

DUCKETT
USNRC
February 10, 1984

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
GEORGIA POWER COMPANY, ET AL.) Docket Nos. 50-424
) 50-425
(Vogtle Electric Generating Plant,)
Units 1 and 2))

APPLICANTS' ANSWER TO PETITIONS FOR LEAVE TO
INTERVENE AND REQUESTS FOR HEARING

I. Introduction

On December 28, 1983, notice was published in the Federal Register concerning the application of Georgia Power Company, acting for itself and as agent for Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and the City of Dalton, Georgia (hereinafter the Applicants), for licenses to operate the Vogtle Electric Generating Plant, Units 1 and 2. 48 Fed. Reg. 57183 (1983). The notice afforded interested persons until January 27, 1984 to request a hearing and petition to intervene. Id. at 57184. On January 26, 1984, Campaign for a Prosperous Georgia (CPG) filed a "Petition for Leave to Intervene and Request for Hearing;" Georgians Against Nuclear Energy and Coastal Citizens for a Clean Environment (GANE/CCCE) filed a "Joint Petition for Leave to Intervene and Request for Hearing;" and Deppish Kirkland III (CUC) filed a "Peti-

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tion for Leave to Intervene of the Consumers' Utility Counsel of Georgia." In addition, CPG and GANE/CCCE each filed a "Request for a Hearing in Atlanta."

In order to be granted party status in an NRC licensing proceeding, a petitioner must 1) demonstrate a cognizable interest that may be affected, and 2) plead at least one admissible contention. 10 C.F.R. § 2.714. However, a petitioner has until 15 days prior to the special prehearing conference (to be scheduled by the Atomic Safety and Licensing Board) to submit its contentions. Accordingly, Applicants address here only whether the petitioners have demonstrated the requisite interest.^{1/} A determination whether to grant a petition must await the filing of contentions, although a petition should be denied at this time if a sufficient interest is not shown.

The Commission's Rules of Practice, at 10 C.F.R. § 2.714(a), require that a petitioner "set forth with particularity" its interest and how that interest may be affected. With respect to a petitioner's interest, contemporary concepts of judicial standing are to be used in allowing or disallowing intervention. Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 & 2), CLI-76-27, 4 N.R.C.

^{1/} Applicants note that some of the aspects of the subject matter as to which petitioners wish to intervene are clearly beyond the scope of the proceeding, but propose to await the filing of contentions and at that time address whether issues are litigable.

610, 613-14 (1976).^{2/} Nevertheless, it is generally assumed that an individual has the requisite interest if he resides in close proximity to the plant. Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), ALAB-522, 9 N.R.C. 54, 56 (1979). Furthermore, an organization may derive standing from a member who has the requisite interest and who authorizes representation;^{3/} but in cases where authorized representation cannot be inferred (as in those instances where it is not clear that the sole or primary purpose of an organization is to oppose nuclear power in general or the particular plant), a specific representational authorization must be provided. Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 N.R.C. 377, 396-97 (1979).

II. The Campaign for a Prosperous Georgia Petition

CPG has submitted affidavits of members residing in proximity to the plant and authorizing representation.

^{2/} The standing test is bifurcated. A petitioner must allege 1) "injury in fact" -- some injury that has resulted or will probably result -- and 2) an interest "arguably within the zone of interest protected by the statute." Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 N.R.C. 610, 613 (1976), citing Sierra Club v. Morton, 405 U.S. 727 (1972); Warth v. Seldin, 422 U.S. 490 (1975).

^{3/} An organization may invoke representational standing when 1) its members would otherwise have standing to sue in their own right; 2) the interests it seeks to protect are germane to the organization's purpose; and 3) neither the claim asserted nor the relief requested requires the participation of the individual members. Hunt v. Washington State Apple Advertising Commission, 432 U.S. 333, 343 (1977).

CPG also has indicated the aspects of the subject matter as to which it wishes to intervene. Applicants do not object to CPG's interest.

III. The Joint Petition

GANE has submitted affidavits of members who reside in proximity to the plant and who have authorized representation. Applicants do not object to GANE's interest. CCCE, however, has not submitted affidavits of members who reside in proximity to the plant. William T. McLaughlin, the sole affiant in support of CCCE, does not indicate that he lives in proximity to the plant; instead, he avers that he resides in "Savannah, Georgia, which is downwind and downriver" from the plant. Savannah is approximately 85 miles from the plant. FSAR, Fig. 2.1.1-1. This distance far exceeds that which is generally considered appropriate. See Dairyland Power Cooperative (LaCross Boiling Water Reactor), ALAB-497, 8 N.R.C. 312, 313 (1978); Philadelphia Electric Co. (Limerick Generating Station, Units 1 & 2), LBP-82-43A, 15 N.R.C. 1423, 1433 (1982). Compare TVA (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 N.R.C. 1418, 1421 n.4 (1977). In addition, the CCCE affiant has not authorized CCCE to join with GANE, nor has he authorized GANE to represent his interest. Nor has CCCE authorized GANE to represent it. Accordingly, CCCE should not be permitted to intervene as a name party even jointly with GANE, absent a curing of the present deficiencies in the petition as submitted.

IV. The Consumers' Utility Counsel Petition

The Consumers' Utility Counsel (CUC) has advised Applicants of his intention to withdraw his petition to intervene in this proceeding. Applicants therefore are not responding to the CUC petition at this time.

V. Petitioners' Requests to Hold Hearings in Atlanta

With respect to the CPG and GANE/CCCE requests that the hearings be held in Atlanta, Applicants submit that the requests should be denied. Hearings in this case, including the initial prehearing conferences, should be held close to the plant. Atlanta is approximately 150 miles from the plant. That distance may substantially foreclose the local public from participating or observing the proceedings.^{4/} The prehearing conferences and evidentiary hearings during the construction permit proceeding were held in Augusta and Waynesboro, which are 26 and 15 miles from the plant respectively. FSAR at 1.2.1-1. The local

^{4/10} C.F.R. Part 2, App. A states: "Particularly in cases where it is evident that there is local concern as to the safety of the plant, boards should so conduct the hearing as to give appropriate opportunity for local citizens to express their views while at the same time protecting the legal interests of all parties and the public interest in an orderly and efficient licensing process."

Most adjudicatory hearings are held near the relevant nuclear reactor site usually in the nearest sizeable city or town. Citizens Advisory Board of the Metropolitan Area Planning Council for Omaha, Nebraska, and Council Bluffs, Iowa, DPRM-81-1, 13 N.R.C. 429, 441 (1981). The NRC has consistently followed this practice.

public document room has been set up at the Burke County Library in Waynesboro, and there are some hearing facilities in Waynesboro and more opportunities in Augusta (including a U. S. Courthouse). Applicants recently have moved the entire Vogtle Project Office from Atlanta to the Vogtle Plant site, which means most of Applicants' management and technical personnel who can be expected to play a support or direct role in the proceeding will be located at the Vogtle site. In addition, there are numerous flights from the District of Columbia to Augusta, and from Atlanta to Augusta. Therefore, Applicants oppose the requests that the hearings be held in Atlanta.

VI. Service

Pursuant to 10 C.F.R. § 2.708, Applicants request that service upon Applicants be made at the following addresses:

Ernest L. Blake, Jr.
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Washington, D. C. 20036

James E. Joiner
Troutman, Sanders, Lockerman,
& Ashmore
127 Peachtree Street, N. W.
Atlanta, GA 30043

Ruble A. Thomas
Southern Company Services, Inc.
P. O. Box 2625
Birmingham, Alabama 35202

VII. Conclusion

For the reasons stated above, Applicants:

1. Do not object to the interests of CPG or GANE;
2. Submit that petitioner CCCE has not demonstrated a cognizable interest and should not be permitted to intervene as a named party even jointly with GANE; and
3. Oppose the requests to hold hearings in Atlanta.

Respectfully submitted,

Ernest L. Blake, Jr.

George F. Trowbridge, P.C.
Ernest L. Blake, Jr., P.C.
David R. Lewis
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James E. Joiner
Sumner C. Rosenberg
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(404) 658-8000

Counsel for Applicants

Dated: February 10, 1984

February 10, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

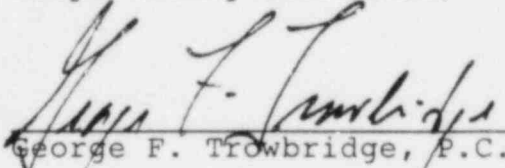
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
GEORGIA POWER COMPANY, <u>ET AL.</u>)	Docket Nos. 50-424
)	50-425
(Vogtle Electric Generating Plant,)	
Units 1 and 2))	

NOTICE OF APPEARANCE

The undersigned, being an attorney at law in good standing admitted to practice before the Courts of the District of Columbia and the Court of Appeals of the State of New York, hereby enters his appearance as counsel on behalf of Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and the City of Dalton, Georgia, in proceedings related to the above-captioned matter.

Respectfully submitted,


George F. Trowbridge, P.C.

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Dated: February 10, 1984

February 10, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

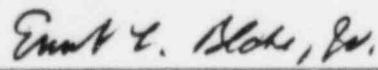
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NOTICE OF APPEARANCE

The undersigned, being an attorney at law in good standing admitted to practice before the Courts of the District of Columbia, hereby enters his appearance as counsel on behalf of Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and the City of Dalton, Georgia, in proceedings related to the above-captioned matter.

Respectfully submitted,


Ernest L. Blake, Jr., P.C.

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Dated: February 10, 1984

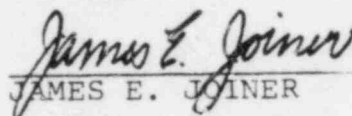
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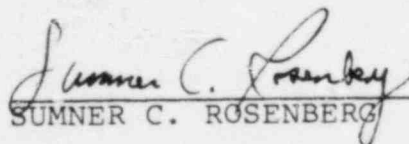
In the Matter of

GEORGIA POWER COMPANY,	:	
OGLETHORPE POWER CORPORATION,	:	
MUNICIPAL ELECTRIC AUTHORITY	:	DOCKET NOS.
OF GEORGIA,	:	50-424
and	:	50-425
CITY OF DALTON, GEORGIA,	:	
	:	
Applicants.	:	
	:	
(Vogtle Electric Generating	:	
Plant, Units 1 and 2)	:	

NOTICE OF APPEARANCE

The undersigned, being attorneys at law in good standing admitted to practice before the Courts of the State of Georgia and the United States Court of Appeals for the Eleventh Circuit, hereby enter their appearance as counsel on behalf of the above identified applicants in proceedings related to the above-captioned matter.


JAMES E. JOINER


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(404) 658-8000

Dated: February 8, 1984

February 10, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
GEORGIA POWER COMPANY, <u>ET AL.</u>)	Docket Nos. 50-424
)	50-425
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NOTICE OF APPEARANCE

The undersigned, being an attorney at law in good standing admitted to practice before the Courts of the District of Columbia, hereby enters his appearance as counsel on behalf of Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and the City of Dalton, Georgia, in proceedings related to the above-captioned matter.

Respectfully submitted,



David R. Lewis

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Dated: February 10, 1984

February 10, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing "Applicants' Answer to Petitions for Leave to Intervene and Requests for Hearing," "Notice of Appearance" of George F. Trowbridge, "Notice of Appearance" of Ernest L. Blake, Jr., "Notice of Appearance" of James E. Joiner and Sumner C. Rosenberg, and "Notice of Appearance" of David R. Lewis, were served by deposit in the United States Mail, First Class, postage prepaid, this 10th day of February, 1984, to all those on the attached service list.

Ernest L. Blake, Jr.

Ernest L. Blake, Jr., P.C.

Dated: February 10, 1984

February 10, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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