the Board that it would file no emergency planning contentions but rather would work cooperatively with the various State agencies involved.^{4/}

Gulf States Utilities Company, et al. ("Applicants") oppose admission of all twelve contentions proposed by Joint Intervenors. All the proposed contentions fail to satisfy the requirements of 10 C.F.R. §2.714 for specificity and basis. They are thus inadmissible. Furthermore, Contentions 1, 6, 7, 9, and 10 constitute challenges to the NRC's regulations. As such, they are inadmissible in the absence of a showing of special circumstances. No such showing has been made. Additionally, Contention 1 fails to put the parties on notice of what Joint Intervenors seek to litigate. This constitutes another ground on which to deny its admission. Accordingly, the Board should deny admission to Joint Intervenors' offsite emergency planning contentions.

Legal Background

The rules governing emergency planning for the U.S. Nuclear Regulatory Commission ("NRC" or "Commission") are contained in 10 C.F.R. §50.47 and 10 C.F.R. Part 50,

^{3/} Letter to Licensing Board from L.B. Watkins (March 9, 1984).

^{4/} Letter to Licensing Board from I.D. Lindsey (March 7, 1984).

Appendix 2. Further regulatory guidance has been provided in NUREG-0654, FEMA-REP-1 (Rev. 1) (November 1980) ("NUREG-0654"). NUREG-0654 does not constitute the only method of meeting applicable regulatory requirements for emergency planning. In the absence of other evidence, however, adherence to NUREG-0654 demonstrates compliance with the NRC's emergency planning regulations.^{5/}

Pursuant to these rules and regulatory guidance, the NRC has assumed responsibility for determining "that there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency."^{6/} With regard to offsite planning, the NRC bases its finding of reasonable assurance on its review of findings by the Federal Emergency Management Agency ("FEMA") as to "whether State and local emergency plans are adequate and whether there is reasonable assurance that they can be implemented."^{7/} Thus, the NRC has not undertaken the function of determining whether every detail of State and

^{5/} Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit No. 1), ALAB-698, 16 NRC 1290, 1298-99 (1982); Southern California Edison Company (San Onofre Nuclear Generating Station, Units 2 and 3), LBP-82-39, 15 NRC 1163, 1270 (1982), aff'd, ALAB-717, 17 NRC 346 (1983).

^{6/} 10 C.F.R. §50.47(a)(1).

^{7/} 10 C.F.R. §50.47(a)(2). See generally Cincinnati Gas & Electric Company (William H. Zimmer Nuclear Power Station, Unit No. 1), ALAB-727, 17 NRC 760, 764 (1983).

local plans has been completed or whether the implementing procedures for such plans have been written. Rather, the sole responsibility of the NRC and its Licensing Boards is to determine whether these plans are capable of being implemented.

There is a distinction, then, between the evolving nature of emergency plans at the time of license hearings and the finalized status of plans when a full-power operating license is granted. This distinction has been emphasized by the Appeal Board in several cases. For example, in the Zimmer operating license proceeding, the Appeal Board stated:

We agree with the applicants that emergency response plans for a particular nuclear power plant need not be in final form at the time an operating license application is noticed for hearing. This conclusion follows from the Commission's expectations that the "plans shall be an expression of the overall concept of operation; they shall describe the essential elements of advance planning that have been considered and the provisions that have been made to cope with emergency situations." 10 C.F.R. Part 50, Appendix E, Section III (emphasis supplied).^{8/}

Similarly, in the San Onofre proceeding, the Appeal Board noted that not all planning details need be determined

^{8/} Zimmer, supra, ALAB-727, 17 NRC at 770 (emphasis added by Appeal Board).

prior to the close of hearings. Citing the NRC's rulemaking on emergency preparedness, the Appeal Board stated:

Substantively, the evidence must be sufficient for the Board to conclude that the state of emergency preparedness "provides reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency period" 10 C.F.R. §50.47(a)(1). The Commission has stressed that this conclusion may be a predictive one, rather than a reflection of the actual state of emergency preparedness at the time of the Board's decision. 47 Fed. Reg. at 30233.9/

More recently, the Appeal Board reiterated this important distinction in the Waterford proceeding, explaining that, in this regard, emergency planning hearings are different from hearings on other issues.^{10/}

Under the NRC's regulatory scheme for making predictive findings as to the adequacy of offsite emergency planning, it is therefore anticipated that certain aspects of emergency plans will not be complete as of the time of a hearing and an initial decision. The Appeal Board in the Fermi proceeding specifically held that the immediate lack of complete information in the plan at the time of the hearing

9/ Southern California Edison Company (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-717, 17 NRC 346, 380 n.57 (1983) (emphasis added).

10/ Louisiana Power & Light Company (Waterford Steam Electric Station, Unit 3), ALAB-732, 17 NRC 1076, 1103-04 (1983).

would not preclude issuance of a full-power license. The Appeal Board stated:

Nor does the lack of completeness of the Monroe County plan, standing alone, preclude issuance of a full-power operating license. We recently canvassed that issue in Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-717, 17 NRC 346 (1983) and in Zimmer, supra. Those cases explained "that the Commission expects licensing decisions on emergency preparedness to be made on the basis of the best available current information." San Onofre, supra, 17 NRC at 380. But that general principle does not mandate either a final local government emergency plan or a final evaluation of offsite preparedness by FEMA, the agency that has the principal responsibility to conduct such an evaluation. The regulatory scheme set forth by the Commission, we ruled, contemplates that "hearings may properly be held [and a decision on a full-power operating license reached] at such time as the plans are sufficiently developed to support a conclusion that the state of emergency preparedness provides reasonable assurance that adequate protective measures can and will be taken . . . in the event of a radiological emergency." Zimmer, supra, 17 NRC at 775. While we could not draw a bright line respecting how much plan development would be enough for that purpose, it is plain from the Commission's regulatory requirements that offsite plans need not be complete, nor finally evaluated by FEMA prior to conclusion of the adjudicatory process.^{11/}

^{11/} Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-730, 17 NRC 1057, 1066 (1983) (brackets in original).

Many of the details which need not be included in emergency plans prior to issuance of a full-power license are subsequently set forth in implementing procedures, lesson plans, manuals, and similar documents. As the Board is well aware, this is a standard practice in the emergency planning process.^{12/} As the Appeal Board stated in the Waterford proceeding, "the implementing procedures supplement the plans with all the details that will be necessary in the event of an actual emergency."^{13/} The Appeal Board went on to hold that the content of implementing procedures is not litigable in hearings.^{14/} In sum, then, hearings on emergency preparedness should focus upon whether the plans satisfy the general requirements contained in the NRC's regulations as explained by NUREG-0654.

Argument

Contention 1

Contention 1 alleges:

The Plan does not provide reasonable assurance that it will operate to effectively protect the public health and safety in the event that its

^{12/} NUREG-0654 provides that emergency plans are to be as concise as possible and that documents may be incorporated by reference into the plans. NUREG-0654 at 29. See also The Cincinnati Gas & Electric Company (Wm. H. Zimmer Nuclear Power Station, Unit 1), LBP-82-48, 15 NRC 1549, 1575-76 (1982).

^{13/} Waterford, supra, ALAB-732, 17 NRC at 1107.

^{14/} Id. at 1107.

implementation is necessary because in numerous essential areas it provides only the barest insufficient outline of "what is to be done in an emergency, how it is to be done, and by whom," and repeatedly recites only general statements in the nature of promises apparently to be carried out at a later date.

This contention is overly broad and vague.^{15/} It does not identify the "numerous essential areas" in which Joint Intervenors allege the Plan is deficient. It does not identify the statements that Joint Intervenors allege are "promises to be carried out at a later date." Thus, it fails to put the parties on notice of what Joint Intervenors seek to litigate,^{16/} and is therefore inadmissible as a contention in this operating license proceeding.

Joint Intervenors attempt to provide a basis for Contention 1 by listing five "illustrative examples." Examples A and B quote, in part, two sentences in Section VI of the Louisiana Peacetime Radiological Response Plan ("LPRRP" or "Plan"). Example A states that the Louisiana Nuclear Energy Division ("LNED") will "make recommendations on appropriate protective response aimed at protecting

^{15/} Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), Docket Nos. 50-443-OL and 50-444-OL, "Memorandum and Order (Ruling on Contentions on the New Hampshire Radiological Emergency Response Plan)" (August 30, 1983) (slip op. at 6).

^{16/} Philadelphia Electric Company (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20-21 (1974).

public health and safety."^{17/} Joint Intervenor do not indicate why this sentence is objectionable or how it provides a basis for Contention 1.

Moreover, this sentence comes from the overview of the Plan. Joint Intervenor cannot provide a basis for its allegation that the Plan "provides only the barest insufficient outline" by taking out of context one sentence in the overview of the Plan.^{18/} Section VI of the LPRRP lists the responsibilities of State government.^{19/} First, the section sets forth those responsibilities shared by all departments of State government; then it sets forth the responsibilities of each individual State department. The section describes the broad range of State responsibilities and the way in which different State agencies will interact in carrying out these responsibilities.

Later sections in the Plan provide more detail on "what is to be done in an emergency, how it is to be done, and by whom." Section 6.III.B.1.b states that LNED will use the U.S. Environmental Protection Agency's Protective Action

^{17/} LPRRP at 20.

^{18/} The LPRRP and its organization have already been approved by NRC Licensing and Appeal Boards in the Waterford operating license proceeding. Louisiana Power and Light Company (Waterford Steam Electric Station, Unit 3), LBP-82-100, 16 NRC 1550, as modified, LBP-82-112, 16 NRC 1901 (1982), aff'd, ALAB-732, 17 NRC 1076 (1983).

^{19/} LPRRP at 17.

Guides as a basis for recommending protective actions.^{20/} Sections III.A.8 and 1.III.D. provide that the Chief Executive Office of an affected parish will initiate protective actions in coordination with the State.^{21/} Chapters 6, 7, and 8 deal with protective actions in more detail. Thus, example A does not provide a basis for Contention 1.

Example B quotes a sentence in Section VI.A.4 stating that the State government will "[e]stablish a department emergency organization to include the assignment of key department personnel to emergency response, emergency management and department liaison activities."^{22/} This sentence is contained in one of eight items listed as the common responsibility of all State departments. Thus, Joint Intervenors have again challenged a single sentence in a general overview of the responsibilities of State government. Similarly, Joint Intervenors have not indicated how this sentence supports its allegation that the Plan is deficient. Such vague statements do not satisfy the requirement of 10 C.F.R. §2.714 that the basis of each contention be set forth with reasonable specificity.

While unclear, presumably Joint Intervenors are alleging that the Plan should contain more detail. More detail,

^{20/} LPRRP at 50.

^{21/} LPRRP at 11 and 32.

^{22/} LPRRP at 17.

however, is not required by the NRC rules. Rather, the plan is to be an expression of the overall concept of operation; it is to describe the essential elements of advanced planning that have been considered and the provisions that have been made to cope with emergency situations.^{23/} Thus, the regulations limit the NRC's review of offsite emergency plans to the issue of whether the plans are capable of being implemented.^{24/} In other words, a mechanism must be in place so that protective actions can and will be taken in the event of an emergency.

There is no requirement that the Plan be as detailed as Joint Intervenors apparently expect. To the extent that Joint Intervenors allege that the Plan should contain more detail than is required by the NRC's rules and caselaw, such assertion is a challenge to the regulations. A challenge to the regulations is inadmissible in a licensing proceeding absent a showing of special circumstances.^{25/} No such showing has been made.

Example C states that "[p]rimary responsibilities of the various supporting organizations have not been specifically established." Joint Intervenors do not provide any information to support this allegation. Moreover, it is

^{23/} 10 C.F.R. Part 50, Appendix E, Section III.

^{24/} San Onofre, supra, ALAB-717, 17 NRC at 380 n.57 (1983).

^{25/} 10 C.F.R. §2.758(b).

directly contrary to the facts. The very section from which the Joint Intervenors earlier quoted is the section which specifies in detail the primary responsibilities of the sixteen State agencies designated by the Plan to respond in the event of a radiological incident having the potential for affecting the population or the environment of the State of Louisiana.^{26/} Primary responsibilities of the various supporting organizations clearly have been established. Thus, example C does not provide a basis for Contention 1.

Example D states that "[i]t is not clearly and unequivocally demonstrated that each principal organization has staff to respond to and augment its initial response on a continuous basis." Again, Joint Intervenors provide no support for this allegation. Furthermore, contrary to this assertion, section III.A.9 of the Plan states that "[t]he State will cooperate with and provide support to local governmental units in carrying out protective actions."^{27/} That section further provides that local governments are to report all resource requirements to the State.^{28/} Section V.B states that the Assistant Secretary of the Office of Environmental Affairs ("ASOEA") is responsible for assuring "continuity of resources to support a protracted, continuous

^{26/} LPRRP at 17.

^{27/} LPRRP at 11.

^{28/} Id.

operation."^{29/} Section VI.A.4 contains a direction to the various responsible State organizations to implement "[a]dequate personnel assignments . . .to sustain continuous operations for a protracted period of time."^{30/} Section VI.A.6 provides for the development and maintenance of rosters of critical department personnel and resource inventories of emergency equipment and supplies.^{31/} Thus, not only does example D not provide a basis for Contention 1, it is clear from the statements quoted above that the Plan satisfies the NRC's rules and NUREG-0654 by setting forth the requisite State and local responsibilities.^{32/} It must be presumed that the State and local governments will honor their commitments.

Example E alleges that the attachments and enclosures to the Plan have not been approved and adopted. The attachments and enclosures to the Plan are the River Bend Plan and the plans for the five parishes within the plume exposure pathway emergency planning zone ("EPZ"). While certain aspects of the parish plans were not yet complete at the time Joint Intervenors received them, these plans were

^{29/} Id. at 15.

^{30/} Id. at 17.

^{31/} Id.

^{32/} NUREG-0654, Criterion A.1.d, A.2.a, and A.4.

sufficiently complete for the state's transmittal of them to FEMA for its review.

Moreover, the NRC does not require offsite emergency plans to be final or formally approved at the time of the operating license hearing. The lack of completeness of the Plan, standing alone, does not preclude its litigation in any operating license proceeding.^{33/} While the Commission expects licensing decisions on emergency planning to be made on the basis of the best available current information, that general principle does not require a final local government plan.^{34/} Plans must merely be developed to the point that they support a conclusion that the state of emergency preparedness provides reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency.^{35/} Thus, example E fails to provide a basis for Contention 1.

In sum, Contention 1 is overly broad and vague and is therefore inadmissible. The illustrative examples put forth by Joint Intervenors as bases for Contention 1 fail to satisfy the NRC's requirements as they either lack specificity or exceed the NRC's requirements regarding the level

^{33/} Fermi, supra, ALAB-730, 17 NRC at 1066 (1983).

^{34/} San Onofre, supra, ALAB-717, 17 NRC at 380 (1983).

^{35/} Id. See also Zimmer, supra, ALAB-727, 17 NRC at 775 (1983).

of detail that must be in the Plan. Accordingly, the Board should deny admission to Contention 1.

Contention 2

The Plan does not provide reasonable assurance that the EP will operate to effectively protect the public health and safety because, as admitted in the letters included with the Plan, it is seriously deficient in numerous components, including (but not necessarily limited to) the following:

- a. Prompt Notification Systems
- b. Emergency Operations Center
- c. Back-up Means of Contacting Key EOC Personnel
- d. RBS Emergency Hotline and EOC Communications
- e. Letters of Agreement
- f. Special Facility Planning
- g. Emergency Implementing Procedures.

Contrary to Joint Intervenor's contention, the referenced letters do not provide a basis for its allegation that the Plan is "seriously deficient." Rather, these letters merely state that seven listed items are not yet in place.^{36/} In order to be admissible, a contention must allege more than the fact that certain emergency planning actions will be completed in the future.^{37/} The mere recitation of these general areas does not specify any

^{36/} The referenced letters provide no basis at all for Joint Intervenor's allegation that the Plan is deficient in components other than those listed in the letters.

^{37/} Fermi, supra, ALAB-730, 17 NRC at 1066 (1983).

litigable issue any more than would a general reference to the Plan's table of contents. No allegation is made that the Plan fails to comply with NUREG-0654 or that it is not capable of being implemented.

With regard to Joint Intervenors' allegation that the Plan is deficient because the implementing procedures are not yet complete, there is no requirement that implementing procedures be completed prior to any hearing.^{38/} In conclusion, this contention is wholly without basis and should be denied admission.

Contention 3

Contention 3 alleges:

Certain state agencies are assigned particular responsibilities in the plan which are not within their statutory authority. In addition, state agencies with certain expertise and proper statutory mandates are not charged in the plan with carrying out duties they could well accomplish under current statutes. For example, the Department of Public Safety and Corrections are [sic] now a single state department, and the Department of Natural Resources no longer has any responsibility for the activities cited.

This contention is further complicated by the fact that a new state department was created by the Louisiana Legislature to go into force on February 1, 1984. The new agency is called the Department of Environmental Quality and it is not mentioned anywhere in the plan. The legislation substantially reorganizes all agencies charged with primary

^{38/} Waterford, supra, ALAB-732, 17 NRC at 1106-07 (1983).

responsibility under this plan. Furthermore, the Office of Environmental Affairs was abolished under L.R.S. 30:1150 et seq.

Contention 3 raises no litigable issue. At the time the Plan was issued, its statement of the responsible State and local government organizations was correct. As a result of recent actions taken by the Louisiana legislature, however, the State government has been and is being reorganized. LNED, formerly under the Department of Natural Resources, is now under the Department of Environmental Quality. Similarly, there is now a Department of Public Safety and Corrections.^{39/}

As the exact structure of the State government has not been finalized yet, it is premature for the Plan to be changed. After all organizational changes have been implemented, the Plan will be amended to reflect the proper department names and responsibilities, if different from those already designated in the Plan. It should be emphasized that both the Department of Corrections and LNED retain their prior responsibilities and will perform the functions presently assigned them in the Plan.^{40/}

^{39/} Section 10, Act 97 of the 1983 Louisiana legislature transferred the functions and responsibilities of LNED and the Department of Corrections to the new departments.

^{40/} Id.

In Contention 3, Joint Intervenors have merely alleged that certain departments of the State government will be reorganized in the future. As that reorganization will merely result in an update to the Plan, Contention 3 raises no substantive litigable issue. It should be denied admission.

Moreover, the requirements of State law are beyond the ken of the NRC and its Licensing Boards.^{41/} The question of how the State government can be reorganized is fundamentally a question of State law. The Board should not, therefore, admit a contention dealing with the reorganization of the State of Louisiana's government. Rather, the Board should assure itself that the Plan is capable of being implemented.

Joint Intervenors also assert that section VI.A, which outlines the common responsibilities of all State departments, contains an "implicit admission" providing a basis for Contention 3. Joint Intervenors do not indicate what this "implicit admission" is. The NRC's rules require that the basis for a contention be set forth with reasonable

^{41/} Northern States Power Company (Tyrone Energy Park, Unit 1), ALAB-464, 7 NRC 372, 375 (1978). See also Cleveland Electric Illuminating Company (Perry Nuclear Power Plant, Units 1 and 2), ALAB-443, 6 NRC 741, 748 (1977); Southern California Edison Company (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-171, 7 AEC 37, 39 (1974); Southern California Edison Company (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-189, 7 AEC 410, 412 (1974).

specificity.^{42/} Joint Intervenors' obscure reference to Section VI.A does not satisfy this test. Therefore, Contention 3 should also be denied as lacking in the requisite basis.

Contention 4

Contention 4 alleges:

The plan does not provide reasonable assurance that the health and safety of special segments of the population within the EPZ will be adequately protected as required by NUREG-0654 II.J.10.d. For example, the plan does not satisfactorily consider the logistical difficulties inherent in the protection and evacuation of a) the local jail and prison population; b) the population of the state hospital at Jackson, LA; c) aged, crippled, sick, or hospitalized person; and, d) persons without vehicles.

Contrary to Joint Intervenors' allegations, the Plan and its attachments and enclosures address at length the protective measures, including evacuation, for the populations referenced in Contention 4. Attached to the LPRRP are the River Bend Plan and the plans for each of the five risk parishes. These plans provide the consideration Joint Intervenors allege is lacking.

With regard to local jail and prison populations, no basis is provided for this contention. Moreover, it is contrary to the facts. There are no jail and prison

^{42/} 10 C.F.R. §2.714(a)(3).

populations within the ten-mile EPZ in East and West Baton Rouge parishes, and section G.3 of the East Feliciana Parish plan,^{43/} the Pointe Coupee Parish plan,^{44/} and the West Feliciana Parish plan^{45/} discuss protective measures for incarcerated populations. Also, protection of the population in the State hospital at Jackson, Louisiana is discussed in section G.3 of the East Feliciana Parish plan.^{46/} Similarly, section G.3 of the parish plans covers transportation of persons without vehicles located within the ten-mile EPZ.^{47/} That section provides that the Civil Defense Director will keep a current list of such persons and will ensure that they are provided transportation as required.^{48/}

Similarly, with regard to aged, crippled, sick, or hospitalized persons, sections D.1.f, D.1.g, D.1.h, D.2.a, D.3, D.4, and D.6 of the East Baton Rouge Parish plan;^{49/} sections D.1.i, D.2.a, D.2.b, D.3, and D.4 of the East

^{43/} LPRRP at II-27.

^{44/} Id. at III-28.

^{45/} Id. at V-26.

^{46/} Id. at II-27.

^{47/} LPRRP at I-28, II-27, III-28, IV-24, and V-26.

^{48/} Id.

^{49/} LPRRP at I-9, I-10, I-11, I-13, and I-14.

Feliciano Parish plan;^{50/} sections D.1.f, D.1.g, D.1.h, D.2.a, D.2.b, D.3, and D.4 of the Pointe Coupee Parish plan;^{51/} sections D.1.f, D.2.a, D.3, and D.4 of the West Baton Rouge Parish plan;^{52/} and sections D.1.h, D.1.i, D.2.a, D.2.b, D.3, and D.4 of the West Feliciana Parish plan^{53/} provide the necessary planning. Thus, there is no basis for Contention 4.

Finally, while alleging that the Plan "does not satisfactorily consider" logistical difficulties, Joint Intervenor do not specify in what particular ways the Plan's consideration is unsatisfactory. Thus, Contention 4 fails to satisfy the NRC's requirement of specificity.^{54/}

Contention 5

The plan does not provide reasonable assurance that it will satisfactorily operate to protect the health and safety of the public because it omits any reference to and inclusion of the state judicial system as a necessary party to issue injunctions to enforce an evacuation order.

There is no basis for this contention. The NRC's rules, as augmented by NUREG-0654, do not require that the State

^{50/} Id. at II-9 and II-11 - II-13.

^{51/} Id. at III-9 - III-14.

^{52/} Id. at IV-8 and IV-10 - IV-12.

^{53/} Id. at V-9 - V-12.

^{54/} 10 C.F.R. §2.714(a)(3).

judicial system be a supporting organization.^{55/} Similarly, there is no requirement that the Plan assure mandatory evacuation. Thus, this contention is contrary to the NRC's rules. To the extent that Joint Intervenor's assert that the NRC should require these matters, then the contention is a challenge to the NRC's rules unaccompanied by a showing of special circumstances and is thus inadmissible in a licensing proceeding.^{56/}

Moreover, by Joint Intervenor's own admission, during the Livingston train derailment, the Louisiana State Police were able to obtain an injunction from the State courts without the courts being a party to any emergency plan. Because Joint Intervenor's have not attempted to explain why the State court system would not act responsibly, if called upon, during any possible incident at the River Bend Station as it did during the Livingston train derailment, there is no basis for this contention.

Contention 6

Contention 6 alleges:

The only mention in the plan regarding feeding evacuees is the provision for use of school lunch program food stock for mass feeding. There is no statutory authority for alternative uses of this food. The plan mentions this use under the subheading of the State Department

^{55/} 10 C.F.R. §50.47(b)(1); NUREG-0654 Criterion II.A.2.a at 32.

^{56/} 10 C.F.R. §2.758(b).

of Education. Food earmarked for the school lunch program may not be donated to alternative agencies. No contracts exist whereby the local school boards agree to keep on hand adequate food storage for evacuees, or for the state to replenish food storage so mistakenly or illegally appropriated.

Neither the NRC's rules nor NUREG-0654 call for the provision of food to evacuees.^{57/} Thus, to the extent that Joint Intervenors allege that the rules should require this, Contention 6 is a challenge to the regulations and inadmissible in this proceeding as there has been no showing of special circumstances.

Moreover, contrary to Joint Intervenors' allegation, the Plan contemplates that emergency shelter operations, including housing and feeding, will be conducted by the Louisiana Chapter of the American Red Cross, in accordance with agreements between the school boards and the Red Cross. Food used by the Red Cross is provided by the U.S.D.A. Commodities Program. Reimbursement for these supplies is made to the U.S.D.A. from Red Cross. Additionally, contrary to Joint Intervenors' assertion, school lunch program funds are subject to use under extraordinary circumstances.^{58/} Thus, this contention again raises a question of State law. As the Board indicated in the Hope Creek licensing

^{57/} NUREG II.J.10.

^{58/} The Louisiana Disaster Act of 1974, La. R.S. 29:701, 706.

proceeding, if a State indicates that it has the authority to undertake an action, it is not for the NRC to question that conclusion.^{59/} Consequently, Contention 6 should be denied.

Contention 7

Contention 7 alleges:

The plan does not provide reasonable assurance that the health and safety of transients and persons dependent on public transportation in East Baton Rouge Parish will be protected because (a) the plan fails to identify the major bus company operating in the parish, Capitol Transportation Company, its legal status, and physical capabilities; and, (b) there is no written agreement with Capitol Transportation Company identifying the emergency measures to be provided and the mutually acceptable criteria for their implementation, and specifying the arrangements for exchange of information.

Contrary to the implication of this contention, public transportation will be available to those persons in East Baton Rouge Parish who reside within the ten-mile EPZ in the event of an emergency. Transportation of persons without vehicles in this portion of East Baton Rouge Parish will be undertaken by rescue/emergency vehicles or school buses.^{60/} Additionally, contrary to Joint Intervenors' assertion,

^{59/} See Public Service Electric & Gas Company (Hope Creek Generating Station), Docket No. 50-354, "Notice of Special Prehearing Conference" (October 5, 1983) (slip op. at 4-5).

^{60/} LPRRP \$G.3 at I-28.

Appendix I-1 to the East Baton Rouge Parish plan lists the letter of agreement with Capitol Transportation Company for provision of emergency transportation services.^{61/} The Plan thus meets Criterion II.J.10.d of NUREG-0654.^{62/} There is no basis for Contention 7 and it should be denied admission.

Contention 8

Contention 8 alleges:

As of the date of this plan, the State Department of Agriculture does not have any facilities to identify and take control of agricultural products that have been contaminated during the accident. This is a state agency that does not have a statutory charge to do this monitoring and/or testing of food stuffs, and does not have trained staff and does not plan in the immediate future to acquire them. Implementation of this aspect of the plan would require new legislation of a kind not currently presented to the state legislative bodies.

Contrary to the allegations in this contention, the State Department of Agriculture is not charged with the responsibility of identifying and taking control of contaminated agricultural products. Rather, as is clearly stated at section VI.B.1.a, the State Department of Agriculture is to serve as liaison between the State and the U.S. Department of Agriculture and is to assist in the identification

^{61/} LPRRP at I-32. That letter is attached to this response.

^{62/} NUREG-0654 at 61.

and control of such agricultural products. Similarly, contrary to Joint Intervenors' allegation, the State Department of Agriculture is not charged with the responsibility of monitoring and/or testing foodstuffs. Instead, it is charged, in coordination with LNED, with sampling soil and raw crops and transporting such samples to laboratories for analysis.^{63/} Thus, the Plan does not impose responsibility upon the State Department of Agriculture for the activities alleged by Joint Intervenors. Moreover, Contention 8 does not allege that the Plan does not meet the NRC's rules.^{64/} Accordingly, there is no basis for the contention. In sum, Contention 8 should be denied admission as it fails to satisfy the requirements of 10 C.F.R. §2.714.

Contention 9

Contention 9 alleges:

The Office of Commerce and Industry may or may not assume responsibility for establishing notification procedures to establish contact during an accident. At a very minimum, this plan is required to be specific as to who will do what and will have full, binding authority and responsibility for the acts contemplated. At a very minimum, the commercial and industrial establishments to be contacted should be identified in the plan as well as the means for contacting them.

^{63/} LPRRP §VI.B.1.c.

^{64/} 10 C.F.R. 50.47(b)(10); NUREG-0654 Criterion II.J.11.

This contention is wholly without basis or specificity. It contains no allegation that the Plan does not satisfy the NRC's rules or NUREG-0654. Moreover, there is no requirement that commercial and industrial establishments be identified in the Plan and the means for contacting them established.^{65/} Thus, to the extent the contention asserts that NRC's rules should require such notification, it is a challenge to the regulations without the requisite showing of special circumstances. Furthermore, no information is set forth to provide a basis for the allegation that the Office of Commerce and Industry may not assume its responsibilities. Thus, this contention constitutes unsupported speculation and is inadmissible in this proceeding.

Moreover, contrary to the contention's implication, Figures F-2 and F-2A in the parish plans identify the commercial and industrial establishments to be contacted in the event of an emergency. The Plan also identifies the means by which they will be contacted. These establishments have special notification devices, such as tone activated alarm pagers.^{66/} The contention does not specify any particular commercial and industrial establishments Joint Intervenors believe have not been identified in the Plan nor

^{65/} 10 C.F.R. §50.47(b)(10); NUREG-0654 Criterion II.J.10.d. at 61.

^{66/} LPRRP at I-22, II-21, III-22, and V-20.

does it allege any defect in the means established for contacting them. Such broad, unsupported, and vague statements are not admissible as contentions in NRC licensing proceedings.

Contention 10

Contention 10 alleges:

The plan does not provide reasonable assurance that the parish school boards that are intended to be a part of the overall response organization for Emergency Planning Zones will have the ability to evacuate children attending schools within the 10-mile EPZ, and thereby protect the health and safety of these children because the plan does not satisfactorily account for the following facts and circumstances:

1. Nearly all the buses serving schools in West Feliciana Parish run double loads daily;
2. Most all, but two or three, of the school buses in West Feliciana Parish are privately owned, and these owner-drivers have families of their own for whose safety the owner-drivers will be primarily concerned;
3. Most of the owner-drivers in West Feliciana Parish have jobs or are self-employed in areas other than driving school buses, including agricultural pursuits, where they would not be easily communicated with and might be unavailable on short notice to satisfactorily effect a double load evacuation of the school children; and,
4. None of the agreements have been signed with owner-drivers of schools buses as of the date of the plan.
5. The above enumerated specific examples are true, to a greater or lesser extent, in the other parishes located in the ten-mile EPZ.

6. The plan does not identify, nor does it consider, the school buses which pick up children in West Feliciana Parish and carry them to certain private schools in Mississippi.

This contention should not be admitted as it lacks the requisite basis. School buses in West Feliciana Parish usually make two runs during regular school days, but would not do so in the event of an evacuation. Instead, these buses, supplemented by buses from East Feliciana and East Baton Rouge Parishes, would make a single run. Thus, subpart 1 of Contention 10 alleges no failure to comply with the NRC's rules or deficiency in the Plan and provides no basis for the contention.

Similarly, while most of the West Feliciana Parish school buses are privately owned, this statement alleges no failure to comply with the rules or deficiency in the Plan and does not support Contention 10. There is no requirement that buses be publicly owned if they are to be used in an evacuation.^{67/}

Joint Intervenors' allegation that the bus drivers will be primarily concerned about their families also alleges no deficiency. Concern does not mean that school bus drivers will not do their job. Any allegation to the contrary is speculative and without foundation. Additionally, the bus

^{67/} 10 C.F.R. §50.47(b)(10); NUREG-0654 Criterion II.J.10.g. at 63.

drivers will receive training including, in addition to classroom training, practical drills in which each individual will demonstrate his ability to perform his assigned emergency function.^{68/} At this time, it will be assured that the bus drivers will be capable of performing their assigned tasks. Thus, subpart 2 provides no basis for Contention 10.

With regard to subpart 3, it is irrelevant that many of the bus drivers in West Feliciana Parish have other jobs. This sentence alleges no defect in the Plan. Rather, a complete roster of drivers will be kept. In the event of an evacuation, the responsible school officials will contact the bus drivers using this list. If one driver is unavailable, the dispatcher will merely move onto the next name. Thus, subpart 3 provides no basis for Contention 10.

Joint Intervenors allege in subpart 4 that none of the letters of agreement with the bus drivers have been signed. This is not the case. All letters of agreement with bus drivers in West Feliciana Parish have already been signed. Besides, from the perspective of judging whether or not the plans "can be implemented,"^{69/} the status of the letters of agreement is irrelevant. The plans reflect the discussions and understandings reached by responsible planning

^{68/} 10 C.F.R. §50.47(b)(15); NUREG-0654 Criterion O at 76.

^{69/} 10 C.F.R. §50.47(a)(2).

officials. Moreover, the plans have been forwarded to FEMA for informal review. As such, the plans as drafted can be implemented.

The status of agreements was an issue in the Waterford proceeding. There, the Appeal Board distinguished the situation in which the necessary resources were lacking from the situation in which "[a]ll that is needed are the formal agreements" for providing such resources.^{70/} The Appeal Board held that the latter situation did not constitute a deficiency in the emergency plan. Thus, Joint Intervenors' Contention 10 raises no litigable issue.

By its wording, Contention 10 is limited to alleged deficiencies in the West Feliciana Parish plan. Subpart 5 alleges that the "above-enumerated examples are true, to a greater or lesser extent, in the other parishes located in the ten-mile EPZ." This assertion is devoid of the requisite specificity and bases for a contention. Thus, it fails to provide a basis for Contention 10.

Finally, with regard to the Plan not considering the school buses which transport children in West Feliciana Parish to and from private schools in Mississippi, this subpart also provides no basis for Contention 10. There is no requirement that a plan consider the availability of

^{70/} Waterford, supra, ALAB-732, 17 NRC at 1105.

particular buses.^{71/} Any assertion to the contrary is a challenge to the regulations.

Contention 11

Omitting Joint Intervenors' quotations of the Louisiana Revised Statutes, Contention 11 essentially alleges:

Relocation of hospital patients as provided in the plan is not within the statutory authority and power of the Bureau of Emergency Medical Services. The Office of Hospitals which functions within the Department of Health and Human Resources does not have the legal authority to function for a radiological or offroad emergency. Without specific designation of authority, the Office cannot of its own, or by a grant from the Department of Environmental Quality (no where mentioned in the plan) function as outlined in the plan.

This contention is inadmissible in this NRC licensing proceeding because it requests that the Board make an interpretation of Louisiana law. As noted earlier, such is beyond the province of the NRC and its Boards.^{72/} If the State indicates that it is authorized to take an action, then the NRC should defer to that conclusion.^{73/}

^{71/} 10 C.F.R. §50.47(b)(10); NUREG-0654 Criterion II.J.10.g at 63.

^{72/} Northern States Power Company (Tyrone Energy Park, Unit 1), ALAB-464, 7 NRC 372, 375 (1978).

^{73/} Public Service Electric and Gas Company (Hope Creek Generating Station), Docket No. 50-354, "Notice of Special Prehearing Conference" (October 5, 1983) (slip op at 4-5).

Finally, contrary to the assertion in Contention 11, the Plan indicates merely that the Bureau of Emergency Medical Services ("Bureau") will "support the relocation of hospital patients from hospitals within the risk areas to identified hospitals, during an accident."^{74/} The Plan also states that the Bureau will "assist in the provision of mass emergency medical transportation resources to be used for the relocation of hospital patients during an accident."^{75/} Thus, the Plan does not state that the Bureau will relocate hospital patients. There is no basis for Contention 11.

Contention 12

Contention 12 alleges:

The plan does not provide reasonable assurance that the East Baton Rouge Metropolitan Council has the legal authority to carry out its responsibilities outlined in the plan (I-D-1.a) as required by NUREG-0654 II.A.2.b, and to the extent that this legal authority is in question, the plan's sufficiency to protect the public health and safety is jeopardized. In particular, the East Baton Rouge Metropolitan Council does not have the legal authority to authorize emergency workers to incur exposure in excess of general public PAG's. Furthermore, many emergency workers, such as those employed by the East Baton Rouge School Board, the East Baton Rouge Sheriff's Department, and other agencies do not come under the supervision and control of the East Baton Rouge Metropolitan Council.

^{74/} LPRRP §IV.8.a (emphasis added).

^{75/} LPRRP §IV.8.b (emphasis added).

This contention challenges the authority of the East Baton Rouge Metropolitan Council to authorize emergency workers to incur exposures in excess of general public protective action guides ("PAG's"). Contrary to Joint Intervenors' allegation, pursuant to the Louisiana Disaster Act of 1974, emergency workers are within the authority of the mayor-president of the East Baton Rouge Parish.^{76/} Thus, Joint Intervenors have again raised a question of State law, beyond the ken of the NRC and its Licensing Boards.^{77/} Contention 12 should not be admitted as lacking in the requisite basis.

Conclusion

In sum, the twelve offsite emergency planning contentions proposed by Joint Intervenors should be denied admission to this proceeding. None of them meets the basis and specificity requirements of 10 C.F.R. §2.714. Additionally, Contentions 1, 6, 7, 9, and 10 are challenges to the NRC's regulations unaccompanied by a showing of special circumstances. Contention 1 does not apprise the parties of what Joint Intervenors seek to litigate. Joint Intervenors' emergency planning contentions thus fail to satisfy the

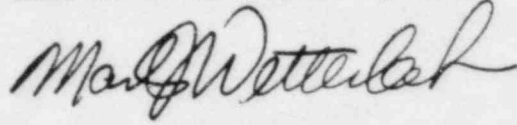
^{76/} La. R.S. 29:701, 706.

^{77/} See footnotes 41, 59, and 72-73 & accompanying text.

requirements of the NRC's rules and applicable caselaw and should be denied.

Respectfully submitted,

CONNER & WETTERHAHN, P.C.

A handwritten signature in dark ink, appearing to read "Mark J. Wetterhahn", written in a cursive style.

Troy B. Conner, Jr.
Mark J. Wetterhahn
Jessica H. Lavery

Counsel for the Applicants

March 26, 1984



Capitol Transportation Corporation

1111 Seneca Street — Baton Rouge, Louisiana 70805

Telephone (504) 343-8331

December 5, 1983

Mr. Larry Gibbens
Civil Defense Director
East Baton Rouge Parish
P.O. Box 1471
Baton Rouge, Louisiana 70821

Dear Mr. Gibbens:

I am confirming the Capitol Transportation Corporation's (CTC) commitment to assist the Civil Defense in accordance with the River Bend Station Attachment to the Louisiana Peacetime Radiological Response Plan.

In the event an incident at the River Bend Station requires evacuation of the general public, CTC will provide approximately 35 to 45 busses and drivers for transportation of evacuees as needed.

Sincerely,

CAPITOL TRANSPORTATION CORPORATION

David Wilson, Manager

DW/awa

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
GULF STATES UTILITIES)	Docket Nos. 50-458 OL
COMPANY, <u>et al.</u>)	50-459 OL
)	
(River Bend Station, Unit 1)	
and 2)	

SERVICE LIST

I hereby certify that copies of "Applicants' Answer to the Contentions Filed by Joint Intervenor on Offsite Emergency Planning," dated March 26, 1984 in the captioned matter, have been served upon the following by deposit in the United States mail this 26th day of March, 1984:

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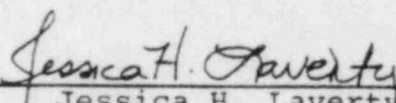
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