

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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Before the Atomic Safety and Licensing Board

OFFICE OF SECRETARY  
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In the Matter of:

GEORGIA POWER COMPANY, ET AL.  
(Vogtle Electric Generating  
Plant, Units 1 and 2

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Docket Nos. 50-424  
50-425  
(OL)

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INTERVENORS' BRIEF IN SUPPORT OF  
MOTION FOR PROTECTIVE ORDER  
AND RESPONSE TO APPLICANTS' MOTION TO COMPEL

In a Memorandum and Order filed March 9, 1984, this Board found that CPG and GANE had fulfilled the requirements of 10 C.F.R. 2.714 and established their respective interests to participate as intervenors in this adjudicatory proceeding. Full party status for each group was dependent on the submission of at least one litigable contention. At a Special Prehearing Conference held on May 30th, the Board heard a discussion of the various contentions submitted by both CPG and GANE.

On September 5, 1984, the Board issued a Memorandum and Order on Special Prehearing Conference Held Pursuant to 10 C.F.R. 2.715a. This order admitted both CPG and GANE as party intervenors. Pursuant to the Order, CPG and GANE consolidated their efforts. The Order also set forth a

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discovery schedule regarding those contentions which were neither withdrawn nor dismissed. Pursuant to this Order the parties have exchanged various sets of Interrogatories and produced documents.

In the context of this discovery, the applicants sought to take deposition of Tim Johnson. Mr. Johnson, the Executive Director of Campaign for a Prosperous Georgia, had previously been designated as a possible witness regarding contention 14. Despite this fact, the applicants desired to take Mr. Johnson's deposition regarding "all contentions". See attached Notice of Depositions. At the present time, joint intervenors do not plan to call Mr. Johnson as a witness for any of the contentions admitted thus far.

Mr. Johnson's deposition took place on March 12. On that day he was questioned for several hours by the applicants who were represented by three individual attorneys from two different law firms. The transcript of the deposition runs 184 pages. Mr. Johnson testified fully and cooperated fully with the interrogation except when he was directed by his personal attorney not to answer.

The applicants seek to compel answers to five specific sets of questions which relate to:

- (1) CPG's past and present membership;
- (2) CPG's finances;
- (3) Mr. Johnson's sources of income;
- (4) ECPG;
- (5) CPG's relationship to ECPG and Southern Regional Council.

It is the position of the joint intervenors that these matters are inappropriate for discussion for discovery in this proceeding; that they are irrelevant to this proceeding; and that they are privileged matters. For these reasons, the applicants' Motion to Compel should be denied, and intervenors' Motion for a Protective Order pursuant to 10 C.F.R. 7.740(c) should be granted.

The remainder of this brief will discuss the position of the joint intervenors on this matter, and then examine the specific questions and the joint intervenors' concerns about each. The joint intervenors seek a protective order to preclude the applicant from questioning Mr. Johnson or others regarding these matters.

#### Position of Joint Intervenors

The joint intervenors join in the objections of individual counsel to Tim Johnson. It is the understanding of the undersigned that it would be inappropriate for the joint intervenors to have objected to any questions at the deposition. See 10 C.F.R. 2.740a(d). Rather, this section suggests that the appropriate time to object is when the information sought is to be used, i.e., Applicants' Motion to Compel and joint intervenors' subsequent Request for a Protective Order. See Pennsylvania Power and Light Co. (Susquehanna Steam Electric Station, Units 1 and 2) ALAB-613, 12 NRC 317, 322-23 (1980). The applicants' Motion seems to make much of the fact that the joint intervenors did not join in the objections; objections would have been premature by the intervenors at the deposition itself.

The applicants sought to depose Tim Johnson regarding the contentions that had been admitted by this Board. None of the five sets of questions about which the applicants complain are related to any of the contentions. For this reason, the objection of relevance by Mr. Johnson's counsel was correct. The issues before this Board are complex enough without raising additional issues and burdening the record with additional matters unrelated to the specific contentions at issue. While the applicants may be very interested in knowing the financial resources of CPG, or the membership of GANE, these matters have nothing to do with the contentions before this Board. Arguably they might have been relevant prior to the Board's determination that CPG and GANE were party intervenors. However, this Board has already determined that CPG and GANE are appropriate parties to this proceeding, and granted each full intervenor party status.

The intervenors do not disagree with the applicants as to interpretation of the Commission's discovery rules by reference to the Federal Rules of Civil Procedure. Moore's Federal Practice 26.72, 26-474 suggests that the 1983 amendments to Rule 26(b)(1) was designed to limit burdensome and abusive discovery, and that courts may be more likely to grant orders that certain matters shall not be inquired into. Moore cites Marrese v. American Academy of Orthopaedic Surgeons 706 F2d 1488 (7th Cir. 1983) as an example. In considering such orders the court must balance the competing interests and hardships involved; consider whether a less burdensome means of acquiring

necessary information exists; and consider whether the claim has any possible merit. We believe if the Board considers the instant discovery, it will conclude that the applicants do not need the information they seek to discover; the information is irrelevant to the contentions; and it is privileged.

The joint intervenors suggest the information sought by the applicants is for a collateral purpose. Specifically, the joint intervenors fear that the information is sought to attack CPG and GANE before the Georgia Public Service Commission, Internal Revenue Service and various private foundations and the press. Joint intervenors fear that applicants will use this information to intimidate supporters of the intervenors, most of whom must do business with one or another of the applicants. Such purposes are impermissible, See Moore's Federal Practice 26.54, p. 26-88.

With this overview, we examine the specific information sought by the applicants.

#### CPG's Past and Present Membership

The applicants seek to identify the past and present membership of CPG. Discovery of membership lists has been disallowed. In a leading case, Bates v. City of Little Rock 361 U.S. 516 at 524, 80 S.Ct. 412 at 417 (1960), the Supreme Court held

[4] On this record it sufficiently appears that compulsory disclosure of the membership lists of the local branches of the National Association for the Advancement of Colored People would work a significant interference with the freedom of association of their members. There was substantial uncontroverted evidence that public identification of persons in the community as members of the organizations had been followed by harassment and threats of

bodily harm. There was also evidence that fear of community hostility and economic reprisals that would follow public disclosure of the membership lists had discouraged new members from joining the organizations and induced former members to withdraw. This repressive effect, while in part the result of private attitudes and pressures, was brought to bear only after the exercise of governmental power had threatened to force disclosure of the members' names. N.A.A.C.P. v. State of Alabama, 357 U.S. at page 463, 78 S.Ct. at page 1172. Thus, the threat of substantial government encroachment upon important and traditional aspects of individual freedom is neither speculative nor remote.

See also Moore's Federal Practice 26.60 [3] at 26-208.

The Georgia Power Company is known to have an extensive and intrusive security system. The news media has reported serious incidents of harassment of critics of Georgia Power including members of both CPG and GANE. See attached articles. Furthermore, business supporters of joint intervenors have expressed the fear that Georgia Power Company will push them into a higher rate bracket, if they are identified. See attached affidavit of Tim Johnson. For these reasons, disclosure of the membership list of CPG or GANE would have a chilling effect on the enrollment and membership of the organizations. Moreover, the membership is irrelevant given that both organizations have been adjudged parties to this proceeding.

#### CPG's Finances

The applicant seek to discover CPG's finances (Motion p. 4-5). They ask whether CPG receives private contributions; Whether CPG receives grants from any organizations; and whether

CPG receives financial assistance from any other organizations? The joint intervenors object to these questions on the basis of relevance. This Board itself has ruled that the financial qualifications of the applicants are irrelevant to this proceeding. It is hard to see why the financial resources of the intervenors have any relevance. Moreover, assuming that CPG's finances are relevant to this proceeding, the joint intervenors object to the questions on the basis of privilege, as this information constitutes proprietary information. See Natural Util. Serv., Inc. v. Wisconsin Centrifugal Foundry, Inc. 52 FRD 539 (E.D. Wis. 1968) where customer lists were protected; and Korman v. Shull 184 F.Supp. 928 (W.D. Mich. 1960) where productions of documents for inspection was not required because of trade secret privilege.

Donors to organizations such as CPG or GANE have the right to privacy. Disclosing their identity may preclude future donations. In any case, other individuals may solicit these donors to the detriment of the joint intervenors. For these reasons, the information sought is both privileged and irrelevant to this proceeding.

#### Mr. Johnson's Financial Affairs

The applicants seek to discover whether Mr. Johnson receives his paycheck from CPG and otherwise identify his sources of income. Again, this inquiry is not relevant to the contentions with which this proceeding is concerned. On the one hand, the applicants suggest the sources of Mr. Johnson's paycheck may bias him, but on the other they concede they were

not deposing him as a witness for CPG (See Tr at 31, lines 9-12). See New York Stock Exchange v. Sloan 22 FR Serv. 2d 500 (S.D. N.Y. 1976) where accounting firm's personnel files were held not discoverable because an expectation of privacy existed. At any rate, since joint intervenors do not plan at this time to call Mr. Johnson as a witness in this proceeding, the sources of Mr. Johnson's finances, like the sources of CPG's finances discussed supra, are both privileged and irrelevant to this proceeding.

#### ECPG and SRC

The applicants have asked questions regarding the relationship between CPG and two other organizations--Educational Campaign for a Prosperous Georgia (ECPG) and Southern Regional Council (SRC). These latter two entities are not parties to this proceeding. Applicants assert at page 8 of their Motion that questions regarding these latter two organizations are intended to illicit information bearing on Mr. Johnson's credibility or bias. Mr. Johnson has not submitted direct testimony. The applicants have made no showing as to how the relationship, if any, among these three organizations has anything to do with Mr. Johnson's testimony, if any, about contentions in this proceeding. Even if Mr. Johnson were the chief executive officer of all three organizations it is difficult to see how that is relevant or would lead to relevant information regarding his credibility in whatever testimony he provides. The applicants suggest that a statement by ECPG may be an admission by CPG. CPG is not required to produce any

evidence in this proceeding. CPG does not contest the applicants' right to ask questions about CPG. However, other organizations such as ECPG and SRC have nothing to do with this proceeding. The relationship, if any, is irrelevant to these contentions.

Conclusion

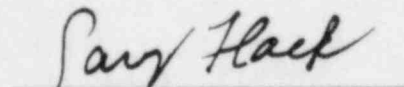
For the reasons discussed above, intervenors request the Board to deny Applicants' Motion to Compel and grant Intervenor's Motion for a Protective Order regarding CPG's past and present membership, CPG's finances, Mr. Johnson's source of income, and CPG's relationship to ECPG and SRC.

Respectfully submitted,

  
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