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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Morton B. Margulies, Chairman  
Gustave A. Linenberger, Jr.  
Dr. Oscar H. Paris

DOCKETED  
USNRC

'85 JUN -5 P12:24

In the Matter of  
GEORGIA POWER COMPANY, et al.  
(Vogtle Electric Generating  
Plants, Units 1 and 2)

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
Docket Nos. 50-424-OL BRANCH  
50-425-OL

SERVED JUN -5 1985

June 4, 1985

MEMORANDUM AND ORDER  
(Ruling on Joint Intervenor's Motion To Compel)

On March 1, 1985, Joint Intervenor, Campaign for a Prosperous Georgia and Georgians Against Nuclear Energy, filed a motion to compel Applicants to respond to interrogatories and produce documents. The discovery requests arise from Joint Intervenor's Third Set of Interrogatories which refer back to Joint Intervenor's First Set of Interrogatories. Movant alleged that Applicants have failed to offer substantial and warranted objections to the interrogatories and requests to produce. They further asserted that Applicants failed to comply with 10 CFR 2.740(f)(1) which provides in part, "Failure to answer or respond shall not be excused on the ground that the discovery sought is objectionable unless the person or party failing to answer or respond has applied for a protective order ...".

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Applicants filed an answer on March 18, 1985 opposing Joint Intervenors' motion to compel. They contend that 10 CFR 2.740(f)(1) is inapplicable because Applicants responded to the requests by written objection, thus making a motion for a protective order unnecessary. Applicants argue the justness of their refusal to respond and request that the motion to compel be denied in toto.

The parties in the past had been successful in resolving disputes among themselves through negotiation. As a result the Board, by letter of March 26, 1985, called upon the parties to attempt to resolve discovery differences by way of settlement. Commendably, they were successful in part. Some of the requests were withdrawn. As to others, additional information was furnished or will be provided. We were notified by letter of April 22, 1985 that the parties were unable to reach any agreement concerning interrogatories B-6(s), B-19, B-20, B-24, B-25, B-26, B-27(c), B-29, B-42, B-43, B-44, B-47 and B-48.

The NRC Staff has taken no position on the discovery dispute between the Joint Intervenors and the Applicants.

#### Applicable Legal Standards

Discovery in proceedings before the Commission is governed by 10 CFR 2.740-2.742. Subparagraph 2.740(b)(1) provides in part:

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding ... and shall relate only to those matters in controversy which have been identified by the Commission or the presiding officer in the prehearing order entered at the conclusion of the prehearing conference... It is not ground for objection that the

information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

The Commission's discovery rules are analogous to those in the Federal Rules of Civil Procedure. See Fed. R. Civ. P. 26(b)(1). Pretrial discovery is liberally granted to enable the parties to ascertain the facts in complex litigation, to refine the issues, and prepare adequately for a more expeditious hearing. Pacific Gas & Electric Co. (Stanislaus Nuclear Project, Unit 1), LBP-78-70, 7 NRC 1038, 1040 (1978). Discovery aids in eliminating the element of surprise. It may shorten the hearing with its attendant expense and inconvenience, and it increases the ability of the parties to develop a complete record. Pennsylvania Power & Light Co. (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-613, 12 NRC 317, 322 (1980).

Limitations should be placed on discovery where the discovery sought is unreasonably cumulative or duplicative, is unduly burdensome, or is obtainable from some other source that is more convenient, less burdensome, or less expensive. It has been held that a party is not required to engage in extensive independent research. It need only reveal information in its possession or control, although it may be required to perform some investigation to determine what information it actually possesses. See Susquehanna, supra, ALAB-613, 12 NRC at 334.

#### Rulings On The Issues

The failure of Applicants to apply for a protective order, referred to in 10 CFR 2.740(f)(1) should not act as a bar to allowing them to defend their positions. The regulation has been criticized as

confusing. See Consumers Power Co. (Palisades Nuclear Power Facility, ALJ-80-1, 12 NRC 117, 130 n.9 (1980)). An appeal board has said that objections "may" be accompanied by a motion for a protective order. Susquehanna, supra, ALAB-613, 12 NRC at 322-23. Under the circumstances we need not view the requirement as mandatory and the Board will rule on the objections raised. This will enable the parties to have the discovery disputes determined on a record made by both and provides fundamental fairness. Form should not prevail over substance.

Disputed Interrogatories

Joint Intervenors' Interrogatory B-6(s)

It asked:

Page 1410976, the Applicants state, "Should we not hear from Transamerica by this date, we will assume that there exist in your organization a lack of dedication to ensure a quality product per the specification and the contract." Do the Applicants believe that TDI is dedicated to ensuring a quality product per the specifications, contracts and regulatory requirements? Provide the bases for the response.

Applicants responded:

RESPONSE: Applicants object to interrogatory B-6(s) on the following grounds:

- (1) interrogatory B-6(s) asks the Applicants to speculate concerning the subjective intent of TDI, and
- (2) interrogatory B-6(s) requests information that is not relevant to the subject matter of this proceeding and that is not reasonably calculated to lead to the discovery of admissible evidence.

Contention 14 alleges that there is no reasonable assurance that diesel generators manufactured by Transamerica Delaval, Inc., to be used

at Plant Vogtle, will provide a reliable and independent source of on-site power and that inadequate quality assurance and quality control have resulted in substandard engines which are subject to common mode failures. In support, Intervenor asserted Applicants should have made a general assessment of the suitability of the generator and that their failure to do so has brought Applicants' own quality control capabilities into question, undermining confidence in the safe functioning of the operating plant contrary to NRC QA requirements.

The quote in the interrogatory from Applicants' letter shows that when the letter was written Applicants were in the process of then considering whether the manufacturer was committed to producing a quality product as called for by contract. The interrogatory tangentially relates to the alleged failure of Applicants to assess the suitability of the generator and the inaction's effect on the Applicants' quality control capabilities and on their ability to operate the plant in accordance with NRC quality assurance requirements.

In applying the discovery rules in the manner previously discussed, the Board finds that Joint Intervenor's Interrogatory B-6(s) is reasonably calculated to lead to the discovery of admissible evidence pertaining to Contention 14. Joint Intervenor's motion to compel answering the interrogatory is therefore granted.

Joint Intervenor's Interrogatory B-19

Interrogatory B-19 of Joint Intervenor's Third Set of Interrogatories asked:



List all wells used to map the marl aquiclude under VEGP. Provide marl data from each. Describe test techniques and whether the marl material brought to the surface was through corings or cuttings. Discuss well 42E. Discuss uncertainty ranges.

Applicants responded:

RESPONSE: The extent of the marl aquiclude was determined primarily by exploratory drill holes, not wells. Volumes II and III of the VEGP Preliminary Safety Analysis Report (PSAR) contain geologic logs describing drilling and sampling methods and lithology for those drill holes. The Applicants' response to interrogatory B-2 of the Intervenor's First Set of Interrogatories describes the testing techniques and data sources used.

Well 42E is discussed in the Applicants' response to interrogatory B-16 of the Intervenor's Third Set of Interrogatories.

Applicants object to that portion of interrogatory B-19 that requests them to "discuss uncertainty ranges" on the ground that it is vague, confusing, not susceptible to a proper response.

This interrogatory relates to Contention 7, which alleges that an accidental spill of radioactive water on the site could result in contamination of the water table aquifer under under Plant Vogtle and possibly deeper aquifers as well. We indicated in our Memorandum and Order dated September 5, 1984 that we were not convinced that the Tuscaloosa aquifer is as isolated from the surface as Applicants would have us believe, or whether there are one or two deep aquifers under VEGP.

Applicants argue that the Joint Intervenor's have failed to specify the particular parameter, measurement, or data they want discussed or

what measure of uncertainty they wish to have Applicants' discuss. Moreover, Applicants assert that ranges of uncertainty for all drill hole and soil data have not been evaluated. Responding to this argument, Joint Intervenor assert that any scientific evaluation has a range of uncertainty.

Applicants are correct in asserting that they are not required to perform additional research or data analysis in order to answer an interrogatory. On the other hand, we believe it possible that the Applicants did make an effort to determine the variability in some of the data collected during the ground water field studies on and around the VEGP site. See, FSAR, Section 2.4.12.1.2. Any estimates of the dispersion of data (such as range; standard deviation, confidence limits, etc.) around central values (e.g., mean values) that now exist in the files of the Applicants or their contractors are relevant estimates of uncertainty and shall be provided and discussed by the Applicants in response to this interrogatory.

Joint Intervenor's Interrogatory B-20

Interrogatory B-20 of Joint Intervenor's Third Set of

Interrogatories asked:

How many wells mapped the confined aquifer underlying the VEGP (the FSAR lists only MU-1 and 2). Discuss the uncertainty in the VEGP analysis of the confined aquifer mapping.

Applicants responded:

RESPONSE: As discussed in the Applicants response to interrogatory B-1 of the Intervenor's First Interrogatories, the presence of the confined aquifer at the site was determined from various

published reports concerning the geology and groundwater hydrology of the region. The sequence and depths of the different aquifers and aquicludes beneath the VEGP site were determined by site exploration as discussed in Applicants' response to interrogatories B-1 and B-24 of the Intervenor's First Set of Interrogatories and described in Section 2.4 and 2.5 of the PSAR and FSAR. The use of observation wells in the confined aquifer to determine the contours of the piezometric surface for that aquifer system is discussed in section 2.4.12.2.3.2 of the FSAR and shown on Figure 2.4.12-6 of the FSAR.

The Applicants object to that portion of interrogatory B-20 that asks them to "discuss the uncertainty of the VEGP analysis of the confined aquifer mapping" on the ground that it is vague, confusing, and not susceptible to a proper response.

The arguments of Applicants and of Intervenor's in support of their positions on this interrogatory are similar to the positions taken by them with respect to Interrogatory B-19, and our finding and ruling are likewise similar. Applicants shall provide and discuss any estimates of uncertainty that presently exist in their files or the files of their contractors.

Joint Intervenor's Interrogatory B-24

Interrogatory B-24 of Intervenor's Third Set of Interrogatories asked:

RE: VEGP Response to IQB-2: Provide the laboratory permeability tests conducted on core samples from marl exploration holes; provide core sampling techniques, core sample depths, core sample locations and other pertinent data. Provide field test correlations for the same core sample locations.

The VEGP power block excavation exposed an upper 25 feet of marl with a surface of about one million square feet exposed, approximately one-third of one percent of the VEGP areal site. Provide the uncertainty ranges in asserting that there are no voids, dissolution cavities, systematic fractures, or joints (exclusive of the multiple penetrations



through the marl by confined aquifer observation and production well) that would provide a path of movement of groundwater contamination through the marl. Provide the uncertainty ranges inclusive of marl well penetration.

Discuss the consistently large water level differences in light of the lack of correlation between the active, confined aquifer observation well water levels. Why do the confined aquifer water levels vary and what is the source of the variability?

Applicants responded:

RESPONSE: The laboratory permeability tests referred to in the Applicants' response to interrogatory B-2 of the Intervenor's First Set of Interrogatories were conducted on core samples of sands above the marl. No laboratory tests were conducted on core samples from the marl. The exploration core drilling was conducted according to the specifications outlined in the contract with the drilling contractor, which follow the ASTM D 2113 standard method procedures. The geologic logs of drill holes contained in the PSAR and FSAR show the information requested concerning sample depths and locations.

Applicants object to the second paragraph of Interrogatory B-24 to the extent that it asks the Applicants to "provide the uncertainty ranges" on the ground that it is vague, confusing, and not susceptible to a proper response. Subject to that objection, Applicants state that the effectiveness of the marl as an aquiclude has been demonstrated to a very high degree of confidence by a variety of methods, as discussed in the Applicants' response to interrogatory B-2 of the Intervenor's First Set of Interrogatories. The marl has been studied by means of packer permeability tests in the field, numerous drill holes, and detailed geologic mapping of the large areas exposed during excavation. These studies did not reveal geologic features that would provide a path for potential contaminants to migrate from the water table aquifer to the deeper confined aquifers. The lack of structures in the marl that would provide a path for movement of ground water contamination is verified by the consistent difference in water levels in the unconfined and confined aquifers as shown in Figures 2.4.12-6 and 2.4.12-7 of the FSAR.

Water levels in observation wells open to the confined aquifer will vary in response to changes in recharge and discharge rates. Other factors such as pumping and barometric pressure also play a part.

Applicants' Response to Intervenor's Third Set of Interrogatories and Request for Production of Documents (Feb. 12, 1985) at 48-50.

Again Applicants argue that the Intervenor's request for "uncertainty ranges" is "vague, confusing, and not susceptible to a proper response", and again Intervenor replies that "any scientific evaluation has a degree of uncertainty associated with it". Once again we rule that Applicants shall provide any measures of uncertainty they or their contractors may have for the data from tests and measurements described in Applicants' response to Interrogatory B-2 of the Intervenor's First Set of Interrogatories.

It is not clear to us whether estimates of variability in the data from permeability tests or water level measurements, if available, would satisfy intervenor's request for "uncertainty ranges in asserting that there are no voids \* \* \* that would provide a path for movement of groundwater contamination through the marl" or the request for "uncertainty ranges inclusive of marl well penetration." It seems to us that the assertion that no voids or fractures exist is an interpretation of the data or statistics calculated from the data, or both, and that any uncertainty associated with such an interpretation is a subjective judgment. Therefore the Intervenor can make their own subjective judgment if they have access to the same numbers available to Applicants, viz., the data in the FSAR plus any estimates of variability

in those data that might be available to Applicants or their contractors. Such information, if available, shall be provided to Intervenor.

As for the "uncertainty ranges inclusive of marl well penetration", we share the Applicants' confusion with respect to what the Intervenor are requesting. Therefore to the extent the motion requests information relating to uncertainty associated with or attributable to marl well penetration, it is denied.

Joint Intervenor's Interrogatory B-25

Interrogatory B-6 of Joint Intervenor's First Set of Interrogatories asked:

Please list all ground water contamination discovered at Plant Hatch and all studies of the tritium contamination of ground water at Plant Hatch.

Applicants responded:

RESPONSE: Applicants object to interrogatory B-6 on the following grounds:

(1) interrogatory B-6 seeks information that is not relevant to the subject matter of this proceeding and that is not reasonably calculated to lead to the discovery of admissible evidence, and

(2) interrogatory B-6 requests information outside the scope of those matters identified as being in controversy in this proceeding by the Atomic Safety and Licensing Board ("Board") in its Memorandum and Order on Special Prehearing Conference Held Pursuant to 10 C.F.R. 2.715a.

Applicants' Response to Intervenor's First Set of Interrogatories and Request for Production of Documents (Nov. 29, 1984) at 19.

Interrogatory B-25 of Joint Intervenor's Third Set of Interrogatories then asked:

RE: VEGP Response to IQB-6: VEGP has made many technical statements and drawn numerous technical conclusions based on esoteric assumptions and recondite theories. The technical conclusions cannot be assailed without validation from two perspectives, either by finding groundwater contamination in the VEGP aquifers in the future or by showing that similar technical conclusions at other facilities have been contraverted. Groundwater contamination at the nearby Savannah River Plant and at Plant Hatch are relevant. Provide the Plant Hatch information requested in IQB-6 but expand it to include all US electric generating power stations and all radionuclide and contaminants released at each site (cf. VEGP Response p. 92 where VEGP uses effluent data from other sites as part of VEGP's own technical statement).

Applicants responded:

RESPONSE: Applicants object to interrogatory B-25 on the following grounds:

(1) interrogatory B-25 seeks information that is not relevant to the subject matter of this proceeding and that is not reasonably calculated to lead to the discovery of admissible evidence,

(2) interrogatory B-25 requests information that is outside the scope of those matters identified as being in controversy in this proceeding by the Board in its Memorandum and Order on Special Prehearing Conference Held Pursuant to 10 C.F.R. 2.715a, and

(3) interrogatory B-25 is overly broad, unduly burdensome, and oppressive, and providing the requested information would necessitate an unreasonable and costly expenditure of time, effort, and research by Applicants.

Applicants' Response to Intervenor's Third Set of Interrogatories and Request for Production of Documents (Feb. 13, 1985) at 50-51.

Applicants argue that groundwater contamination at Plant Hatch is irrelevant to possible groundwater contamination at Plant Vogtle, because the geology and hydrology of the region in which Plant Hatch is located differ from the geology and hydrology at Plant Vogtle. Further, they argue that groundwater contamination at the Savannah River Plant is

irrelevant because that facility is not an "electric generating power station." Finally, Applicants believe that the request for information on groundwater contamination at all electric generating power stations in the U. S. "is overly broad, extremely burdensome, and of no value to Joint Intervenors' pursuit of Contention 7." Intervenors respond by arguing that Applicants' conclusion that a spill at Vogtle would not contaminate the Tuscaloosa aquifer can be assailed by showing that similar conclusions at other facilities have been contraverted.

We agree with the Applicants that the request for them to supply information about groundwater contamination at each U. S. electric generating power facility is unduly burdensome. Moreover, it would probably require the Applicants to undertake extensive independent research. Therefore the request for the Board to compel the Applicants to supply information about every electric power plant in the U. S. is denied.

In light of the Applicants' information that the geology and hydrology at Plant Hatch are different from those at Vogtle, we deny the request for Hatch data because it would be of no value in this proceeding. Should Intervenors be able to establish that Applicants' information is incorrect, however, we would reconsider the matter.

As regards the Savannah River Plant (SRP), we recognize that it is not an electric generating power plant. On the other hand, there are nuclear reactors at SRP, so that the potential for groundwater contamination to occur certainly exists. To that extent information about SRP might be relevant. Furthermore, SRP is close enough to Plant



Vogtle to make it reasonable to assume that the geology and hydrology at SRP are probably similar, though not identical, to those at Vogtle. But it appears that the Intervenor already have access to information about groundwater contamination at SRP, i.e., from a former Senior Project Engineer of SRP's Nuclear Waste Management Branch. See letter from William F. Lawless to Danny Feig, dated May 29, 1984, ff. Tr. 165. Therefore we deny the request to compel Applicants to supply information about groundwater contamination at SRP on the grounds that the discovery information sought is presently available to the Intervenor.

Joint Intervenor's Interrogatory B-26

Interrogatory B-26 of Joint Intervenor's Third Set of Interrogatories asked:

RE: VEGP Response to IOB-7: What financial assurances exist that VEGP will be able to fund not only the post-operational environmental radiological and chemical monitoring programs associated with decommissioning the VEGP plant but also the cleanup of contaminated soil and groundwater at VEGP. Since the predominant well pattern in the area surrounding VEGP indicates primarily groundwater table well users (FSAR), what steps will VEGP take to financially and technically return the 3000 plus acre VEGP facility back to public domain free of radionuclide and hazardous waste contamination in water table aquifer?

Applicants' responded:

RESPONSE: Applicants object to interrogatory B-26 on the following grounds:

(1) interrogatory B-26 asks for information that is not relevant to the subject matter of this proceeding and that is not reasonably calculated to lead to the discovery of admissible evidence, and

(2) interrogatory B-26 requests information beyond the scope of those matters identified as being in controversy in this proceeding by the ASLB in its Memorandum and Order on

Special Prehearing Conference Held Pursuant to 10 C.F.R. 2.715a, since the Board did not admit proposed Contention 3 submitted by Campaign for a Prosperous Georgia; and

(3) interrogatory B-26 requests information concerning the financial qualifications of the Applicants in contravention of 10 C.F.R. § 50.33(f) and 10 C.F.R. § 50.40(b), which have eliminated as an issue in an operating license application proceeding the financial qualifications of an electric utility applicant.

Applicants' Response to Intervenor's Third Set of Interrogatories and Request for Production of Documents (Feb. 13, 1985) at 51-52.

Applicants argue that this interrogatory relates to the financial qualifications of the applicant and to decommissioning. With respect to the former, Applicants point to the Commission's March 31, 1982 financial qualifications rule which prohibits litigating this matter in operating license cases. With respect to decommissioning, Applicants argue that decommissioning has nothing to do with the issue of whether an accidental spill at Vogtle could contaminate groundwater.

Intervenors argue that the information requested is "clearly relevant to protection of the groundwater and public health and safety. The information requested concerning technical provisions for protection of the ground water is not relevant to the financial qualification rule."

The Commission's rule that bars litigating financial qualifications of utilities in operating license cases remains in effect, although it is now pending a challenge in court. Therefore, to the extent that this interrogatory requests information about financial qualifications, Intervenor's motion to compel must be denied.

It is clear to us that that the thrust of this interrogatory is to obtain information on financial qualifications as they relate to both the operation of Plant Vogtle and its decommissioning. To the extent that the question, "\* \* \* what steps will VEGP take to financially and technically return the 3000 plus acre VEGP facility back to public domain free of radionuclide and hazardous waste contamination in water table aquifer?" can be separated from the financial qualification issue, the fact remains that the question focuses on decommissioning.

Our reading of Contention 7 leads us to conclude that the issue here is whether an accidental spill during the operation of Plant Vogtle could result in radioactive material entering groundwater. The issue is not whether the Applicants can return the VEGP site to the public domain free of radioactive contamination. That matter clearly relates to decommissioning and is therefore not relevant to Contention 7.

For the foregoing reasons, Intervenor's motion to compel the Applicants to respond to Interrogatory B-26 is denied.

Joint Intervenor's Interrogatory B-27

Interrogatory B-18 of Joint Intervenor's First Set of Interrogatories asked:

Describe all tests, studies, analyses or surveys

\* \* \*

(c) that consider the cumulative effects of the operation of the Savannah River Plant and Plant Vogtle on the ground water and aquifers.

Applicants responded:

RESPONSE:

(c) Applicants object to part (c) of interrogatory of B-18 on the following grounds:

(1) interrogatory B-18(c) asks for information that is not relevant to the subject matter of this proceeding and that is not reasonably calculated to lead to the discovery of admissible evidence, and

(2) interrogatory B-18(c) seeks information beyond the scope of those matters identified as being in controversy in this proceeding by the Board in its Memorandum and Order on Special Prehearing Conference Held Pursuant to 10 C.F.R. 2.715a.

Applicants' Response to Intervenors' First Set of Interrogatories and Request for Production of Documents (Nov. 29, 1948) at 30-33.

Interrogatory B-27 of Joint Intervenors' Third Set of

Interrogatories then asked:

RE: VEGP Response to IQB-18(c): The Savannah River Plant emissions of NOx, SOx, and TSP have been found to be within 20 to 810 percent of acceptable SRP boundary release limits measured at 30 to 40 kilometers from plant center southwest of the VEGP site. VEGP on the other hand is only 15 km from SRP plant center, a likely location for SRP airborne hazardous and radionuclide depositions. Also, strontium-90 released from SRP in concentrations already exceeding EPA drinking water standard have been found in milk at Waynesboro, Georgia, 45 km from the SRP plant center. VEGP is between Waynesboro, and SRP. Therefore cumulative effects are relevant. Please respond to IQB-18(c).

Applicants responded:

RESPONSE: Applicants object to interrogatory B-27 on the following grounds:

(1) interrogatory B-27 asks for information that is not relevant to the subject matter of this proceeding and that is not reasonably calculated to lead to the discovery of admissible evidence, and

(2) interrogatory B-27 seeks information beyond the scope of those matters identified as being in controversy in this proceeding by the ASLB in its Memorandum and Order on Special Prehearing Conference Held Pursuant to 10 C.F.R. 2.715a, since the Board rejected proposed Contention 2 submitted by Georgians Against Nuclear Energy, which dealt with the cumulative effects of radioactive releases from Plant Vogtle and the Savannah River Plant.

Applicants' Response to Intervenor's Third Set of Interrogatories and Request for Production of Documents (Feb. 13, 1985) at 52-53.

Applicants argue that interrogatory B-18(c) addresses cumulative environmental effects, a subject which we excluded from consideration in our Memorandum and Order dated September 5, 1984. LPB-84-35, 20 N.R.C. 887, 913-14 (1984). Intervenor's argue that this question is directly related to groundwater contamination and therefore is relevant to Contention 7.

If the Tuscaloosa Aquifer underlies the Savannah River Plant as well as the Vogtle site then the possible contribution by Plant Vogtle to groundwater contamination attributable to the SRP would certainly be relevant in this proceeding. The situation here is distinguished from that considered in LBP-84-35 because there the denied contention addressed the cumulative effects that would result from the re-opening of the L-2 reactor at SRP, a matter not within our jurisdiction. The possible contribution of Plant Vogtle to existing groundwater contamination is clearly within our jurisdiction. Therefore, if the Applicants possess any information that relates to possible cumulative effects on groundwater of the operation of Plant Vogtle and the operation of the SRP, that information should be made available to the



Intervenors in response to this interrogatory. If the Applicants have information that shows that releases into the Tuscaloosa Aquifer from SRP could not become mixed with possible releases into that aquifer from VEGP, then that information is also relevant and should be provided.

To the extent indicated by the foregoing, Intervenors motion to compel a response to Interrogatory B-27 is granted.

Joint Intervenors' Interrogatory B-29

Interrogatory B-29 of Joint Intervenors' Third Set of

Interrogatories asked:

RE: VEGP Response to IBQ-27, p. 39: VEGP states that the marl is an aquiclude and that the Cretaceous Aquifer is confined and isolated from VEGP releases. The Savannah River Plant made similar assurances in 1976 (C.H. Ice). What range of uncertainty exists with this VEGP claim? VEGP assumes a marl is nonexistent under the Savannah River and that contaminants migrating in the water table aquifer would not penetrate the Tuscaloosa Aquifer underlying the Savannah River because of higher head differences between the Tuscaloosa [Aquifer] and the Savannah River. SRP has made similar assurances in the past but contamination has been found in Tuscaloosa wells. What range of uncertainty exists with the VEGP claim that the Tuscaloosa will be open under the Savannah River alongside VEGP but that downward contamination flow will be prevented.

Applicants responded:

RESPONSE: Applicants object to interrogatory B-29 on the ground that it is vague, confusing, and not susceptible to a proper response since Applicants do not know what Intervenors mean by "range of uncertainty." Also, the head differentials between the Cretaceous (Tuscaloosa) aquifer and the Savannah River have no connection with contamination found in wells at the SRP.

Subject to that objection, the effectiveness of the Blue Bluff marl as a barrier to groundwater movement has been investigated through several avenues of study as described in the Applicants' response to interrogatory B-2 of the Intervenors First Set of Interrogatories. The extent of those

studies and the consistency in the results obtained provide a sound basis for concluding the marl is effectively impermeable and will act as a barrier to groundwater movement.

A reversal of the present direction of the potential hydraulic gradient between the Cretaceous aquifer and the Savannah River would require either a very large reduction in the available recharge to the aquifer, or a very large increase in the extractions from the aquifer in the vicinity of the VEGP. Neither of these possibilities is credible.

Applicants' Response to Intervenor's Third Set of Interrogatories and Request for Production of Documents (Feb. 13, 1985) at 54-55.

The Applicants responded to this interrogatory as they did with respect to the other interrogatories that requested information about uncertainty measures, and the Intervenor's answer as they answered in those other cases.

We must diverge slightly from the course we took in the case of the other interrogatories requesting uncertainty measures, because here we share the Applicants' lack of understanding of what is meant by "range of uncertainty" when applied to what appears to be a general conclusion based on a variety of observations. As Applicants point out, these observations are referenced in their response to interrogatory B-2 of the Intervenor's First Set of Interrogatories. We rule here as we ruled on Interrogatory B-24: to the extent that the Applicants or their contractors have uncertainty estimates for the various data referenced in Applicants' response to Interrogatory B-2, that information shall be made available to the Intervenor. Those estimates, if available, may enable the Intervenor to make their own judgment about the uncertainty associated with Applicants' general conclusion.

For the foregoing reasons Intervenor's motion to compel a response to Interrogatory B-29 is granted to the extent we have indicated.

Joint Intervenor's Interrogatory B-42

L-1. The requests comprising this interrogatory are directed toward discovery with respect to subcontention 10.5, which challenges the adequacy of qualification of solenoid valves used at Vogtle. Its basis related explicitly to solenoid valves manufactured by Automatic Switch Co. (ASCO) and to tests performed by Franklin Research Center wherein certain ASCO valves failed to perform after exposure to high temperatures. Applicants object to request L-1 because it is not restricted to ASCO valves. We agree that such a restriction is appropriate, and determine that, with such a restriction, request L-1 shall be answered by Applicants, since it is directly relevant to the environmental qualification of such valves.

Applicants respond further to request L-1 by stating that they have not yet developed a maintenance and surveillance program for ASCO valves, although such a program will be established prior to operation. Applicants are directed, however, to advise Intervenor's of the basic scope and/or nature of such a future program and to make details of said program available to Intervenor's in a timely manner when the program is formulated.

L-2. As indicated above, the L-2 request is restricted to ASCO valves. Likewise, the maintenance and surveillance program matter is also relevant and is to be responded to by Applicants, as set out in the previous paragraph.

L-3. Again, this request is restricted to ASCO valves and we deem that Applicants' further response is dispositive of request L-3. Intervenor's motion to compel with respect to L-3 is denied.

L-4. Restricting their response to ASCO valves, Applicants are directed to provide Intervenor with the answer to L-4(a), which is relevant to substantiation of environmental qualification compliance.

M-1. We deem Attachment C to the March 13, 1985 letter from J. E. Joiner to Ms. L. Fowler to be responsive to Intervenor's document request M-1 at this time. Accordingly, Intervenor's motion to compel with respect to M-1 is denied. However, Applicants are reminded of their obligation under 10 CFR 2.740(e) with respect to supplementation of responses.

Joint Intervenor's Interrogatory B-43

This interrogatory relates to subcontention 10.7 concerning Vogtle hydrogen recombiners.

N-4. To the extent Applicants possess information applicable to this request, they are directed to provide same to Intervenor. Such information may be relevant to the manner in which these specific recombiners are to be utilized at Vogtle.

N-5. We concur with Applicants that the recombiner situation with respect to the Three Mile Island Unit 2 accident is not relevant to the admitted subcontention 10.7. Intervenor's motion to compel a response to N-5 is denied.

Joint Intervenor's Interrogatory B-44

N-6. Although questions framed by us with respect to this

subcontention (10.7) (LBP-84-35, 20 NRC 887 at 906 (1984)) do not explicitly involve maintenance and surveillance of recombiners, the Board considers that the underlying thrust of all of Contention 10 goes to the operability of safety related equipment throughout plant life. Thus N-6 is relevant. Accordingly, as with L-1 above (Interrogatory B-42), Applicants are directed to respond.

Joint Intervenor's Interrogatory B-47

This interrogatory relates to admitted, modified Contention 11, which states as follows:

Applicants have not demonstrated their basis for confidence that no unacceptable radiation releases will occur as the result of steam generator tube failures occasioned by vibration-induced fatigue cracking and bubble collapse within the Vogtle steam generators. (Id. at 908)

Applicants state that no Westinghouse-designed steam generator has experienced a tube failure due to the two mechanisms postulated above, and hence they need not respond to B-47. The interrogatory comprises requests P-1 through P-15 and document production requests Q-1 and Q-2. However, in its submittal of March 18, 1985, Applicants address and object only to P-4, P-5, Q-1 and Q-2, despite Intervenor's Motion to Compel, of March 1, 1985, which moves that Applicants address B-47 fully.

We are not satisfied with this state of affairs. The wording of Contention 11 postulates tube failure from one or other of the two proposed mechanisms as a given. Whereas Applicants' confidence that history does not support this interpretation may be comforting, we



consider this to be an inadequate basis for Applicants' refusal to respond to so many of the Intervenor's P-series requests. For example, we are not aware that Applicants have requested or been granted leave not to conduct maintenance and surveillance of steam generators. Simple logic would say that these could be of interest to Intervenor. Indeed, Intervenor's P-3 request addresses this. If these procedures are not yet in final form, Applicants are to state their scope and/or nature and timely transmit them when they are available. If Applicants have not made a full and complete analysis of these procedures, they are to so state and to advise whether and when such an analysis will be available.

The fifteen P-series requests need not be ruled upon in such detail as furnished above. Our analysis of the discovery submittals leads us to the following determinations:

<u>Item</u>	<u>Disposition of Motion to Compel</u>
P-1	Answered; motion denied.
P-2	Outside of scope; motion denied.
P-3	See initial discussion; motion granted.
P-4	Mitigation of radiation releases within scope of contention; motion granted.
P-5	If ECCS activation makes management of a tube rupture event more difficult, Applicant is to discuss; motion granted conditionally.
P-6	If this is covered in FSAR, Applicant is to cite references; if not so covered, why not? Motion granted.
P-7	Answered; motion denied.
P-8	Beyond scope; motion denied.
P-9	Answered; motion denied.
P-10	Moot; motion denied.

P-11 through  
15

Adequately answered; motion denied.

Q-1

For current Operators' Manual for Emergency Action, motion granted.

Q-2

To the extent practical and within the limits of the foregoing determinations, Applicants are to respond; motion granted conditionally.

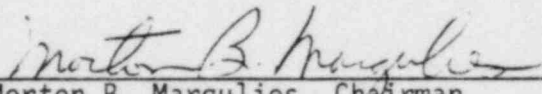
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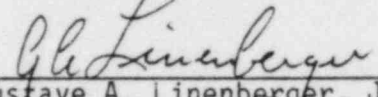
Upon consideration of all the foregoing, it is hereby ORDERED:

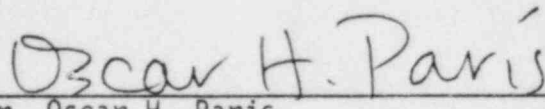
1. Joint Intervenors' Motion to Compel is hereby granted to the extent set forth in the individual rulings on the disputed interrogatories, and is otherwise denied.

2. Applicants shall respond to the interrogatories as directed in the individual rulings on the disputed interrogatories, within the time limit set forth in the discovery schedule for answering.

THE ATOMIC SAFETY & LICENSING BOARD

  
Morton B. Margulies, Chairman  
Administrative Judge

  
Gustave A. Linenberger, Jr.  
Administrative Judge

  
Dr. Oscar H. Paris  
Administrative Judge

Dated at Bethesda, Maryland  
this 4th day of June, 1985.