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July 5, 1985

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
GEORGIA POWER COMPANY, et al.	)	Docket No. 50-424
	)	50-425
(Vogtle Electric Generating Plant, Units 1 and 2)	)	(OL)

APPLICANTS' ANSWER TO
JOINT INTERVENORS' PROPOSED CONTENTIONS
ON EMEPGENCY RESPONSE PLANS

I. INTRODUCTION

"Joint Intervenors' Revised Contention Relating To Emergency Response" ("Revised Contention") was filed on June 24, 1985. As discussed below, Joint Intervenors actually advance some 20 separate proposed contentions in the June 24 filing -- all assertedly based on the offsite emergency plans for the Vogtle Electric Generating Plant ("VEGP") provided to Joint Intervenors by letter dated May 3, 1985. Applicants respond herein to Joint Intervenors' proposed contentions. In Section II, Applicants oppose the admission of the proposed contentions on the ground that they are untimely filed, given the availability of the emergency plans, and the Board's September 5, 1984 Memorandum and Order. In Section III, Applicants address the existing standards for the admissibility of

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proposed contentions; and, in Section IV, Applicants apply those standards to each of Joint Intervenors' proposed contentions, opposing the admission of all twenty.

II. AVAILABILITY OF PLANS AND UNTIMELINESS OF PROPOSED CONTENTIONS

By letter to the Licensing Board, dated June 24, 1985, Joint Intervenors filed their "Revised Contention" on emergency response. The revised contention is untimely and contravenes the Board's September 5, 1984 Memorandum and Order. Joint Intervenors have made no showing of good cause for filing nearly three weeks late, and the contention should therefore be rejected.

Prior to the May 30, 1984 special prehearing conference, Applicants and Joint Intervenors agreed that a revised contention on emergency planning (Contention 13) would be refiled after the filing of the emergency plans. The Board adopted this agreement and specified that the Joint Intervenors would have 30 days after filing of the plans to submit a revised emergency planning contention. See LBP-84-35, 20 N.R.C. 887, 910-11 (1984).

By letter dated October 5, 1984, Applicants' counsel notified the Board that Applicants' onsite plans were expected to be filed in December 1984, and that the offsite plans were expected to be filed in May 1985. The letter also reported an agreement between Applicants and Joint Intervenors that

contentions relating to the onsite and offsite plans would be due within 30 days after the filing of either draft or final copies of the respective plans.

Applicants' onsite emergency plan ("Vogtle Plan") was filed with the NRC and served on Joint Intervenors on November 30, 1984. Joint Intervenors filed no onsite emergency plan contentions within the prescribed 30 days. The Vogtle-specific portion of the Georgia state offsite plan,1/ which included the Burke County Plan ("County Plan"), was filed with the NRC on May 3, 1985, with copies served on Joint Intervenors by Federal Express on the same date.2/ Joint Intervenors' June 24 filing of its revised Contention 13 is therefore untimely.

Joint Intervenors have provided no showing of good cause for the untimeliness of their filing, and have not even attempted to address the other provisions of 10 C.F.R. § 2.714(a) pertaining to tardy filings. They allege, instead, that the 30-day period did not begin to run when the offsite plans were filed because the plans were marked draft, and that the Board had specified that the contention was to have been based on the

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1/ Georgia Radiological Emergency Plan, Georgia Power Company Plant Vogtle, Annex D ("Annex D"). The Georgia Base Plan itself ("Base Plan"), non-specific to Plant Vogtle, had been previously available.

2/ Also included in the May 3, 1985 service was the "South Carolina Operational Radiological Emergency Response Plan -- SCORERP-84" ("SCORERP").

filing of "final" plans. Their argument is that the 30-day time period began to run when Applicants notified them by telephone on June 21 that the "final" Burke County plans had been submitted.3/ "Revised Contention," at 2. Such a position is clearly contradicted by the record.

Nowhere, in either the Board's September 5, 1984 Order or during the course of the prehearing conference (Tr. 95-98), did the Board or any of the parties specify that the time for filing the revised contention would be triggered by the filing of "final" plans. To the contrary, counsel for the NRC staff explained at the prehearing conference that "we are talking about offsite emergency plans and frequently there are a number of drafts that are produced." Tr. at 95. Moreover, Applicants' October 5, 1984 letter to the Board reporting on the agreement between the two parties clearly stated that "[c]ontentions related to the State and county emergency plans would be due within 30 days after filing of same, or if draft

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3/ Applicants did not tell Joint Intervenors that the draft Burke County plans were in fact the "final" plans. Applicants informed Joint Intervenors that there was no requirement to wait for the "final" plans, that such plans are typically not finalized before completing the NRC and FEMA (Federal Emergency Management Agency) review process, and that in some instances a "final" plan is not clearly designated as such because the plans are often considered to be organic documents which are subject to updating and improvement with time. See generally Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-808, 21 N.R.C. ____ (June 11, 1985) (slip op. at 6-7).

plans are provided, within 30 days after furnishing of the draft." Joint Intervenors' argument that their time did not begin to run until they were informed verbally by Applicants that the "final" plan had been submitted is therefore clearly contrary to the unambiguous record in this proceeding.4/

In addition, Joint Intervenors' argument is inconsistent with the Commission's directive that offsite emergency planning issues should be raised as early as possible on the basis of information available. Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 N.R.C. 1041, 1050 (1983). Joint Intervenors' failure to heed this requirement is exacerbated by their initial attempt to ignore the Burke County Plan simply because it was marked as a draft, quite aside from their failure to abide by the Board's Order. The Commission has also reaffirmed that the Licensing Board should apply the factors set out in 10 C.F.R. § 2.714(a)(1) when confronted with a late-filed contention, which procedural requirements are "consistent with a petitioner's obligation to examine the publically available documentary material pertaining to the facility in question with sufficient care to enable it to uncover any

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4/ Joint Intervenors also note that a Richmond County plan has not been submitted. No portion of Richmond County lies within the ten-mile plume exposure emergency planning zone (EPZ), however, and Joint Intervenors have not advanced the absence of a Richmond County plan as an argument in support of their late-filed contention. They instead concede that their due date is based on the filing of the Burke County Plan. "Revised Contention," at 2.

information that could serve as the foundation for a specific contention." Id. at 1045. Because Joint Intervenors have failed to comply with the specific Order of the Board, have failed to address the specific requirements of 10 C.F.R. § 2.714(a)(1), and have not complied with the requirements of the Commission as set out in Catawba, Joint Intervenors' late-filed Contention 13 should be rejected.

III. APPLICABLE STANDARDS FOR ADMISSIBILITY OF CONTENTIONS

Applicants have previously summarized the general legal standards (e.g., "specificity" and "basis") governing the admissibility of proposed contentions in an NRC licensing proceeding. See, e.g., "Applicants' Response to GANE and CPG Supplements to Petitions For Leave to Intervene" (May 7, 1984). Accordingly, Applicants here simply elaborate upon those principles which are particularly applicable to Joint Intervenors' proposed emergency response contentions.

A. Bases with Reasonable Specificity

The Commission's Rules of Practice, at 10 C.F.R. § 2.714(b), require that an intervenor include with proposed contentions "the bases for each contention set forth with reasonable specificity."

There are several purposes which underlie the Commission's standard in section 2.714(b):

> A purpose of the basis-for-contention requirement in Section 2.714 is to help assure at the pleading stage that the hearing process is not improperly invoked. For example, a licensing proceeding before this agency is plainly not the proper forum for an attack on applicable requirements or for challenges to the basic structure of the Commission's regulatory process. Another purpose is to help assure that other parties are sufficiently put on notice so that they will know at least generally what they will have to defend against or oppose. Still another purpose is to assure that the proposed issues are proper for adjudication in the particular proceeding. In the final analysis, there must ultimately be strict observance of the requirements governing intervention, in order that the adjudicatory process is invoked only by those persons who have real interests at stake and who seek resolution of concrete issues.

Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 A.E.C. 13, 20-21 (1974) (footnotes omitted).

The notice aspect of the "bases with reasonable specificity" requirement is a natural outgrowth of fundamental notions of fairness applied to the party with the burden of proof. The Atomic Safety and Licensing Appeal Board has observed:

> The applicant is entitled to a fair chance to defend. It is therefore entitled to be told at the outset, with clarity and precision, what arguments are being advanced and what relief is being asked . . . . So is the Board below. It should not be necessary to speculate about what a pleading is supposed to mean.

Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit No. 1), ALAB-279, 1 N.R.C. 559, 576 (1975) (emphasis supplied; footnote omitted). Moreover, the Licensing Board is entitled to adequate notice of a petitioner's specific contentions to enable it to guard against the obstruction of its processes. As the Supreme Court has noted, in NRC proceedings,

> * * * it is incumbent upon intervenors who wish to participate to structure their participation so that it is meaningful, so that it alerts the agency to the intervenors' position and contention.* * *
>
> Indeed, administrative proceedings should not be a game or forum to engage in unjustified obstructionism by making cryptic and obscure reference to matters that "ought to be" considered * * *.

Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, 435 U.S. 519, 553-54 (1978).

Yet, important as the notice aspect of the standard is, the requirement for bases with reasonable specificity goes beyond the "notice pleading" allowed in the federal courts, which has been found to be insufficient for NRC licensing proceedings. See Wolf Creek, supra, ALAB-279, 1 N.R.C. at 575, n.32 (1975). On the other hand, the regulation does not require the intervenor to detail the evidence which will be offered in support of each proposed contention. Peach Bottom, supra, ALAB-216, 8 A.E.C. at 20 (1974); see also Mississippi Power and Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-130, 6 A.E.C. 423, 426 (1973); Houston Lighting and Power

Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 N.R.C. 542, 548-49 (1980). In short, the standard falls somewhere in between, and "[t]he degree of specificity with which the basis for a contention must be alleged initially involves the exercise of judgment on a case-by-case basis." Peach Bottom, supra, 8 A.E.C. at 20 (1974).

To establish relevance, an intervenor, in setting forth the basis for its proposed contention, should establish a nexus between the substance of the contention and the statutory and regulatory scope of the Board's jurisdiction. Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), LBP-82-106, 16 N.R.C. 1649, 1654 (1982). With respect to any safety issue (such as emergency planning), the intervenor must specify a regulation with which applicant is allegedly not complying, and must provide sufficient detail to permit the Board to determine how the regulation is being violated; or the intervenor should allege with particularity the existence and detail of a substantial safety issue on which the regulations are silent. Id. at 1656. This requirement is often referred to as the "legal basis" for a contention.

To establish materiality, the proposed contention must provide a foundation sufficient to warrant further exploration. Peach Bottom, supra, ALAB-216, 8 A.E.C. at 21; Duquesne Light Co. (Beaver Valley Power Station, Unit No. 1), ALAB-109, 6 A.E.C. 243, 246 (1973). See also Seabrook, supra, LBP-82-106,

16 N.R.C. at 1655, citing Consumers Power Co. (Midland Plant, Units 1 and 2), CLI-74-5, 7 A.E.C. 19, 32 n.27 (1974), rev'd sub nom., Aeschliman v. NRC, 547 F.2d 622 (D.C. Cir. 1976), rev'd sub nom., Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 553-54 (1978), for the proposition that a contention must be sufficient to require reasonable minds to inquire further. In this regard, the basis for the contention should provide either a reasonably logical and technically credible explanation, Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-765, 19 N.R.C. 645, 652-54 (1984), or a plausible and referenced authority for the factual assertions in the contention. The petitioner's personal opinion alone is not adequate for this purpose. This materiality requirement is often referred to as "factual basis."

A contention must also have application to the facility in question. Beaver Valley, supra, ALAB-109, 6 A.E.C. at 246 n.5. A contention should refer to and address documentation, available in the public domain, that is relevant to this facility. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 & 2), LBP-81-24, 14 N.R.C. 175, 181-84 (1981). The Commission itself has emphasized intervenors' duties in this regard, holding that a petitioner for intervention has an iron-clad obligation "to diligently uncover and apply all publicly available information to the prompt formulation of contentions." Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 N.R.C. 1041, 1048 (1983).

In the instant case, the Board did not rule on emergency planning contentions filed prior to the availability of the emergency plans, pending service of the plans themselves, in order to accord intervenors the opportunity to file refined, specific contentions after reviewing the actual plans. See LBP-84-35, 20 N.R.C. 887, 910 (1984). Accordingly, a proposed emergency planning contention fairly can be "required to specify in some way each portion of the plan alleged to be inadequate. . . . [W]ithout an adequately particularized contention setting forth how the 'local conditions' referenced in [the contention] are alleged to affect every aspect of [the] plan, we are left to speculate how [Applicant's] alleged failure to consider these local factors is supposed to render each aspect of its plan inadequate." Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-82-75, 16 N.R.C. 986, 993 (1982).

Thus, with respect to proposed emergency planning contentions, the requirement for specific reference to relevant documentation applies with special force to the emergency plans, but may also include NUREG-0654/FEMA-REP-1, "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants" (Rev. 1, 1980) ("NUREG-0654"), and FEMA-43, "Standard Guide For The Evaluation of Alert and Notification Systems For Nuclear Power Plants" (1983) ("FEMA-43"), as well as applicable

NRC Staff regulatory guides and other published reports. If a contention inaccurately describes an applicants' proposal or misstates the content of licensing documents, it should be rejected. See Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1 and 2), LBP-82-119A, 16 N.R.C. 2069, 2076 (1982); Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), LBP-32-107A, 16 N.R.C. 1791, 1804 (1982); Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-82-43A, 15 N.R.C. 1423, 1504-05 (1982).

In this regard, Applicants have an objection that is applicable to quite a few of the proposed emergency planning contentions. Rather than repeating the argument in response to each of the proposed contentions, Applicants state the objection here, and will simply note the contentions to which it particularly applies in the discussion of the individual proposed contentions. None of the proposed contentions include even a single reference to the emergency plans. There is virtually no indication that Joint Intervenors reviewed the plans at all. Indeed, quite a few of the proposed contentions are lifted essentially verbatim from the emergency planning contention filed by Joint Intervenors more than one year ago -- prior to the availability of the emergency plans. See "Supplement To Petition For Leave To Intervene and Request For Hearing - GANE" (April 11, 1984) ("GANE's 4/11/84 Supplement"), at 29-34, and "Amendment To Supplement To Petition For Leave To

Intervene and Request For Hearing - CPG" (May 25, 1984) ("CPG's 5/25/84 Supplement"), at 25-30. Thus, although the plans are now available, Joint Intervenors have failed to revise their proposed contentions, to address the detailed provisions of the plans as filed and to provide the specificity which is required by the Commission's regulations. This default alone warrants rejection of many of the proposed contentions.

B. Challenges to Commission Regulations and Policy, and Rulemaking Topics

A contention is not appropriate for litigation if it collaterally attacks a Commission rule or regulation. 10 C.F.R. § 2.758.5/ Similarly, as a general proposition, Licensing Boards should not accept in individual proceedings contentions which are or are about to become the subject of general

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5/ A party may obtain a waiver of a rule, but only if it submits to the Licensing Board for certification to the Commission a petition setting forth with particularity special circumstances with respect to the subject matter of the particular proceeding which are such that the rule or regulation (or provision thereof) as is to serve the purposes for which the rule or regulation was adopted. The petition must be accompanied by supporting affidavit. Opportunity is provided for other parties to respond to the petition, including the submission of reply affidavits. If the Licensing Board determines that a prima facie showing has been made in support of waiver of exception, it shall, before ruling, certify directly to the Commission for a determination on the matter. If the Licensing Board does not determine that such a prima facie showing has been made, it must deny the petition. 10 C.F.R. § 2.758; Potomac Electric Power Co. (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 A.E.C. 79, 89 (1974).

rulemaking by the Commission. Potomac Electric Power Co. (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 A.E.C. 79, 85 (1974). This policy avoids wasteful duplication of effort (id.), and regulatory inconsistency. In the same vein, Commission policy statements and policy declarations are binding on the Boards. Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-704, 16 N.R.C. 1725, 1732 (1982); Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-455, 7 N.R.C. 41, 51 (1978), remanded on other grounds sub nom., Minnesota v. NRC, 602 F.2d 412 (D.C. Cir. 1979).

IV. JOINT INTERVENORS' PROPOSED CONTENTIONS

As set forth in the June 24 filing, Joint Intervenors' proposed contention is one single-spaced sentence on page 2, which does nothing more than assert generally that the emergency plans fail to meet the applicable regulations. Patently, such an overly broad contention must be rejected for lack of specificity and basis. However, the single-sentence contention is followed by a four page discussion of the contention. This discussion purports to provide the bases for the proposed contention, and constitutes, in essence, some 20 individual proposed contentions.

For ease of discussion here, and for disposition by the Board, Applicants have organized Joint Intervenors' discussion

by subject matter. The individual proposed contentions have been designated EP-1 through EP-11, with appropriate subparts. In two instances (EP-1 and EP-2), Applicants have restated, in single-spaced format, Joint Intervenors' general assertion that the plans fail to meet a particular regulatory standard. Applicants have included this introductory language solely for the sake of completeness. Like Joint Intervenors' single-sentence contention, this language is so broad as to be nonlitigable. Accordingly, the introductory language must be rejected, unless the Board admits one of the subsidiary proposed contentions -- in which case, the introductory language must be considered limited by the subsidiary contention.

EP-1

> Applicants fail to show that each principal response organization has the staff to respond and to augment its initial response on a continuous basis, as required by 10 CFR 50.47(b)(1).

In EP-1(a), Joint Intervenors assert that "Applicants rely upon the Burke County Emergency Management Agency to coordinate emergency planning and operation activities. Applicants fail to note, however, that Burke County has no full-time emergency manager or office."6/ Joint Intervenors, however, have failed to provide (and, indeed, cannot provide) any basis for their

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6/ This language is essentially unchanged from GANE's 4/11/84 Supplement, at 30, and CPG's 5/25/84 Supplement, at 25.

assertions. Contrary to Joint Intervenors' unsupported allegation, the position of Director of the Burke County Emergency Management Agency is a full-time position. Further, Joint Intervenors' allegations notwithstanding, the Director has an office in the Burke County Emergency Operating Center ("EOC") in Waynesboro, Georgia, at the phone number listed in the plan. See County Plan, at 47, 50. Proposed Contention EP-1(a) therefore must be rejected for lack of basis in fact.

Moreover, even if Director were a part-time position, or if the Director had no permanent office, EP-1(a) would still be objectionable. There is no NRC requirement that the position be a full-time position, or that such an official have an office; certainly 10 C.F.R. § 50.47(b)(1) -- the sole regulation cited by Joint Intervenors -- does not require such provisions. Indeed, numerous county emergency management coordinators across the country serve in part-time or volunteer capacities, and not all have administrative offices or support staffs. In the abstract, in the absence of some associated identified detrimental effect on substantive emergency planning, any alleged administrative inadequacies (e.g., a part-time Director or the lack of a permanent office) are not litigable. Accordingly, for all these reasons, EP-1(a) is not admissible.

EP-1(b) alleges that "[I]n listing the state agency resources available to respond to an emergency at Plant Vogtle (Table D-1) Applicants fail to include an estimate of the

number of personnel available at each agency." But there is no requirement that information such as "the number of personnel available at each agency" be included in emergency plans. Indeed, Table D-1 is included in the State Plan, Annex D, for use in conjunction with the Base Plan, Appendix 1, to conform to NUREG-0654[7]/ Criterion A.2.a, which provides only for "a table of primary and support responsibilities [for various emergency response functions] using the agency as one axis, and the function as the other." The criterion makes no mention of any need to include numbers of personnel. Certainly Joint Intervenors have not pointed to any other state emergency plans which include such detailed information. The level of detail sought by Intervenors is simply not required to be included in emergency plans; rather, this level of detail is more appropriate to implementing procedures, or "call lists" and "resource lists." See generally NUREG-0654, at 29 (plans to "be kept as concise as possible"). Accordingly, there is no legal basis for proposed Contention EP-1(b).

Further, to the extent that EP-1(b) can be read to imply that there are insufficient personnel resources to carry out the functions with which the State is tasked, the proposed contention is similarly deficient. Joint Intervenors' failure to

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7/ NUREG-0654/FEMA-REP-1, "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants" (Rev. 1, 1980).

identify specific agencies and functions render its proposed contention fatally non-specific. Nor have Joint Intervenors advanced any factual basis whatsoever to support an allegation that the State cannot carry out its emergency response functions. In these cirumstances, proposed Contention EP-1(b) must be rejected.

EP-2

> Applicants fail to show that provisions exist for prompt communications among principal response organizations to emergency personnel and the public as required by 10 CFR 50.47(b)(6).

EP-2(a) asserts that "[T]he Burke County plan states that the means of communication among local governments and respective department/agency personnel within the Plume Exposure Pathway EPZ are, primarily, dedicated circuits and commercial phone lines, and secondly, radio systems. This plan ignores the probability that both dedicated and commercial phone lines will quickly become overloaded and incapacitated and in the event of a radiological accident at the plant the limited radio bands made available to emergency response vehicles will just as quickly become congested."

Joint Intervenors' concerns have no basis in fact. Intervenors acknowledge, as they must, that the primary means of emergency communications are "dedicated" circuits. See, e.g., County Plan, at 50-51, 53. Such telephone circuits are "hard-wired" from point to point, and thus are not dependent on

central exchange and switching mechanisms. Therefore, by definition, "dedicated" phone lines are not susceptible to incapacitation by the overloading which Joint Intervenors postulate.

Joint Intervenors' broad-brush allegations of congestion on "the limited radio bands made available to emergency response vehicles" are similarly objectionable. There is a wealth of information in the plans describing the emergency communications systems, including radio systems. See, e.g., County Plan, at 50-51 (identifying various available radio systems, such as the GEMA statewide radio network frequency, the Burke County EMA radio network frequency, the Burke County Sheriff's Department/ICC radio network frequencies, the DNR Radiological Field Team radio network frequencies, and other available radio networks such as those used by the municipal police, fire departments, hospital/emergency medical service and city/county public works departments); Base Plan, at 19-20 (noting that all statewide radio systems can be exclusively "dedicated" for emergency use); Annex D, at 6, 52. Intervenors have failed to even reference this detailed information in their proposed contention, let alone offer any factual basis for their allegation that the available radio systems would fail due to congestion in an emergency. Nor have Joint Intervenors distinguished this case from the multiplicity of others which place reliance for emergency communications capability on dedicated phone lines, backed up by commercial phone lines or

existing radio networks. See, e.g., Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), LBP-82-100, 16 N.R.C. 1550, 1580 (1982) (dedicated phone lines, backed up by radio). Accordingly, the second part of EP-2(a) fails for lack of basis and specificity. For all these reasons, proposed Contention EP-2(a) must be rejected.

EP-2(b) alleges that "[T]he Acting Director of Emergency Management of Richmond County, Pam Smith, states that she occasionally has difficulty contacting emergency personnel in Burke County due to the lack of a full-time emergency planner."8/ However, as discussed above in response to proposed Contention EP-1(a), the Burke County Emergency Management Agency is headed by a full-time Director. Thus, there is no factual basis for this proposed contention. Further, the alleged difficulties of one emergency planning official in contacting another with respect to routine business are relevant and material to emergency preparedness only if similar difficulties would occur at the time of an emergency, and would impair emergency response. To the contrary, the plans expressly provide for the contingency of the unavailability of the Burke County EMA Director (for whatever reason) at the time of an emergency. The Burke County Sheriff's Department has been designated as an alternate contact for the county. See, e.g., County Plan, at 53; Vogtle

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8/ This language is repeated verbatim from GANE's 4/11/84 Supplement, at 30, and CPG's 5/25/84 Supplement, at 26.

Plan, at A-10. For these reasons, proposed Contention 2(b) must be rejected for lack of basis in fact.

EP-2(c) alleges that "The plan provides for notification of the public in the Plume Exposure Pathway by use of tone alert radio receivers installed in each household in the EPZ. This provision ignores the fact that these devices are often shut off permanently by residents who become aggravated by its tendency to go off frequently without reason."

The short answer to this proposed contention is that it is untimely in the extreme. The onsite emergency plan -- served on Joint Intervenors in late November 1984 -- clearly identified NOAA tone alert radios as the primary means of emergency alerting for the population within the plume EPZ. See, e.g., Vogtle Plan, App. 3, especially App. 3 at 3-2 ("The primary means for alerting and providing initial instructions to the public is by the NOAA Alert signal") and at 3-5 ("Georgia Power Company provides NOAA radio receivers for all known establishments (residents, businesses, schools, etc.) within the plume * * * EPZ"). Accordingly, Intervenors were obligated to advance any proposed contentions relating to this means of alerting within the 30-day time period specified by the Board. This the Intervenors failed to do; the proposed contention is now more than five months late. EP-2(c) should be dismissed for this reason alone.

Moreover, Joint Intervenors fail to acknowledge the applicable regulatory guidance, which grants the Commission's imprimatur to alerting systems which rely exclusively upon tone alert radios for notification of the general public. FEMA-439/ notes, at E-3:

> Regarding the physical means [of alerting], * * * the licensee could employ a number of means to alert the public. The means of alert is at the option of the licensee. * * * These could include, but are not limited to, fixed sirens; mobile siren vehicles; tone alert radios; aircraft; automatic telephone dialers/switching equipment; modulated power lines; and police, fire, and rescue vehicles or personnel. [emphasis supplied]

See also NUREG-0654, App. 3, at 3-2 and 3-16 (discussing use of tone alert radios as alerting system).

Joint Intervenors allege that tone alert radios may be "shut off permanently" by the EPZ residents to whom they are distributed. But, again, the regulatory guidance expressly contemplates the potential for such actions by the public:

> It is recognized that absolute control of tone alert radios is lost once they are given to the public for use in residences.

FEMA-43, at E-10. Thus, it is required only "that the public is offered the opportunity to benefit from the availability of tone alert radios in geographical areas where the radios are used as the alerting mechanism." FEMA-43, at E-11 (emphasis in

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9/ FEMA-43, "Standard Guide For The Evaluation of Alert and Notification Systems For Nuclear Power Plants" (1983).

the original). In short, Applicants' burden to provide an alerting system for the Vogtle EPZ is fully discharged by its distribution of tone alert radios to residents in compliance with applicable regulatory guidance. See, e.g., County Plan, at 52; Annex D, at 4; Vogtle Plan, App. 3; (addressing compliance with applicable regulatory guidance). Joint Intervenors cite no authority for the implication that Applicants are required to provide a "foolproof" public alerting system -- an alerting system that cannot be disabled by the very people for whose benefit it has been installed. Nor have Intervenors distinguished this site from others (e.g., Hatch and Fort St. Vrain) where the public alerting system is comprised entirely of tone alert radios. Accordingly, proposed Contention EP-2(c) must be rejected as both untimely and lacking in legal basis.10/

In EP-2(d), Joint Intervenors note that "Applicants cannot ensure that all residents have televisions or radios to turn to for additional information in the event of a radiological accident." But, once again, Intervenors fail to provide any legal basis for their implication that Applicants are required to

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10/ Even if some members of the public did disable their tone alert radios, they would still receive notification of the emergency, through the County's "Supplementary Notification System" of law enforcement vehicles equipped with siren or public address systems (County Plan, at 52) and/or through the evacuation confirmation system (County Plan, at 55; Vogtle Plan, App. 6, at 7-1).

"ensure" that all residents have TVs or radios. Indeed, there is no such regulatory requirement. Applicants need only demonstrate "the capability of local and State agencies to provide information promptly over radio and TV * * * " (NUREG-0654, at 3-4), so that EPZ residents with access to radios or TVs can obtain additional information about the emergency via Emergency Broadcast System ("EBS") messages. There simply is no requirement that Applicants demonstrate that any particular proportion of the public within the EPZ have radios or TVs. Thus, proposed Contention EP-2(d) fails for lack of legal basis.

Moreover, proposed Contention EP-2(d) is also objectionable for lack of basis in fact. The tone alert radios being distributed to all residents of the plume EPZ will provide not only an acoustic alerting signal, but also specific instructions to the public (such as recommended protective actions, etc.).11/ See, e.g., County Plan, at 52; Vogtle Plan, App. 3, at 3-2. Thus, while access to commercial radio and TV would provide residents with additional detailed information in the event of an emergency, even those residents who have only tone alert radios will have access to all emergency information

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11/ Tone alert radios thus have a significant advantage over sirens as a means of public alert and notification. While tone alerts provide both an "acoustic alerting signal" and an "informational or instructional message" to the general public, siren systems generally provide only the alerting signal and must rely exclusively upon the EBS system for dissemination of, e.g., protective action recommendations.

which is essential to their health and safety. Accordingly, the Board should reject proposed Contention EP-2(d).

EP-2(e) asserts that "Applicants list a number of warning devices that might be implemented such as autos and boats equipped with sirens or loudspeakers, door-to-door contact in remote areas and aircraft equipped with sirens to be used in remote areas; however, there is no assurance that such equipment is available to local governments or that personnel will be available to operate this equipment." This proposed contention is objectionable on any of a number of alternative grounds. First, Applicants note that the language of EP-2(e) is taken virtually word-for-word from Joint Intervenors' earlier contention. See GANE's 4/11/84 Supplement, at 31, and CPG's 5/25/84 Supplement, at 27. Thus, Intervenors initially drafted the proposed contention in the absence of the emergency plans, but have failed to provide any further specification, although all the relevant emergency plans are now available. Indeed, the available plans include a wealth of information on public alert and notification (including available resources) -- none of which Intervenors have seen fit even to reference, let alone address. See, e.g., County Plan, at 52-53 ("Notification and Warning"), 47-49 (listing of vehicles with sirens and PA systems, and "mutual aid" jurisdictions with additional resources), 11-31 (identifying some 18 state and local agencies available to assist with public notification). See also Vogtle

Plan, App. 3. The proposed contention therefore should be rejected for lack of specificity, due to Joint Intervenors' failure to specifically address the relevant documentation.

Moreover, because the tone alert system is the primary means for notification of all residents within the plume EPZ, siren vehicles and door-to-door contact are merely back-up means of notification for that segment of the population. See County Plan, at 52-53. There is no explicit regulatory requirement for such means of back-up notification to a primary system (such as tone alert radios or sirens). See, e.g., Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-85-14, 21 N.R.C. ___ (May 2, 1985) (slip op. at 216). Thus, since the County is not even required to provide a back-up means of notification, Joint Intervenors cannot be heard to allege that the County lacks the resources to implement such a system. Accordingly, to the extent that the proposed contention refers to notification of the public residing within the EPZ, the proposed contention lacks any legal basis.

Finally, Joint Intervenors have failed to provide any factual basis whatsoever to support their allegations. As discussed above, the available plans detail the resources available for notification of both the general public and transients within the plume EPZ. See, e.g., County Plan, at 11-31, 47-49, 52-53; Vogtle Plan, App. 3. See also Vogtle Plan, App. 3, at 3-2 and App. 6, at 5-2, 5-5 (specifically addressing transient

notification). Joint Intervenors have neither acknowledged the availability of these resources for public notification, nor offered any indication why the listed resources would be inadequate. Under these circumstances, the proposed contention must be rejected for lack of basis in fact. For all these reasons, proposed Contention EP-2(e) is not admissible.

In EP-2(f), Intervenors claim that "An adequate county-wide siren warning system * * * would require installation of a minimum of 200 sirens for $5,000 each, totalling $1,000,000. The County has lacked the funds to install such a system in the past." Intervenors cite Pam Smith as a basis for their assertions.12/ However, as noted above in proposed Contention EP-2(b), Pam Smith is the Emergency Management Agency Director for Richmond County. Since Richmond County is outside the Vogtle plume EPZ (see, e.g., Vogtle Plan, App. 11), provisions for alert and notification of Richmond County residents are not required. Within the EPZ, residents are being notified via tone alert radios, not sirens. See discussion in response to proposed Contentions EP-2(c) and EP-2(d). Thus, EP-2(f) must also be rejected for lack of basis.

EP-2(g) contends that "The plan also fails to address how sirens will operate in the event of a power failure." As

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12/ This language is included virtually word-for-word from GANE's 4/11/84 Supplement, at 31, and CPG's 5/25/84 Supplement, at 27.

explained elsewhere, sirens are not used for notification of the public within the Vogtle EPZ. Therefore, there is no factual basis for Joint Intervenors' concern about the operability of sirens in the event of a power failure, and proposed Contention EP-2(g) must be rejected. As an aside, Applicants note that, even if sirens were employed as part of the public alert and notification system, back-up power for such sirens is not required. See, e.g., Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-85-12, 21 N.R.C. ___ (April 17, 1985) (slip op. at 172). Thus, the proposed contention would also fail for lack of legal basis.

EP-2(h) alleges that "Applicants provide no assurance that transients who are unfamiliar with the area will understand the implications of a warning signal in the event they are able to hear it." To the contrary, as discussed immediately below, the plans specifically address the provision of such information to transients; Joint Intervenors simply have failed to identify and discuss the relevant portions of the plans. The proposed contention should therefore be rejected for lack of specificity.

The proposed contention is also objectionable for lack of basis. NUREG-0654 Criterion G.2 governs the provision of pre-emergency public information to transients. That criterion provides, in relevant part:

> Signs or other measures * * * shall * * * be used to disseminate to any transient population within the plume * * * EPZ appropriate information that would be helpful if an emergency or accident occurs. [emphasis supplied]

The only significant transient population in the Vogtle EPZ is the hunters and fishermen along the banks of the Savannah River.13/ See County Plan, at 45; Vogtle Plan, App. 6, at 3-4. The emergency plans unequivocally provide for the placement of "appropriate posters and signs" along the Savannah River, to advise hunters and fishermen of actions to be taken if notified of an emergency, e.g., by emergency vehicles with PA systems and/or sirens. See, e.g., County Plan, at 63; Vogtle Plan, at G-2; Vogtle Plan, App. 8, at 19. Joint Intervenors have failed to distinguish this case from others approving the use of such means to provide notification to transients under similar circumstances. See, e.g., Kansas Gas & Electric Co. (Wolf Creek Generating Station, Unit 1), LBP-84-26, 20 N.R.C. 53, 68, 96 (1984). For this reason, too, EP-2(h) must be rejected.

EP-2(i) claims that "Applicants fail to provide adequately for notification and evacuation of hearing impaired and other

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13/ Though Vogtle plant workers are generally considered "transients" for purposes of evacuation planning, they are not "transients who are unfamiliar with the area," and it cannot be seriously contended that they would not understand the significance of an emergency warning signal. See, e.g., Vogtle Plan, at E-2 (pre-emergency training for all plant personnel concerning appropriate actions in emergency).

handicapped persons." However, Joint Intervenors have not even referenced the relevant sections of the emergency plans; certainly they have not alleged any specific inadequacies in the applicable provisions.

The plans expressly provide for special, personal notification of hearing-impaired residents, pursuant to Standard Operating Procedures maintained by the Burke County Emergency Management Agency and the Health and Social Service Departments of Burke County. See County Plan, at 53. No particular special resources are needed for such a service. Thus, Joint Intervenors cannot distinguish this case from others approving similar plans for the notification of the hearing-impaired in the event of a radiological emergency. See, e.g., Wolf Creek, supra, LBP-84-26, 20 N.R.C. at 67, 94-95. Accordingly, that portion of EP-2(i) relating to notification of the hearing-impaired must be rejected for lack of basis and specificity.

The plans also address the special problems of evacuating the mobility-impaired and non-ambulatory residents of the EPZ. Specifically, the plan provides:

> Special equipped vehicles will be dispatched directly to the homes of handicapped and/or non-ambulatory individuals requiring special transportation means. A roster of these individuals is maintained in the Burke County EOC and the EMA Director maintains coordination with the Burke County Health Department and Burke County Department of Family and Children Services on maintenance of the roster and use of their emergency service vans.

County Plan, at 55. See also County Plan, at 53 (evacuation procedures for handicapped are maintained by Burke County Emergency Management Agency and Health and Social Service Departments of Burke County), 48-49 (listing emergency medical vehicles available within Burke County, and noting that "emergency medical non-radiological service support" is available from adjacent "mutual aid" jurisdictions); Annex D, at 52 (identifying ambulance services and "Military Assistance to Safety and Traffic" ("MAST") resources available to assist with evacuation). Joint Intervenors have neither distinguished this case from others approving similar plans for the evacuation of the mobility-impaired, see, e.g., Kansas Gas & Electric Co. (Wolf Creek Generating Station, Unit 1), LBP-84-26, 20 N.R.C. 53, 70-72, 100-01 (1984), nor have they offered any indication why the listed resources would be insufficient (particularly given the absence of hospitals and nursing homes in the EPZ). Under these circumstances, that portion of EP-2(i) relating to evacuation of the handicapped must also be rejected for lack of basis and specificity.

EP-3

> Applicants fail to show that they have the capabilities to notify responsible state and local governmental agencies within 15 minutes after declaring an emergency as required by 10 CFR Appendix E(10)(D)(3) because they rely upon the same unreliable means of communication (dedicated and commercial phone lines and radio) as described above [in EP-2(a)].

Joint Intervenors' proposed Contention EP-3 refers to, and is virtually identical in substance to, proposed Contention EP-2(a); both proposed contentions postulate that phone lines and radio bands will "become overloaded" in the event of a radiological emergency. The sole distinction between the two proposed contentions is that EP-3 refers to initial notification of an emergency from the plant site to the State and local emergency response organizations, while EP-2 (a) challenges the ability of the onsite and offsite authorities to communicate during an emergency. But this distinction is an important one; for, since the "initial notification" from the plant site to offsite authorities -- the subject of EP-3 -- must be an onsite function, Joint Intervenors were required to raise any contentions relating to "initial notification" (such as proposed Contention EP-3) within thirty days of the availability of the onsite plan (which was served on November 30, 1984). See, e.g., Vogtle Plan, at E-2 to E-3, Figure E-1 (discussing "initial notification" of offsite emergency response authorities). This the Intervenors failed to do. Accordingly, EP-3, an

"onsite emergency planning" contention, is untimely in the extreme -- more than five months late -- and should be rejected for that reason alone.

Moreover, as explained in the response to proposed Contention EP-2(a) above, "dedicated" phone lines are by definition not subject to overloading. Further, Joint Intervenors have offered no explanation why even commercial phone lines or other non-dedicated means of communication might be overloaded at the time of initial notification. In other words, while some non-dedicated means of communication may become "overloaded" after offsite authorities and the general public have been notified of an emergency, there is no reason whatsoever to expect that they would be overloaded at the time the site makes its initial contact with offsite authorities, to advise them of the declaration of an emergency. See Metropolitan Edison Co. (Three Mile Island, Unit No. 1), ALAB-697, 16 N.R.C. 1265, 1269-72 (1982) (approving onsite plan using commercial phone lines for "initial notification" of offsite authorities, noting lack of reason to expect phone overloading at "initial notification" stage). Thus, proposed Contention 3 is particularly objectionable for lack of basis.

Finally, given the substantive similarity of the two contentions, EP-3 must be rejected for the reasons advanced in opposition to EP-2(a), which need not be restated here. See also, e.g., Vogtle Plan, at E-2 to E-3, F-1; County Plan, at

50, 53; Base Plan, at 19-20; (concerning radio back-up for initial notification). For all these reasons, Applicants oppose the admission of proposed Contention EP-3 to this proceeding.

EP-4

> Applicants fail to show that adequate emergency facilities and equipment to support the emergency response are provided and maintained by 10 CFR 50.47(b)(8). For example, the Burke County plan shows the county has only four emergency medical response vehicles. The Burke County Hospital, which the Plan says will handle the treatment of both radiation-contaminated and noncontaminated injuries, has a bed capacity of only 52. Such facilities are unlikely to be sufficient to service a large number of injured in the event of a fairly serious radiological accident or of an accident external to the plant which results in injury to the plant, such as an earthquake or a nuclear attack, where non-plant related injuries will also be rampant.14/

To the extent Joint Intervenors' proposed Contention EP-4 challenges the capability of area medical service providers to care for "a large number of injured in the event of a fairly serious radiological accident," litigation of the proposed contention is precluded by the Commission's decision in Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), CLI-83-10, 17 N.R.C. 528 (1983), the Commission's "Statement of Policy on Emergency Planning Standard 10

14/ Joint Intervenors erroneously cite 10 C.F.R. § 50.47(b)(8) in the body of their proposed contention. Their expressed concerns are more appropriately addressed under 10 C.F.R. § 50.47(b)(12) and the case law interpreting that regulation. See discussion, infra.

CFR 50.47(b)(12)," 50 Fed. Reg. 20892 (May 21, 1985) [issued in response to the partial reversal of the Commission's San Onofre decision in GUARD v. NRC, 753 F.2d 1144 (D.C. Cir. 1985)], and the pending petition for rulemaking on the need for provision of medical services in the event of a radiological emergency [see 50 Fed. Reg. 20799 (May 20, 1985)].

Briefly, Southern California Edison Co., (San Onofre Nuclear Generating Station, Units 2 and 3), CLI-83-10, 17 N.R.C. 528 (1983), expressly held that 10 C.F.R. § 50.47(b)(12) does not require special medical arrangements or extensive advance planning for injuries to members of the general public in the event of a nuclear plant accident:

> With respect to individuals who become injured and are also contaminated, the arrangements that are currently required for on-site personnel and emergency workers provide emergency capabilities which should be adequate for treatment of members of the general public. Therefore, no additional medical facilities or capabilities are required for the general public. However, facilities with which prior arrangements are made or which have the capability to treat contaminated injured individuals should be identified. With respect to individuals who may be exposed to dangerous levels of radiation, treatment requires a lesser degree of advance planning and can be arranged for on an as-needed basis during an emergency. Emergency plans should, however, identify those local or regional medical facilities which have the capabilities to provide appropriate medical treatment for radiation exposure. No contractual agreements are necessary and no additional hospitals or other facilities need be constructed.

Id. at 536-37 (footnote omitted). GUARD v. NRC vacated and remanded that portion of the Commission's San Onofre decision which stated that a list of treatment facilities constitutes adequate arrangements for medical services for members of the public who might be exposed to high levels of radiation in the event of an accident at a nuclear power plant. The Court's decision in GUARD v. NRC specifically contemplates further Commission action on this subject.

In its recent Statement of Policy in response to the GUARD decision, the Commission provides procedural Interim Guidance to all licensing and appeal boards, pending its substantive response to the GUARD decision. The Commission expressly holds that, "until the Commission concludes its GUARD remand and instructs its boards and its staff differently," it is reasonable to limit contentions on this subject "to issues which could have been heard before the Court's decision in GUARD v. NRC" (50 Fed. Reg. 20894) -- that is, to whether the plans identify the existing appropriate medical facilities. But Intervenors do not quarrel with whether the existing facilities are identified in the plans; rather, they assert that the existing facilities are not sufficient to care for the "large number of injured" they postulate. Litigation of this issue is clearly precluded by the Commission's ruling in San Onofre. Further, as discussed above in Section III.B, Commission policy statements are binding on the Boards. Accordingly, because

Intervenors have offered no indication why this Board should depart from the persuasive reasoning of the Commission's recent Statement of Policy on this subject, the Board should reject that portion of EP-4 relating to injuries resulting from "a fairly serious radiological accident."

In addition, as noted above, the Commission has recently published for comment a petition for rulemaking on the subject, which would amend the emergency planning regulations to clarify that emergency plans need only include medical arrangements for persons who are both contaminated and traumatically injured in some manner requiring emergency medical treatment. 50 Fed. Reg. 20799 (May 20, 1985). As discussed earlier in Section III.B, contentions are not appropriate for litigation where the matter at issue is or is about to become the subject of general rulemaking by the Commission. For this reason, too, the part of proposed Contention EP-4 postulating injuries resulting from "a fairly serious radiological accident" must be rejected.

The second part of proposed Contention EP-4 challenges the ability of existing medical facilities to accomodate radiation-related injuries resulting from "an accident external to the plant, which results in injury to the plant, such as an earthquake or a nuclear attack." To the extent that Joint Intervenors seek to litigate unspecified "accidents external to the plant," their proposed contention fails for lack of

specificity. Moreover, litigation of Intervenors' concerns about earthquakes is expressly barred by the pending Commission rulemaking on the subject. To briefly summarize the proposed rule:

> The Commission has ruled in previous adjudications that its regulations do not require the consideration of potential impacts of earthquakes on emergency planning for nuclear reactor sites. The Commission now proposes to provide explicitly through amendment of its regulations in 10 CFR Part 50 that such consideration need not be given. Pending completion of this rulemaking, the interpretation of its rules set out in the adjudications remains in effect.

49 Fed. Reg. 49640 (December 21, 1984) (emphasis supplied). See also Section III.B, supra (contention not admissible where matter at issue is subject of rulemaking).

Finally, litigation of Joint Intervenors' concerns about nuclear attack is precluded as a challenge to 10 C.F.R. § 50.13, and associated case law. Section 50.13 provides, in relevant part:

> An applicant for a license * * * is not required to provide for design features or other measures for the specific purpose of protection against the effects of (a) attacks and destructive acts, including sabotage, directed against the facility by an enemy of the United States, whether a foreign government or other person, or (b) use or deployment of weapons incident to U.S. defense activities.

See also Florida Power & Light Co. (Turkey Point Nuclear Generating Units No. 3 and No. 4), 4 A.E.C. 9, 13 (1967)

(Commission emphasizes that "neither our regulations nor our decisions indicate any requirement that an applicant provide for special design features or other measures for the specific purpose of protection against the effects of enemy attacks and destructive acts), aff'd, Siegel v. AEC, 400 F.2d 778 (1968). As discussed in Section III.B above, proposed contentions which constitute attacks on existing regulations are not admissible. Accordingly, because the part of EP-4 which postulates "nuclear attack" effectively challenges 10 C.F.R. § 50.13 and associated Commission decisions, that part of EP-4 must be rejected.15/

In addition, Applicants note that the language of EP-4 is taken virtually word-for-word from Joint Intervenors' earlier contention. See GANE's 4/11/84 Supplement, at 30-31, and CPG's 5/25/84 Supplement, at 26. Thus, Intervenors initially drafted EP-4 in the absence of the emergency plans, but have failed to provide any further specification although all the relevant plans are now available. Indeed, the plans include much detailed information on available medical and public health support resources -- none of which Intervenors have even acknowledged. See, e.g., Annex D, at 51-59; Base Plan, at 95, and App. 3 at 4; County Plan, at 49. See also Vogtle Plan, at L-2 (describing capabilities of Burke County Hospital and Humana

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15/ Note that the State of Georgia maintains a separate emergency plan for nuclear war. See "Nuclear Emergency Operations Plan" (1978).

Hospital). The available information completely discredits Intervenors' assertions that the Burke County emergency medical response vehicles and the Burke County Hospital are the only medical facilities available for use in the event of a radiological emergency. The proposed contention is therefore also objectionable for lack of specificity -- for failure to specifically address the relevant documentation.

For all these reasons, the Board must reject Joint Intervenors' proposed Contention EP-4.

EP-5

> The Plan does not specify whether the designated Reception Center, the Burke County Comprehensive High School has developed an adequate plan for early evacuation.

Proposed Contention EP-5 must be rejected for lack of basis. Burke County Comprehensive High School is outside the Vogtle plume EPZ. See, e.g., County Plan, at 61 (high school is located more than 15 miles from Vogtle plant). There is therefore no requirement for any plan for "evacuation" of that high school, let alone a plan for "early evacuation." Further, to the extent the proposed contention can be read to mean "early dismissal" of the high school students in attendance there (e.g., to accomodate evacuees), Joint Intervenors have failed to demonstrate -- and, indeed, cannot demonstrate -- that those students must be released in order to accomodate the evacuees. As the plans indicate, evacuees generally will be

accomodated in the common areas of the high school (e.g., the gymnasium, auditorium, etc.), and the old high school and an elementary school are available as back-up facilities, if needed. See, e.g., County Plan, at 61-62. Thus, there is no basis for concern about the capacity of the designated facilities to accomodate evacuees. For these reasons, the Board should reject EP-5.

EP-6

> Applicants have not shown, pursuant to 10 CFR Part 50 Appendix E, IV D.2 and 50.47(b)(7) that adequate and credible education and notification procedures will be followed during normal plant operation and in the event of an accident at Vogtle. These requirements include "basic emergency planning information," "general information as to the nature and effects of radiation," "signs or other measures . . . helpful if an accident occurs." 10 CFR Appendix E, IV, D.2.

Contrary to proposed Contention EP-6, the plans include detailed provisions addressing both the distribution of pre-emergency public information and the dissemination of additional, specific information at the time of an actual emergency. See generally Base Plan, at 62-71; Annex D, at 7; County Plan, at 63-66; Vogtle Plan, at G-1 to G-3; Vogtle Plan, App. 8. These provisions address all the public information program elements required by the Commission's regulations and regulatory guidance, including those recited by Joint Intervenors in their proposed contention.

In short, the pre-emergency public information program includes a printed brochure for distribution to EPZ residents (Base Plan, at 63; County Plan, at 55, 63; Vogtle Plan, at G-1; Vogtle Plan, App. 8, at 19), as well as a telephone directory ad providing basic emergency information (Vogtle Plan, at G-1, G-2; Vogtle Plan, App. 8, at 19), and -- as discussed in response to EP-2(h) above -- signs on the banks of the Savannah River, to advise hunters and fishermen of appropriate actions in an emergency (County Plan, at 63; Vogtle Plan, at G-2; Vogtle Plan, App. 8, at 19). Detailed, situation-specific information will be broadcast to the public at the time of an emergency via the EBS system (Base Plan, at 65-71; Annex D, at 7; County Plan, at 63-66), and extensive plans have been made to provide for rumor control, and to assure that the news media are kept up-to-date in the event of an accident (Base Plan, at 64-65; Annex D, at 7; County Plan, at 63, 66; Vogtle Plan, at G-2 to G-3; Vogtle Plan, App. 8, at 1-4, 14-15). Thus, there is no basis whatsoever for proposed Contention EP-6.

Moreover, EP-6 is also objectionable for its failure to address the particularly detailed provisions of the plans on the subject of public information and education. Further, Applicants note that this proposed contention is taken virtually word-for-word from Intervenors' earlier filings. See GANE's 4/11/84 Supplement, at 33, and CPG's 5/25/84 Supplement, at 28-29. Thus, Intervenors initially drafted the proposed

contention in the absence of the emergency plans. Nevertheless, despite the availability of all relevant emergency plans, Intervenors have failed to further specify their sweeping contention. Indeed, there is no indication whatsoever that Intervenors even skimmed the particularly detailed provisions of the plans on the subject of public information and education. Accordingly, the Board should reject EP-6 both for lack of basis and lack of specificity -- that is, failure to specifically address the relevant documentation.

EP-7

> Applicants claim that the Department of Energy (Savannah River Plant Operations Office, Aiken, South Carolina) will provide radiological assistance (advice and emergency action essential for the control of immediate hazards to health and safety) in the event of an emergency at Vogtle. It fails to address the possibility that an emergency situation (for example, an earthquake) which threatens the safe operation of Vogtle might also endanger operations at Savannah River Plant. In this event, not only would Department of Energy offices be prevented from providing aid to Vogtle, other federal, state and local assistance resources would be divided between the two sites. Applicants do not address the impacts of simultaneous evacuation from both plants, or overload of medical facilities and emergency vehicles in the event of injury to persons by the operation of both plants. Nor do Applicants adequately discuss coordination of activities of Georgia and South Carolina's agencies.16/

16/ This proposed contention is largely lifted word-for-word from GANE's 4/11/84 Supplement, at 33, and CPG's 5/25/84 Supplement, at 29.

The only scenario which Joint Intervenors postulate to "threaten[] the safe operation" of both Vogtle and the Savannah River Plant is an earthquake. But, as explained above in response to proposed Contention EP-4, litigation of the effects of earthquakes on emergency planning is expressly barred by the Commission's pending proposed rule on the subject. See 49 Fed. Reg. 49640 (December 21, 1984). Further, to the extent that Joint Intervenors seek to litigate other, unspecified "emergency situations" which might affect both Vogtle and the Savannah River Plant, their proposed contention is impermissibly vague. EP-7 must therefore be rejected because its subject matter is at issue in a pending rulemaking, and because it lacks the specificity required by the Commission's regulations.

EP-8

> The evacuation of the 145,000 citizens of Augusta who live within 26 miles of Plant Vogtle is not addressed in the Emergency Plan though Applicants should be prepared for the displacement of a significant number of the population outside the EPZ due to predictable public response to a limited evacuation. For example, during the accident at Three Mile Island-2, over 30% of the people living within a fifteen mile radius of the plant evacuated though only a precautionary warning to pregnant women and small children within a five-mile radius of the plant had been issued. (J. H. Johnson, "Planning for Spontaneous Evacuation During a Radiological Emergency," Nuclear Safety, Vol. 25, No. 2, March-April 1984). Nor is the likelihood that people will disregard official orders and instructions during a nuclear power plant accident. (Ibid.)17/

17/ This proposed contention is lifted essentially from GANE's 4/11/84 Supplement, at 31, and CPG's 5/25/84 Supplement, at 27.

The thrust of proposed Contention EP-8 is that the population of Augusta will evacuate in the event of an emergency at Vogtle, despite the absence of any official order or instruction to do so. However, any such relocation is immaterial unless it would impede the evacuation of those inside the plume EPZ. Because any evacuating Augusta residents would be moving away from the plant rather than toward it, and because (as Intervenors concede) Augusta is approximately 26 miles from Vogtle, any relocation of Augusta residents would not impede the evacuation of those within the plume EPZ. Accordingly, EP-8 must be rejected for lack of any reasonable basis in logic.

EP-9

> Applicants have failed to plan for a situation where emergency response is hampered by an earthquake and resulting structural damage to roads. The Plan also fails to address the fact that in the event of an earthquake, sheltering is not possible as residents are directed to remain outside houses and other buildings.

Litigation of proposed Contention EP-9 is precluded by the pendency of the Commission's rulemaking on the effects of earthquakes on emergency planning for fixed nuclear facilities. See 49 Fed. Reg. 49640 (December 21, 1984). See also Section III.B, supra (contention not admissible where matter at issue is subject of rulemaking). Proposed Contention EP-9 therefore must be rejected.

EP-10

> Applicants have also failed to provide a complete list of the orchards and farms within the ingestion pathway.

Proposed Contention EP-10 fails for lack of legal basis. The applicable regulatory guidance provides, in relevant part:

> Up-to-date lists of the name and location of all facilities which regularly process milk products and other large amounts of food or agricultural products * * * shall be maintained.

NUREG-0654, Criterion J.11. However, Joint Intervenors do not contend that the plans fail to include the required provisions for milk and food processors; nor could they so contend. See, e.g., Annex D, at 37-38, 40-44; SCORERP, at 29. Rather, Joint Intervenors assert that the plans do not include "a complete list of the orchards and farms within the ingestion pathway." Thus, because there is no regulatory requirement for the listing of such individual farms and orchards, proposed Contention EP-10 must be rejected by the Board.18/

18/ Planning for the ingestion pathway EPZ does contemplate the use of the Emergency Broadcast System, if necessary, to advise the public of any restrictive measures on the use of crops and animal by-products for food, as well as any other restrictions imposed by the Departments of Agriculture, Human Resources, and Natural Resources. See, e.g., County Plan, at 66.

EP-11

Applicants fail to address the effects on evacuation of the many thousand construction workers at Unit 2 of Plant Vogtle if an accident should occur at Unit 1 before completion of construction at Unit 2.

Joint Intervenors' allegation that Unit 2 construction workers have not been considered in evacuation planning is flatly disproven by the plans themselves. See, e.g., County Plan, at 54, 59-60; Vogtle Plan, App. 6, at 2-1. The plans indicate that evacuation planning assumes an onsite work force with Unit 1 in operation and Unit 2 under construction. Thus, proposed Contention EP-11 is totally lacking in basis.

EP-11 is also objectionable because of its failure to address the specific provisions of the available plans. Further, Joint Intervenors have not indicated the particular "effects on evacuation" with which they are concerned. Therefore, EP-11 also lacks the specificity required by the Commission's regulations.

Finally, the proposed contention is untimely in the extreme. The evacuation time estimate study -- Appendix 6 to the Vogtle Plan, served on Joint Intervenors on November 30, 1984 -- specifically addressed the effects on evacuation of the Unit 2 construction force (see, e.g., Vogtle Plan, App. 6, at 2-1), and thus should have triggered any contentions reflecting Intervenors' concerns on this subject. The instant contention is therefore more than five months late, and could be rejected for that reason alone. For all these reasons, Applicants oppose the admission of EP-11.

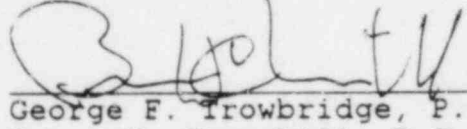
V. CONCLUSION

Joint Intervenors' proposed emergency planning contentions are late-filed, in violation of Board order and Commission directive, and without the requisite showing of good cause. All are at least three weeks late -- some more than five months late. The proposed contentions should therefore be rejected as untimely.

Moreover, the proposed contentions are substantively defective. As discussed above, they variously fail to address the relevant documentation and lack the required specificity, are without legal and factual bases, attack the Commission's regulations, contravene official NRC statements of policy, and seek to raise matters which are currently the subject of generic rulemaking by the Commission.

Accordingly, the Board should reject Joint Intervenors' twenty proposed emergency planning contentions, both because they are late-filed and because they fail to meet the Commission's established standards for admissible contentions.

Respectfully submitted,



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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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)	)	(OL)

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 her appearance as counsel on behalf of Applicants in proceedings related to the above-captioned matter.

Delissa A. Ridgway

Delissa A. Ridgway

SHAW, PITTMAN, POTTS & TROWBRIDGE
1800 M Street, N.W.
Washington, D.C. 20036
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Dated: July 5, 1985

July 5, 1985

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NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicants' Answer to Joint Intervenors' Proposed Contentions on Emergency Response Plans," and "Notice of Appearance" of Delissa A. Ridgway, both dated July 5, 1985, were served upon those persons on the attached Service List by deposit in the United States mail, postage prepaid, this 5th day of July, 1985, except that Laurie Fowler has been served by deposit with Federal Express (Saturday delivery). In addition, the three members of the Licensing Board have been served with the following documents (already available to the other parties to the proceeding):

(a) "State of Georgia Radiological Emergency Plan -- Base Plan";

(b) "Annex D, Plant Vogtle to The Georgia Radiological Emergency Plan" (April 1985);

(c) "Burke County Emergency Management Agency Radiological Emergency Plan" (April 1985);

(d) "Vogtle Electric Generating Plant Unit 1 and Unit 2 Emergency Plan" (in two volumes); and

(e) "South Carolina Operational Radiological Emergency Response Plan -- SCORERP-84."

Delissa A. Ridgway

Dated: July 5, 1985

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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)	)	

SERVICE LIST

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