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September 13, 1979

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	Docket Nos. 50-321
GEORGIA POWER COMPANY)	50-366
(Edwin I. Hatch Nuclear Plant,)	(Proposed Amendment for
Unit Nos. 1 and 2))	Spent Fuel Pool Expansion)

LICENSEE'S ANSWER TO PETITION
FOR LEAVE TO INTERVENE OF
GEORGIAN AGAINST NUCLEAR ENERGY

On August 15, 1979, the Nuclear Regulatory Commission published in the Federal Register a notice that it was considering issuance of a proposed amendment to the operating licenses for the Edwin I. Hatch Nuclear Plant, Unit Nos. 1 and 2 in connection with an increase of the spent fuel storage capacity of these units. 44 Fed. Reg. 47820. The notice provided that written petitions for leave to intervene by persons whose interest might be affected by the proceeding and who wished to participate were to be filed by September 14, 1979.

A petition for leave to intervene dated September 14, 1979 has been filed in this proceeding by Georgians Against Nuclear Energy (GANE). Georgia Power Company, Oglethorpe Power Corporation (formerly Oglethorpe Electric Membership Corporation), Municipal Electric Authority of Georgia and City of Dalton (Licensee) respectfully submit that GANE's petition fails to meet the requirements of the Commission's Rules of Practice. Licensee further requests that the Commission or the Chairman of the Atomic Safety and Licensing

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Panel promptly designate an Atomic Safety and Licensing Board so that the first prehearing conference may be promptly scheduled and the petition acted upon.

The Commission's Rules of Practice, 10 CFR §2.714, set forth two basic requirements for petitions for leave to intervene. First, the petitioner must adequately set forth his interest in the proceeding. Second, the petitioner must specify appropriate contentions which he desires to litigate. Since 10 CFR §2.714(b) does not require a petitioner to list his contentions until 15 days prior to the first prehearing conference, Licensee will not at this time comment on the "contentions" set forth in GANE's petition. Licensee will submit comments on GANE's contentions prior to the prehearing conference.

As for GANE's interest, Licensee believes that the petition has not met the requirements established by the Commission. As was described in the August 15, 1979, Federal Register notice, the Commission's rules (10 CFR §2.714(a)) require that a petition for leave to intervene set forth with particularity the petitioner's interest in the proceeding and how that interest would be affected by the results of the proceeding. These rules also specify that the petition describe the reasons why petitioner should be permitted to intervene with particular reference to

1. the nature of his right under the Atomic Energy Act to be made a party;

2. the nature and extent of the petitioner's property, financial or other interest in the proceeding; and
3. The effect of any order which may be issued in the proceeding on petitioner's interest.

GANE's petition does not meet these requirements.

Judicial standards are used to determine whether a petitioner has made a sufficient allegation of personal interest to warrant the intervention as a matter of right. Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 613-614 (1976). Following these standards, a petitioner must (1) allege that some injury has occurred or will probably occur as a result of the proposed action, and (2) allege an interest arguably within the zone of interests protected by the statute. Id. No cognizable interest is presumed. Rather, there must be a concrete demonstration that harm to the petitioner will or could flow from an unfavorable outcome. Nuclear Engineering Co., Inc. (Sheffield, Illinois, Low-Level Radioactive Waste Disposal Site), ALAB-473, 7 NRC 737, 743 (1978).

GANE's petition states that its interest is based on the concern that increased spent fuel storage at the Hatch facility

increases the risk to its members and the general public to exposure to radioactive waste products which can seriously affect the health and safety of the citizens of Georgia and other states and seriously affect the quality of the environment.

Petition, p. 2.* GANE's interest cannot, of course, be based upon the "risk to . . . the general public" or the "health and safety of the citizens of Georgia and other states." As §2.714(a) makes clear, GANE must show how its interest is or may be affected.

GANE's showing of interest can only be based upon the interest of its members. Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC ____ (April 4, 1979) (slip op. at 24). The member identified by GANE in its petition lives in Decatur, Georgia. Affidavit of John de Castro, attached to GANE petition. According to the Rand McNally Road Atlas, Decatur is approximately 168 miles from Baxley, Georgia, the site of the Hatch facility. This distance is not in "reasonable proximity" to the site, the test established by the Appeal Board. Duquesne Light Co. (Beaver Valley Power Station, Unit No. 1), ALAB-109, 6 AEC 243, 244 n.2 (1973). See also Dairyland Power Cooperative (LaCross Boiling Water Reactor), ALAB-497, 8 NRC 312 (1978) (Appeal Board affirms ASLB finding that petitioners, who reside more than 75 miles from the facility, have not shown sufficient interest); Tennessee Valley Authority (Browns Ferry Nuclear Plant, Units 1 and 2), LBP-76-10, 3 NRC 209, 215 (1976) (residence 65 miles from site not automatically a sufficiently localized interest).

* The Petition also states a "concern about the additional financial burdens this proposal will impose on consumers of electricity in Georgia." GANE's interest as a utility ratepayer is not cognizable in NRC proceedings. Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), supra, at 614.

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Nor does the petitioner show how Mr. de Castro's interest might be affected aside from the vague, unspecific claim that there would be "exposure to radioactive waste products." Petition, p. 2. This hardly complies with the particularity test established by 10 CFR §2.714. As the Appeal Board stated in Allied General Nuclear Services (Barnwell Fuel Receiving and Storage Station), ALAB-328, 3 NRC 420, 422 (1976), there must be "a particularization of how the interests of one or more members of the [petitioner] might be adversely affected by the grant of the . . . license." For all of these reasons, Licensee submits that GANE has not shown standing to intervene as of right.

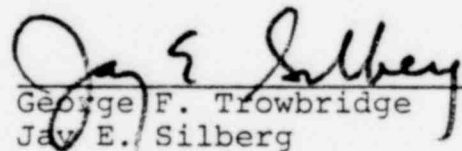
Nor has GANE shown that it should be granted intervention as a matter of discretion. In Pebble Springs, CLI-76-27, supra, the Commission directed that licensing boards, using guidelines specified in that decision, should exercise their discretion on granting intervention to petitioners not entitled to intervene as a matter of right. Of the six factors identified in Pebble Springs, the foremost is whether GANE's participation would likely produce a valuable contribution to the decision-making process. Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-113, 5 NRC 1418, 1422 (1977). See also Public Service Company of Oklahoma (Black Fox Station, Units 1 and 2), ALAB-397, 5 NRC 1143, 1151 and n.14 (1977); Virginia Electric and Power Co. (North Anna Power Station, Units 1 and

2), ALAB-363, 4 NRC 631, 633 (1976). GANE has indicated nothing to suggest that such a contribution would be likely in this proceeding. Nor has GANE made any attempt to show that discretionary intervention is warranted on the basis of any other factor. Of particular note is the delay factor ("the extent to which the petitioner's participation will inappropriately broaden or delay the proceeding"). In this license amendment proceeding, there would be no hearing absent GANE's petition.

For the reasons set forth above, Licensee respectfully submits that GANE's petition does not meet the standards established by 10 CFR §2.714. We would urge that an Atomic Safety and Licensing Board be promptly appointed and the first prehearing conference scheduled. This will enable an early ruling on GANE's petition and assure that the spent fuel pool modification may proceed on a timely basis.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

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Dated:

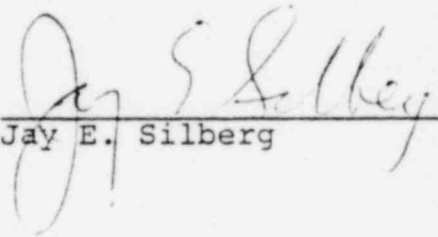
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CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing "Licensee's Answer to Petition for Leave to Intervene of Georgians Against Nuclear Energy" were served by deposit in the U. S. Mail, first class, postage prepaid, this 28th day of September, 1979, to all those on the attached Service List.



Jay E. Silberg

Dated: September 28, 1979

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