



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

C. R. R. R.
31

December 7, 1977

MEMORANDUM FOR: Roger S. Boyd, Director, DPM
Harold R. Denton, Director, DSE
Roger J. Mattson, Director, DSS
Victor Stello, Jr., Director, DOR

FROM: Edson G. Case, Acting Director
Office of Nuclear Reactor Regulation

SUBJECT: GENERIC TECHNICAL ACTIVITIES

Enclosed for your information are several pages extracted from a decision issued by the Atomic Safety and Licensing Appeal Board on November 23, 1977 (ALAB-444), that deal with the subject of the NRR Technical Activities Program.

Since the initiation of this program, it has been understood that eventually we would be required to specifically justify why we feel it is acceptable to continue licensing and/or operating nuclear plants in light of these identified outstanding generic matters. It appears that now is the time to formalize our views in this regard. In light of ALAB-444, we can expect that licensing boards will require us to furnish this information on each of the generic technical activities in future licensing proceedings.

To prepare for this eventuality, each Task Manager of a Category A technical activity should prepare a short write-up, in the format of and containing the information indicated in Enclosure 2. (The format has been selected so that the write-up can be inserted directly in the Task Action Plan.) Please provide draft versions of these write-ups to Mike Aycock by COB on December 15, 1977. Following review by the TASC Advisory Group, and revision as necessary in comparison text format, the write-ups will be provided to you for comment or concurrence.

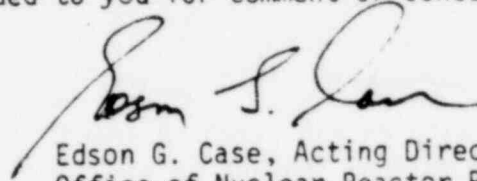
A justification for not addressing Category B and lower priority generic

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December 7, 1977

tasks on an issue-by-issue basis in SERs will be developed by the Advisory Group and also provided to you for comment or concurrence.



Edson G. Case, Acting Director
Office of Nuclear Reactor Regulation

Enclosures:

1. Pages from ALAB-444
2. Format Sample

cc: R. Deyoung
NRR Assistant Directors
Task Managers
Advisory Group
PDR



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R. Tedesco
P-822

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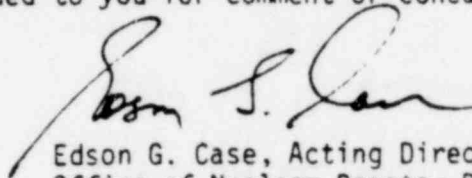
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Multiple Addressees

- 2 -

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PDR

ENCLOSURE 2

INFORMATION TO BE PROVIDED

FOR EACH CATEGORY A TASK

TO ADDRESS ALAB-444

APPLICABILITY

State the type of nuclear plant to which the task applies, e.g., BWRs, PWRs, LWRs, Mark I containments, Westinghouse plants.

BASIS FOR CONTINUED PLANT OPERATION AND LICENSING
PENDING COMPLETION OF TASK

(Anticipated results of task action plan - Brief discussion of what general results are anticipated from the task plan, e.g., confirmation of current licensing criteria, more stringent licensing requirements, relaxed licensing requirements, quantification of safety margins ... etc.)

(Interim measures - Briefly describe the interim measures or current licensing requirements that are relied upon to assure plant safety while the task is being worked on.)

(Alternative Courses of Action - Briefly describe alternative means of justifying continued operation and licensing should the anticipated results discussed above not be realized, e.g., Design modifications? De-rating? Increased surveillance? Continue with current licensing requirements?)

(Summary - In view of the various considerations, state why it is acceptable to continue with plant licensing or operation pending ultimate resolution of the issue addressed by the task action plan.)

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD

Alan S. Rosenthal, Chairman
Dr. John H. Luck
Michael C. Farrar

1977 Nov 25 4:31

1-11-1110

In the Matter of

GULF STATES UTILITIES COMPANY

(River Bend Station, Units 1 and 2)

Docket Nos. 50-458
50-459

*Brenner/Brock
Hoefling/Lewis*

Messrs. William J. Cusick, Jr., Attorney General,
and Richard M. Troy, Jr., Assistant Attorney General,
New Orleans, Louisiana, and Mr. Anthony Z. Roisman
and Ms. Karin P. Sheldon, Washington, D. C.,
for the State of Louisiana.

Messrs. Troy B. Conner, Jr. and Mark J. Vetterhahn,
Washington, D. C., for Gulf States Utilities
Company, applicant.

Messrs. Lawrence Brenner and Richard K. Hoefling for
the Nuclear Regulatory Commission staff.

Ms. Karin P. Sheldon, Washington, D. C., for Union
of Concerned Scientists, petitioner for intervention.


DECISION

November 23, 1977

(ALAB-444)

This construction permit proceeding involves Units 1
and 2 of the River Bend Station, to be located on the east
bank of the Mississippi River in West Feliciana Parish,
Louisiana. In ALAB-317, 3 NRC 175 (1976), we reviewed

3. The failure of the State to have asserted the requisite nexus between, on the one hand, the River Bend facility and, on the other, the TSAR items and the newly issued regulatory guides in question is thus dispositive of the complaint respecting the Licensing Board's treatment of the attempt to raise issues on the basis of those items and guides. Nonetheless, a few additional observations are in order at this point.



The responsibilities of a licensing board in the radiological health and safety sphere are not confined to the consideration and disposition of those issues which may have been presented to it by a party or an "interested State" with the required degree of specificity. To the contrary, irrespective of what matters may or may not have been properly placed in controversy, prior to authorizing the issuance of a construction permit the board must make the finding, inter alia, that there is "reasonable assurance" that "the proposed facility can be constructed and operated at the proposed location without undue risk to the health and safety of the public". 10 CFR 50.35(a). To be sure, in the absence of a contest on a particular safety matter, the board need not duplicate the staff's review. Nonetheless, as previously noted (supra, pp.8-9), to discharge its functions properly

it must pass judgment upon whether that review "has been adequate". 10 CFR Part 2, Appendix A, Section V(f) (Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-116 AEC 331, 335 (1973), reversed on other grounds sub nom. Aeschliman v. NRC, supra.^{26/} Of necessity, this determination will entail an inquiry into whether the staff review satisfactorily has come to grips with any unresolved generic safety problems which might have an impact upon operation of the nuclear facility under consideration.

The SER is, of course, the principal document before the licensing board which reflects the content and outcome of the staff's safety review. The board should therefore

^{26/} Although Section V(f)(2) of Appendix A to Part 2 is expressly directed to licensing board responsibilities in "an uncontested case", the obligation to determine whether the staff safety review was "adequate" obviously is equally applicable to the uncontested portions of a case in which some matters have been placed in controversy. It would make no sense at all to construe the Appendix otherwise; e.g., to conclude that the licensing boards must make such a determination if no issues are contested but need not do so if an intervenor has entered the proceeding for the purpose of raising environmental matters. Rather, the only reasonable interpretation is that the intended distinction insofar as licensing board treatment in a construction permit proceeding is concerned is between issues in contest and matters which have not been placed in controversy. With respect to the former, the board must resolve the controversy and also decide whether the required safety and environmental findings can be made. Section V(f)(1). With respect to the latter, the board must decide whether the staff's review has been adequate to support such findings.

be able to look to that document to ascertain the extent to which generic unresolved safety problems which have been previously identified in a TSAR item, a Task Action Plan, an ACES report or elsewhere have been factored into the staff's analysis for the particular reactor -- and with what result. To this end, in our view, each SER should contain a summary description of those generic problems under continuing study which have both relevance to facilities of the type under review and potentially significant public safety implications.

This summary description should include information of the kind now contained in most Task Action Plans. More specifically, there should be an indication of the investigative program which has been or will be undertaken with regard to the problem, the program's anticipated time-span, whether (and if so what) interim measures have been devised for dealing with the problem pending the completion of the investigation, and what alternative courses of action might be available should the program not produce the envisaged result.

In short, the board (and the public as well) should be in a position to ascertain from the SER itself -- without the need to resort to extrinsic documents -- the staff's

perception of the nature and extent of the relationship between each significant unresolved generic safety question and the eventual operation of the reactor under scrutiny. Once again, this assessment might well have a direct bearing upon the ability of the licensing board to make the safety findings required of it on the construction permit level even though the generic answer to the question remains - in the offing. Among other things, the furnished information would likely shed light on such alternatively important considerations as whether (1) the problem has already been resolved for the reactor under study; (2) there is a reasonable basis for concluding that a satisfactory solution will be obtained before the reactor is put in operation;^{27/} or (3) the problem would have no safety implications until after several years of reactor operation and, should it not be resolved by then, alternative means will be available to insure that continued operation (if permitted at all) would not pose an undue risk to the public.^{28/}

^{27/} See 10 CFR 50.35(a)(4), quoted at p. 31, infra.

^{28/} We need not pause to consider whether we might have the power to direct (rather than simply to urge) the inclusion in SERS of the information referred to in the text above. In all events, the licensing boards

(FOOTNOTE CONTINUED ON NEXT PAGE).

C. We have seen that although the Licensing Board rejected the State's endeavor to inject the TSAR items and newly issued regulatory guides into the proceeding as issues in controversy, it did allow the State to raise issues based upon the indication in the SER that, with respect to certain reactor components and features, additional information would be required before a definitive safety finding were made respecting that component or feature. To the extent deemed necessary, we shall discuss these so-called "SER items" individually in a later portion of this opinion.^{29/} At the threshold, however, some attention must be given to the State's broad claim that, as a matter of law, issuance of construction permits could not be authorized until after

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plainly have the authority to insist that the information be supplied on the record -- if not through the vehicle of the SER then by other evidence. This being so, the interests of the staff -- as well as those of the boards and other parties -- will be best served by insuring that the information (to the extent available) is at hand before the evidentiary hearing on radiological health and safety matters commences. Otherwise, there will be a high potential for delay in the progress of the hearing. More likely than not, the hearing will have to be adjourned to allow for the belated submission of the information. And, once it has been submitted, the licensing board may be confronted with the necessity to provide time for additional discovery or the preparation of rebuttal evidence.

29/ As part of our review sua sponte of those aspects of the Licensing Board's decision which did not involve matters properly placed in controversy, we will also consider some of the TSAR and regulatory guide questions sought to be raised by the State.

the informational gaps pointed to in the SER had been filled.

In advancing this claim, the State has disavowed any assertion that all design details of a facility must be supplied at the construction permit stage, or that answers to all questions bearing on safety must be reached prior to issuance of a construction permit. Such disavowal was necessary in light of PRDC v. International Union, supra, in which the Supreme Court long ago gave its approval to the Commission's two-step licensing procedure and explicitly sanctioned the deferral of "a definitive safety finding until operation is actually licensed". 367 U.S. at 407. Rather, the question which the State poses goes to the extent to which safety information must be supplied (or, conversely, need not be supplied) prior to authorization of construction.

Our examination of this question starts with 10 CFR 50.35(a), which permits issuance of a construction permit so long as the following findings can be made:

- (1) the applicant has described the proposed design of the facility, including, but not limited to, the principal architectural and engineering criteria for the design, and has identified the major features or components incorporated therein for the protection of the health and safety of the public;

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DECISION

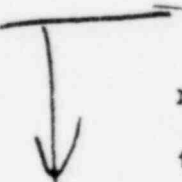
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