UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

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

In the matter of	Docket Nos. 50-424-OL 50-425-OL
GEORGIA POWER COMPANY, et al.	(ASLBP No. 84-499-01-OL)
(Vogtle Electric Generating Plant Units 1 and 2)	August 12, 1985

MEMORANDUM AND ORDER
(Ruling On Joint Intervenors'
Proposed Contentions On Emergency Planning)

On June 24, 1985, Joint Intervenors Campaign for a Prosperous Georgia and Georgians Against Nuclear Energy submitted a filing in the format of a single proposed contention on Applicants' emergency plan, supported by four pages of bases. In actuality, it contains a series of proposed contentions.

Applicants filed an answer on July 5, 1985, in which they contend that the proposed contentions are untimely filed and that, in the absence of an attempt by Joint Intervenors to comply with Commission requirements for accepting tardy filings, the contentions should be rejected. Applicants also contend that none of the proposed contentions meet the Commission's standards for admissibility of contentions and they all should be rejected for that reason.

NRC Staff (Staff) filed a response on July 15, 1985. Staff does not regard Joint Intervenors filing to be untimely and argues that even if it were, the tardiness should be viewed as de minimus and the Applicants' objection not be considered. Staff considers Joint Intervenors' allegations on the inadequacy of the emergency plans to be without merit because of a lack of specificity, except for issues involving effective means for notifying the public and the availability of reception centers, which it deemed litigable.

The Untimeliness Issue

Prior to the holding of the Special Prehearing Conference on May 30, 1984, Joint Intervenors, Applicant and Staff met and agreed that the proposed contention on emergency planning, Proposed Contention 13, would be refiled based upon information contained in the emergency plans of Richmond and Burke Counties. The Counties' plans were to be contained in Applicants' plan, which was expected to be filed on October 1, 1984. The Board adopted the agreement and ordered that Joint Intervenors "have 30 days from the issuance of Applicants' emergency plan in which to respond." Georgia Power Company, et al. (Vogtle Electric Generating Plant, Units 1 and 2), LBP-84-35, 20 NRC 887, 910 (1984). The order was issued September 5, 1984.

By letter dated October 5, 1984, Applicants advised the Board that there was a substantial slippage in the schedule for the filing of emergency plans for Plant Vogtle and that the State and County emergency plans were expected to be filed in May, 1985. The letter stated that counsel for the parties had agreed that contentions relating to the

State and County emergency plans would be due within 30 days after filing of same, or if draft plans are provided, within 30 days after furnishing of the draft.

The Vogtle-specific portion of the Georgia state offsite plan and the Burke County Plan were filed with the NRC and Joint Intervenors on May 3, 1985. Applicants assert that Joint Intervenors' June 24, 1985, filing is therefore untimely.

Joint Intervenors, in their June 24 filing, contend that their submission is timely. They state that in May, 1985, Applicants filed a "Preliminary Draft" emergency response plan for Burke County and none for Richmond County. It was on Friday, June 21, 1985, as the result of a telephone conversation with Applicants' counsel, that Intervenors learned there was not to be a plan for Richmond County and that the plan captioned "Preliminary Draft" for Burke County was in fact the final plan; hence no further plan would be submitted. Joint Intervenors contend that this information, learned on June 21, 1985, triggered the running of the 30 day period, and consequently the June 24, 1985 filing was timely. Applicants dispute having told Joint Intervenors that the Burke County plan was in fact the final plan.

It is the position of the Staff that the marking of the plan as "Preliminary Draft" may have caused Joint Intervenors to fail to realize that the plan was sufficiently final to permit meaningful discussion and litigation. Hence Staff would not consider the filing as untimely.

The Board does not find Joint Intervenors' filing to be untimely. It complies with our order in the matter. The period for filing was to

begin to run from the time of submitting emergency plans for Richmond and Burke Counties. The record is very clear that it was expected that a plan would be submitted for Richmond County. See: Transcript pages 95-97, of Special Prehearing Conference of May 30, 1984. There is nothing to dispute Joint Intervenors' assertion that it was June 21, 1985 when they first learned that there was not to be a Richmond County plan. Furthermore, the Board's order did not set the time running with the filing of a draft plan. Joint Intervenors' submittal on June 24, 1985 met the Board's order.

We first learned of the intention to have the 30 day period run from the submission of a draft plan from Applicants' letter of October 5, 1984. The agreement of the parties reported in the letter was not commented on by Joint Intervenors in their filing of June 24, 1985. Irrespective of the foregoing, we do not find that the June 21 submission is violative of the filing time stated in the October 5, 1984 letter. That which was submitted to Joint Intervenors was not indicated to be a draft plan but a "Preliminary Draft" plan. Preliminary, of course, connotes leading up to or being a preparatory step. The filing on May 3, 1985 did not trigger the running of the time for filing, because a recognizable draft plan was not submitted nor was a plan filed for Richmond County.

The Board does not find Joint Intervenors' filing of June 24 to be untimely, and Applicants' request that it be rejected is therefore denied.

Even if Joint Intervenors' filing were some three weeks late as Applicants' contend, we agree with Staff that such tardiness should be treated as de minimus and the objection disregarded considering the posture of the case. At the May, 1984 Special Prehearing Conference it was anticipated the plan would be available by October, 1984, but it was not submitted until eight months later. At this juncture discovery has just about been completed and filings are being made on motions for summary disposition. The Safety Evaluation Report was submitted by Staff on July 15, 1985. NUREG-1137, Safety Evaluation Report Related to the Operation of Vogtle Electric Generating Plant, Units 1 and 2. Staff stated under 13.3 Emergency Planning at pp. 13-22 and 13-23 that a final evaluation of adequacy cannot be made absent additional filings by Applicants and that further evaluation of the Emergency Plan will be provided in a supplement to the SER.

A three week delay in filing, even if established, would not create any impingement under the foregoing circumstances. It should be considered as de minimus and treated accordingly.

The Proposed Contentions

Joint Intervenors' submission was in the format of a single proposed contention on Applicants' proposed emergency plan followed by four pages of bases. The proposed contention reads as follows:

> Applicants proposed emergency plan fails to provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency at Plant Vogtle, as required by 10 CFR 50.33, 50.47, 50.54 and Appendix E to Part 50.

Applicants' analysis that the proposed contention is overly broad to litigate and that the four page discussion of the contention in effect is a series of proposed contentions is correct. Applicants placed the material into a form that could be reviewed by subdividing the four pages of discussion into 11 contentions, with subparts. The result very fairly treats the interests of the Joint Intervenors and is workable. Staff has followed a somewhat similar format. Because of the advantages of the way Applicants have laid out the contentions and subparts, we have used the arrangement they employed.

Contention EP-1

Applicants proposed that the following language by the Joint Intervenors be designated as 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).

Applicants object to this general assertion on the grounds that it is too broad as to be litigable. Applicants, however, proposed two subcontentions, also derived from the Joint Intervenors' language, which are specific enough to be litigated. The first of these, designated Subcontention EP-1(a), states as follows:

Subcontention EP-1(a)

> 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.

Applicants argue that Joint Petitioners have failed to and cannot provide a basis for this contention, because the position of Director of the Burke County Emergency Management Agency is, in fact, a full-time position. In addition, Applicants state that "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."

Joint Intervenors allege that "[t]he Acting Director of Emergency Planning 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." Applicants have treated this statement as Subcontention EP-2(b), and they argue that "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." They also argue that the Burke County Sheriff's Department is designated as an alternate contact for the county. We consider the allegation regarding communication difficulties between the emergency planning Directors of Richmond and Burke counties to be more of a basis for the Contention EP-1 and Subcontention EP-1(a) than a contention in itself, and we treat it as such.

Both Applicants and Staff argue additionally that the regulation cited by Joint Intervenors, 10 CFR 50.47(b)(1), does not require a full-time emergency manager or office. They ignore, however, Evaluation

Criterion II.A.1.e. of NUREG-0654 FEMA-REP-1, Rev. 1, "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants" (NUREG-0654), which states:

> Each organization shall provide for 24-hour per day emergency response, including 24-hour per day manning of communications links.

Planning Standard II.A. of NUREG-0654 defines "organization" as used in the foregoing criterion as "each principal response organization" within the Emergency Planning Zone. Certainly the Burke County EOC qualifies under this standard.

Additionally, Evaluation Criterion II.F.1.a. of NUREG-0654 provides that each plan shall include:

> provision for 24-hour per day notification to and activation of the the State/local emergency response network; and at a minimum, a telephone link and alternate, including 24-hour per day manning of communications links that initiate emergency response actions.

Applicants point out that the telephone number of the Burke County Sheriff's Department has been designated as an alternate to that of the Burke County EOC. According to section A.9.1, "Continuous Communication Capability", of the Vogtle Electric Generating Plant, Unit 1 and Unit 2, Emergency Plan (Vogtle Plan), "In the event of inability to contact the Emergency Management Agency director, the Sheriff's Department will be contacted so that Burke County officials can be notified." (Emphasis supplied). It is not clear whether the emphasized language means that the Sheriff's Department will endeavor to contact the Director of the County Emergency Planning Agency, or whether the Sheriff's Department

itself will initiate the notification of emergency workers by the "fan out" call list described in Attachment F of the Burke County Emergency Management Agency Radiological Emergency Plan (Burke County Plan). Nor does the letter of agreement from the Sheriff's Department to the General Manager of Nuclear Operations for the Vogtle Electric Generating Plant (VEGP) assist us. It says only that the Sheriff's Department will provide "Back-up communication". We believe that the Burke County Plan or the letter of agreement, or both, should specify more precisely what the responsibility of the Sheriff Department is in the event that the Director of emergency planning or the EOC itself cannot be contacted via the Emergency Notification Net (ENN) and how that responsibility is to be discharged. As NUREG-0654 directs under I.J. (at 29), "The plans should make clear what is to be done in an emergency, how it is to be done and by whom."

The Board is concerned, also, by the allegation that the Richmond County Director of emergency planning has had difficulty reaching the Burke County Director. Applicants argue that the alleged difficulties of one emergency planning official in contacting another with routine business are relevant to emergency preparedness only if similar difficulties would occur at the time of an emergency and would impair emergency response. Absent a better understanding of what the Sheriff Department's role would be in the event the Director could not be contacted, we are unwilling to assume that the Richmond County Director's experience under routine circumstances might not occur also given an emergency. If the Sheriff Department's role is to notify the

Director that an emergency exists, presumably it could experience the same difficulty as the Richmond County Director. The Staff suggests that the existence of dedicated telephones lines "would appear to render this concern academic." But if the Burke County Director is unavailable to take a call on a commercial line, we assume he or she would also be unavailable to take a call on the dedicated line.

We are not convinced that the Burke County EOC complies with the 24-hour per day staffing criterion contained in NUREG-0654. Applicants must demonstrate either that the EOC is staffed continuously or, in the alternative, that the procedure to be followed by the Sheriff Department can initiate an emergency response in a timely and efficient fashion. To the extent indicated in the preceding sentence, we admit Contention EP-1 and Subcontention EP-1(a).

The second subcontention proposed and designated by Applicants as Subcontention EP-1(b) employed the following language of the Joint Intervenors:

> Subcontention EP-1(b)
>
> [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.

Applicants indicate that Table D-1 is included in the State of Georgia Radiological Emergency Plan (State Plan) to be used in conjunction with Appendix 1 of the State Base Plan, which assigns primary and support responsibilities for state agencies, to conform to NUREG-0654 Criterion II.A.2.a. The criterion calls for the functions of major elements and individuals in response organizations to be tabulated

by agency and function in order to indicate whether assigned responsibilities are primary or supporting. Nothing in NUREG-0654 calls for a listing of the numbers of personnel available at each agency. Staff agrees with Applicant. We find nothing in Joint Intervenor's filing that provides a basis for this contention.

We agree with Applicants and Staff. There is no requirement that Applicants provide a listing of the number of personnel available at each emergency response agency, nor is there anything to suggest that the agencies have insufficient personnel. Therefore we deny admission of Subcontention EP-1(b).

Contention EP-2

Applicants designated the following language of Joint Intervenors as Contention 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).

Applicants proposed a total of eight subcontentions, designated EP-2(a) through EP-2(H), under EP-2. All were derived from the language of the Joint Intervenors. The first of these, Subcontention EP-2(a), states as follows:

Subcontention EP-2(a)

> [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 radiobands made available to emergency response vehicles will just as quickly become congested.

Contention EP-3

Applicants have proposed another contention, selected from the language of the Joint Intervenors and designated Contention EP-3, which is, according to Applicants, virtually identical to Subcontention EP-2(a). This contention states as follows:

> 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 commerical phone lines and radio) as described above [in EP-2(a)].

Because both contentions deal with the emergency communication links between emergency response agencies, it will be logical and convenient to consider both contentions here. As Applicants noted, however, whereas Subcontention EP-2(a) focuses on communication problems resulting from overloading of the telephone and radio links, Contention EP-3 challenges the ability of the Applicants to notify local and state officials within 15 minutes after declaring an emergency, as required by 10 CFR Part 50, Appendix E. Since overloading could cause delayed notification, we shall deal with the overloading problem first.

Applicants argue that Subcontention EP-2(a) has no basis in fact because the dedicated telephone circuits are "hard-wired" from point to point. The NRC Staff agrees. The dedicated lines are not dependent on a central exchange and switching mechanisms; transmissions on them can originate from and go to only the points to which they are wired. We agree that the dedicated lines cannot be overloaded by calls involving non-emergency personnel. We note, however, that nothing in the plans

indicates what, if any, administrative controls are in place to restrict the use of the dedicated lines to the transmission of official and necessary messages.

Commercial telephone lines and radio channels serve as secondary means of communication. It is conceivable that commercial telephone circuits could become overloaded after the public has been alerted that an accident has occurred at VEGP. We think it unlikely, however, that such a circumstance could seriously interfere with emergency communications because of the existence of dedicated phone lines and emergency radio channels. We doubt that the radio channels would become overloaded during an emergency, although we have no doubt that they might become quite busy. The only limiting factor for the amount of voice transmission that can be carried over a radio channel is time. The low population density around VEGP and the small size of the response organizations lead us to believe that it is extremely unlikely that the emergency radio channels would become overloaded.

With regard to EP-3, Applicants argue that this contention should be denied as untimely, on the grounds that it relates to an onsite function--the initial notification of state and local authorities by the plant. Therefore, say Applicants, Joint Intervenors were required to raise any contentions relating to "initial notification" within thirty days of the availability of the onsite plan, which was served on November 30, 1984. The initial notification which originates onsite is transmitted to offsite agencies, however, and initiates offsite

emergency response. We think the distinction raised by Applicants is trivial, and we decline to hold the contention untimely.

Applicants argue in addition that the dedicated phone lines cannot be expected to be overloaded, for the reasons discussed above. Nor is there any reason to expect commercial phones to be overloaded at the time of initial notification, because at this time the public is not yet aware that an emergency has been declared. We agree. Therefore we deny admission of Contention EP-3.

As for Contention EP-2(a), the only concern we have as a result of the allegations of Joint Intervenors is whether there are adequate administrative controls over use of the ENN. Therefore we shall admit Contention EP-2(a) on the limited basis that Applicants have not shown that such administrative controls exist.

Subcontention EP-2(b)

This subcontention was considered to be a basis for Subcontention EP-1(a), and was set forth and dealt with at page 6, et seq.

Subcontention EP-2(c)

> 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.

Again Applicants protest that this contention is untimely because the use of NOAA tone alert radios was discussed in the Vogtle Plan served in November 1984. Again we find this argument to be trivial,

because the tone alert radios will be used offsite, and we deferred consideration of offsite emergency plans until now.

Applicants further oppose admission of the contention on the grounds that the use of tone alert radios complies with NUREG-0654 and FEMA-43, "Standard Guide for the Evaluation of Alert and Notification Systems for Nuclear Plants", which allow the utility to elect one of several alerting systems, including tone alert radios. Staff, on the other hand, does not object to the admission of this contention because it believes the Joint Intervenors have provided a reasonably specific basis for the contention.

Joint Intervenors argue that tone alert radios "are often shut off permanently by residents who become aggravated by its tendency to go off frequently without reason." The fact that Applicants plan to use the NOAA Weather Radio alert system lends credence to Joint Intervenors' argument. In an area which is subject to frequent summer thunderstorms, such as the coastal plain of Georgia and South Carolina, NOAA weather radios could sound off frequently during the passage of a storm front, as weather alerts such as severe storm watches and warnings, or marine interest watches and warnings, are broadcast. Since such alerts may not affect the entire broadcast area, it is not unreasonable to expect that some residents may turn off their weather radios to stop its warning signals, especially if the area affected by the storm is not the one in which they live.

We agree with Staff. There is adequate basis for this contention. We shall admit it for the purpose of litigating whether Applicants

should be allowed to use the NOAA Weather Radio alerting system or required to utilize some other form of radio alerting system.

Subcontention EP-2(d)

> Applicants cannot ensure that all residents have televisions or radios to turn to for additional information in the event of a radiological accident.

Applicants object to this contention on the grounds that there is no regulatory requirement that they "ensure" that all residents have TVs or radios. Applicants are correct in asserting that NUREG-0654 does not require them to ensure that all residents have radios or televisions. On the other hand, we note from study of Appendix 3 to the Vogtle Plan, Vol. 2, "Means for Providing Prompt Alerting and Notification of the Public", that the plan states,

> "Detailed information and instructions may be broadcast on local commercial radio and television stations"

and

> "Within the plume exposure pathway EPZ, the system will provide an alerting signal and notification by NOAA radio; further notification might also be provided by local commercial radio and television stations which may be activated via EBS." (Emphasis supplied).

The requirement contained in NUREG-0654, which was quoted in part by Applicants, states as follows:

> A prompt notification scheme shall include the capability of local and State agencies to provide information promptly over radio and TV at the time of activation of the alerting signal. The Emergency Plans shall include evidence of such capability via agreement, arrangements or citation of applicable laws which provide for designated agencies to air messages on TV and radio in emergencies.

NUREG-0654, Appendix 3, B.3.

While NUREG-0654 does not require Applicants to ensure that all residents have radios or TVs, it unequivocally requires that Applicants demonstrate that the EBS is in place. While the language in the Vogtle Plan is equivocal, we do note that the plan includes letters of agreement from local radio and TV stations.

We do not admit the contention, but we do expect Applicants to change the language in Appendix 3 to the Vogtle Plan to conform to the clear intent of Appendix 3 to NUREG-0654. Applicants shall inform the Board when the appropriate change of language has been made and distributed to holders of copies of the Vogtle Plan.

Subcontention EP-2(e)

> 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.

Applicants object to the admission of this contention on the grounds that Joint Intervenors proposed this contention in their 1984 filing and have not provided further specification based on the emergency plans now available.

Our study of the Burke County Plan indicates that, indeed, there is no basis for this contention. The plan clearly shows that the emergency equipment and personnel alluded to in the contention, except for siren-equipped aircraft, are available to local governments. We find nothing in any of the plans to indicate that aircraft equipped with sirens will be used to provide warning to remote areas. Burke County Plan at 47-49. Lacking any basis, therefore, the subcontention is inadmissible.

Subcontentions EP-2(f) and EP-2(g)

Both of these contentions concern warning sirens; therefore we shall consider them together. Subcontention EP-2(f) states:

> 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.

and Subcontention EP-2(g) states:

> The plan also fails to address how sirens will operate in the event of a power failure.

Applicants and Staff object to the admission of this contention on the grounds that the emergency plan does not provide for the use of sirens as the emergency warning system, and Staff notes further that sirens are not a regulatory requirement. We agree. Since the emergency warning system provided for in the plan consists of tone alert radios, not sirens, there is no basis for these contentions. They are inadmissible.

Subcontention EP-2(h)

> 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.

Both Applicants and the Staff object to this contention on the grounds that it lacks specificity. Applicants argue that "[t]he only significant transient population in the Vogtle EPZ is the hunters and fisherman along the banks of the Savannah River." Signs posted along the river bank are to provide the necessary information to these persons; we deal with the need to know the contents of the signs and

other warning notices under Contention EP-6, infra. NUREG-0654 Criterion G.2, quoted in part by Applicants on p. 29 of their July 5, 1985 pleading, provides as follows:

> Signs or other measures (e.g., decals, posted notices or other means, placed in hotels, motels, gasoline stations and phone booths) shall also be used to disseminate to any transient population within the plume exposure pathway EPZ appropriate information that would be helpful if an emergency or accident occurs. Such notices should refer the transient to the telephone directory or other source of local emergency information and guide the visitor to appropriate radio and television frequencies. (Emphasis added).

The Vogtle Plan, App. 6, at 3-4 discusses dissemation of information to the "only significant transient population within the EPZ", the VEGP workers at the site and sportsmen "on the banks of the Savannah River". Any other transient population, such as the "seasonal resident population", "is considered to be minimal" and is not included in the plan. The Burke County Plan likewise considers the only "significant" transient population, viz., the plant workers and the river sportsmen.

We note, however, that NUREG-0654 provides for disseminating information to "any transient population", not just to the transients judged by Applicants and the County to be "significant". Our interpretation of Criterion G.2 is that pre-emergency information should be made available for any and all transients, not just the significant numbers expected to be at the site and on the banks of the Savannah River. In addition to indicating that signs will be placed along the river and in places near the river where people congregate, the Vogtle Plan indicates that a notice will be placed in the local telephone book. Neither the Vogtle Plan nor the Burke County Plan, however, mention the

placing of notices elsewhere where the remaining transient population may be within the EPZ. On this basis we find Contention EP-2(h) admissible.

Subcontention EP-2(i)

> Applicants fail to provide adequately for notification and evacuation of hearing impaired and other handicapped persons.

Both Applicants and Staff oppose the admission of this contention on the grounds that Joint Intervenors have failed to provide a basis for the contention. Applicants point out that the Joint Intervenors have failed to reference the relevant sections of the emergency plans and have not alleged any specific inadequacies in them.

Our study of the Burke County Plan reveals that notification and evacuation of handicapped persons is addressed and the plan appears to be adequate. Therefore, the subcontention is inadmissible.

Contention EP-3

This contention is set forth and dealt with simultaneously with Contention EP-2(a) at Page 12, et seq.

Contention EP-4

Applicants designated the following statements of Joint Intervenors as making up this contention:

> Applicants fail to show that adequate emergency facilities and equipment to support the emergency response are provided and maintained as required 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.

Applicants correctly note that Joint Intervenors erroneously cite 10 CFR 50.47(b)(8) as the regulatory reference for the proposed contention, although their concerns are more appropriately addressed under 10 CFR 50.47(b)(12). The latter regulation provides that offsite emergency response plans for nuclear power reactors must make arrangements for medical services for contaminated injured individuals. II.L. of NUREG-0654 sets forth the planning standard and evaluation criteria for 10 CFR 50.47(b)(12). 10 CFR Part 50, Appendix E, IV.E.6. provides that adequate provisions shall be made and described for emergency facilities and equipment, including "arrangements for transportation of contaminated injured individuals from the site to specifically identified treatment facilities outside the site boundary."

Applicants assert that the proposed contention is invalid for a number of reasons and should be rejected. They claim that to the extent Joint Intervenors challenge the capability of area medical service providers to care for "a large number of injured in the event of a fairly serious radiological incident" 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 NRC 528 (1983), the Commission's Statement of Policy on Emergency Planning Standard 10 CFR 50.47(b)(12), 50 Fed. Reg. 20892 (May 21, 1985) and the pending petition for rulemaking on the need

for provision of medical services in the event of a radiological emergency, 50 Fed. Reg. 20799 (May 20, 1985).

As to that part of the proposed contention challenging the ability of existing medical facilities to accommodate 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", Applicants contend the proposed contention fails for a lack of specificity. They further point out that litigation about earthquakes is barred by the Commission's pending rulemaking on the subject, 49 Fed. Reg. 49640 (December 21, 1984) and that litigation premised on nuclear attack is precluded by 10 CFR 50.13.

Applicants further assert that Joint Intervenors initially drafted EP-4 in the absence of emergency plans, but have failed to provide any further specification although all the relevant plans are now available. The plans are said to contain much detailed information on available medical and public health support resources, none of which Joint Intervenors discuss; additionally the information is contrary to Joint Intervenors' allegations. It is concluded that the proposed contention is therefore objectionable for failure to specifically address the relevant documentation.

Staff objects to the admissibility of the proposed contention on similar grounds.

The Board finds that the proposed contention is admissible in part. That which is litigable under 10 CFR 50.47(b)(12) is limited as a result of the Commission's ruling in San Onofre, CLI-83-10, supra, the partial

reversal of the San Onofre decision in Guard v. NRC, 753 F.2d 1144 (D.C. Cir. 1985) and the Commission's Statement of Policy on Emergency Planning Standard 10 CFR 50.47(b)(12), supra, which indicates that there will be further action by the Commission in the matter either by rulemaking or other generic action.

In San Onofre, the Commission in interpreting 50.47(b)(12) held that for individuals who become injured and contaminated and individuals who may be exposed to dangerous levels of radiation, no additional hospitals or other medical facilities need be constructed and all that need be done for emergency planning is to identify medical facilities capable of treating the individuals.

The Court in Guard vacated and remanded that portion of the Commission's San Onofre decision which stated that the identification of treatment facilities constitutes adequate arrangements for medical services for individuals who might be exposed to high levels of radiation in the event of an accident at a nuclear power plant. The Court appeared to allow the Commission wide latitude to determine the meaning of 50.47(b)(12).

The Commission in its Statement of Policy in the matter indicated to the licensing boards that it would take prompt further action on the issue having general applicability. The Board finds it would serve no useful purpose to generally litigate the question of what constitutes adequate arrangements for medical services for contaminated injured individuals until the Commission has ruled on the matter. We do accept the Commission's guidance indicating it would be acceptable at this time

to litigate the subject, as it pertains to issues which could have been heard before the Court's decision in Guard, i.e., as to whether the plans identify existing treatment facilities. To the extent the proposed contention goes beyond the matter of whether the plans identify the medical facilities capable of treating the injured and contaminated it is nonlitigable and rejected.

The proposed contention is valid to the degree that the plan fails to identify treatment facilities for those contaminated injured individuals who would come from within the plume EPZ located in South Carolina. A major portion of the EPZ lies within the State of South Carolina, yet we have not been furnished with anything to show significant emergency planning for that part of the EPZ that lies within that State. The United States Department of Energy's Savannah River Plant (SRP) occupies a large portion of the South Carolina area within ten miles of the subject plant. There is an agreement between Georgia Power Company and the Savannah River Operations Office that provides that the latter is responsible for the protection of all persons and for the direction and control of all emergency response actions on the Savannah River Plant Site, whenever emergencies occur at the VEGP. Vogtle Plan, Volume 2, Appendix 5. The agreement fails to establish that there is emergency planning that complies with the Commission's regulatory requirements in the event of a radiological emergency at Vogtle.

The foregoing only describes in part the lack of information on emergency planning for that part of the EPZ within South Carolina. With

the information furnished to the Board, it was not possible to discern the boundaries of the EPZ within South Carolina and the factual bases for their establishment. Not much can be learned from the letter from the Director of the Office of the Adjutant General of the State of South Carolina Military Department to the General Manager of VEGP, whose whole content dealing with the size of the EPZ reads, "Due to the distance of the plant from any South Carolina residents and the low number of residents actually living within the 10-mile zone, we have agreed to exclude this small portion of South Carolina from any formal emergency planning." Vogtle Plan, Volume 2, Appendix II. The entire boundaries of the EPZ in South Carolina should be clearly defined and the factual basis provided.

The plan's naming of the hospitals that are available in Georgia to treat injured and contaminated individuals is sufficiently confusing so that the matter is litigable. The State Plan names: Burke County Hospital, Waynesboro, Georgia as the primary facility, irrespective of whether or not the patient is contaminated; the Humana Hospital, Augusta, Georgia as the secondary facility, whether or not the patient is contaminated; and for radiation patients requiring care beyond that which can be provided by the other facilities, the Oak Ridge Hospital of the Methodist Church, Oak Ridge, Tennessee (Page 51 of Annex D of the State Plan). Applicants' emergency plan names two facilities, Humana Hospital and the Burke County Hospital. The former is named as the primary hospital for treatment of contaminated accident victims and the latter as the backup facility for the same type of patients. (L-2, 3 of

the Vogtle Plan). The Burke County plan mentions only Burke County Hospital. No mention is made of the type of patients it is to treat or how the other hospitals relate. (See Page 19, Burke County Plan). The differing information as to the hospitals in the plans makes for a confusing situation as to identifying the hospitals that are to be available to treat injured and contaminated individuals.

The proposed contention contains nothing additional that is litigable. The remainder of the contention deals with the capacity of the medical facilities to minister to the contaminated and injured individuals. As discussed previously, the issue is not litigable at this time. Even if it were, the proposed contention on this issue is defective in that it does not relate to the existing plans. For example, at page 52 of Annex D of the State Plan, there is provision for ambulance service to be obtained from four sources, not the single one named by Joint Intervenors. Also the same plan at page 51 names three hospitals that will be available in case of an emergency, not the single one named by the Joint Intervenors.

The scenario Joint Intervenors propose, to establish a need for greater medical facilities, is premised on the existence of conditions the Commission has not found acceptable at this time, i.e., the occurrence of an earthquake or nuclear attack. The Commission has ruled in prior decisions that its regulations do not require the consideration of potential impacts of earthquakes on emergency planning. See Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-781, 20 NRC 819, 824 (1984). It has proposed a rule through

amendment of 10 CFR Part 50 that such consideration need not be given. See 49 Fed. Reg. 49640 (December 21, 1984). As to nuclear attack, 10 CFR 50.13 provides in part that an applicant is not required to provide 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. Joint Intervenors have provided no recognized grounds for its assertion that greater medical facilities are needed in case of a radiological emergency at the Vogtle plant. Additionally, Joint Intervenors' expectation as to the need for greater medical facilities runs contrary to the Commission's holding in San Onofre that "the number of individuals both onsite and offsite who may become contaminated and injured is expected to be very few."

We approve the following as Contention EP-4.

> The offsite emergency response plans for Plant Vogtle do not meet the requirements of 10 CFR 50.47(b)(12) as to arrangements made for medical services for contaminated injured individuals whose condition results from a radiological emergency at VEGP, because the plans do not adequately identify medical service facilities capable of treating contaminated injured individuals.

Contention EP-5

Applicants designated the following statement of Joint Intervenors as making up the contention:

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

Applicants contend the proposed contention must be rejected for lack of basis. In interpreting the proposed contention to mean the early dismissal of the high school students in attendance to accommodate evacuees, Applicants assert that Joint Intervenors have failed to demonstrate and cannot demonstrate that those students must be released in order to accommodate the evacuees. Applicants state the plans indicate that evacuees generally will be accommodated in the common areas of the high school, and an old high school and an elementary school are available as backup facilities, if needed. Applicants conclude there is no basis for concern about the capacity of the designated facilities to accommodate evacuees.

The Staff has no objection to the admission of the proposed contention, which it asserts deals with whether the designated reception center would be immediately available for use in an emergency at Vogtle.

The Board agrees with the Staff's assessment of the proposed contention and we will admit it. There is no doubt that the proposed contention is poorly drafted, but its thrust is that the emergency plan is inadequate because it does not provide for the ready availability of the reception center for evacuees in case of a radiological emergency at VEGP.

The Burke County Plan provides no indication that the County has determined that should a radiological emergency arise at VEGP when school is in session, the reception centers are of sufficient capacity that pupils need not be dismissed and both they and the evacuees will be accommodated at the same time.

Although Applicants argue that the schools can accommodate both groups, we are not convinced of this on the record before us. The plan does not indicate the size of the facilities, and it is indicated that there is the potential that all of the residents within the Burke County portion of the EPZ may use the facilities. Irrespective of this, the plan itself should be specific as to the action the County will take that will assure the ready availability of the reception centers for evacuees in case of a radiological emergency at VEGP. The purpose of emergency planning is to know what to do in advance, so that if an emergency occurs the general public and others will be able to react properly and obtain adequate protection in a timely manner. The plan should relate as to how it will provide for the ready availability of the emergency centers for evacuees in case of an emergency. If it can be accomplished with the students remaining in attendance, the plan itself should so state. If study has disclosed it cannot be so accomplished, the plan should provide another mechanism for it to be achieved, including the possibility of early dismissal of the students, and for its implementation.

We approve the following as Contention EP-5.

> The offsite emergency response plans for VEGP do not meet the requirement of 10 CFR 50.47(b)(8) because the plans do not reasonably assure that adequate emergency facilities, namely reception centers, will be readily available for use in the event of a radiological emergency at VEGP.

Contention EP-6

Applicants designated the following statements of Joint Intervenors as making up this contention.

> 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.

Applicants contend that contrary to the proposed contention, 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. It is asserted the provisions address all the public information program elements required by the Commission's regulations and regulatory guide, including those recited by Joint Intervenors in their proposed contention.

Applicants cite those parts of the plans containing education and notification procedures. It is further alleged that the proposed contention is also objectionable for its failure to address the particularly detailed provisions of the plans on the subject of public information and education; and it thereby lacks specificity.

Staff objects to the admission of the proposed contention because it lacks specificity. It states Joint Intervenors have failed to indicate how or why the pre-emergency education and post-emergency notification procedures set out in the emergency plan are not adequate.

10 CFR 50.47(b)(7) provides that information is to be made available to the public on a periodic basis on how they will be notified and what their initial actions should be in an emergency, that the principal points of contact with the news media for dissemination of information during an emergency are to be established in advance, and procedures for coordinated dissemination of information to the public are to be established. 10 CFR Part 50, Appendix E, IV.D.2 builds on the foregoing and also provides, "Signs or other measures shall also be used to dissiminate to any transient population within the plume exposure pathway EPZ appropriate information that would be helpful if an accident occurs." II.G. of NUREG-0654 contains the planning standard evaluation criteria for public education and information.

The plans submitted by Applicants contain extensive material on public education and information required by 10 CFR 50.47(b)(7) and the other regulatory requirements. To the extent such information is contained in the plans, the Board finds the proposed contention inadequate, and it is rejected because it lacks specificity in that the Joint Intervenors have failed to indicate how or why such material set out in the emergency plan is unsatisfactory.

To provide the public with essential information, called for by the regulatory requirements, Applicants' plans provide for the distribution of a printed brochure to all EPZ residents and for placing an advertisement in the telephone directory containing basic emergency information. Also signs are to be placed on the banks of the Savannah River to advise hunters and fishermen of appropriate actions in an emergency.

The fact that plans provide for taking such action does not assure that the proper information will be contained in the printed brochure advertisement and signs (or other measures, e.g., decals, posted notices or other means). See Duke Power Company, et al. (Catawba Nuclear Station, Units 1 and 2), LBP-84-37, 20 NRC 933 (1984), where inadequacies were found in the brochure and warning notices and licensing was conditioned on their correction.

Applicants have not made known the contents of the printed brochure, the advertisement and the warning notices. Whether the information to be contained therein will meet the regulatory requirements cannot be determined at this time. Absent knowing what information is to be provided to the public, there is no way to reach a conclusion as to its adequacy and credibility. It is on the foregoing basis alone that we find the proposed contention admissible.

Contention EP-7

Applicants designated the following statements of Joint Intervenors as making up this contention:

> 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.

Applicants object to this contention for two reasons: the earthquake emergency is proscribed from consideration, as we note above with respect to Contention EP-4; and other emergency situations are not treated with specificity. Applicants also note (and we concur) that there is a striking similarity between this contention and a portion of Joint Intervenors' submittals of April 1984 that considerably predate the issuance of the present emergency planning materials. The Staff would have us deny admission because Applicants are not required to plan for simultaneous emergencies at the SRP and at VEGP, an assertion that the Staff does not substantiate. The Staff also notes that the earthquake matter is precluded from litigation. Both Applicants and Staff fail to mention the last sentence of the contention, or discuss its significance.

The Board believes that the earthquake emergency is only an example offered by Joint Intervenors, and as such is not a fatal flaw; tornadoes might compromise the safe operations of VEGP and SRP and thus generate impediments to the effectiveness of emergency plans similar to those posited by Joint Intervenors. This was not dealt with by Applicants and Staff, which we find to be an inadequacy.

The wording of this contention exhibits scant evidence that Joint Intervenors have familiarized themselves with details of the planning materials submitted so far. However, the Board finds that there are major problems with these materials. As noted previously, information

is lacking on emergency planning for that part of the VEGP EPZs within South Carolina, and the various emergency assistance resources within South Carolina are not identified nor are their duties and responsibilities discussed. How the communication, coordination and cooperation amongst South Carolina and Georgia resources would function following a VEGP emergency is not described. It is not at all clear from the material at hand that there would or could be effective emergency responses from the resources within both states in the event of simultaneous emergencies at VEGP and SRP. By way of example, Georgia's Base Plant at page 8 of Annex D identifies the U. S. Department of Energy (DOE) as a federal resource available to support the response to a VEGP emergency. How DOE will be coordinated into the cooperative responses of the various agencies from the two states and will be able simultaneously to discharge its responsibilities at SRP are not described. The viability of support from DOE in the event of simultaneous emergencies at VEGP and SRP is even more in question.

The totality of the foregoing leads us to decide that the emergency planning materials we have in hand are incomplete and that Contention EP-7 is admissible.

Contention EP-8

The following statements of Joint Intervenors were designated by Applicants as comprising this contention:

> 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.)

Applicants observe that there is no requirement that they address the evacuation of persons residing in Augusta, some 26 miles from the plant site and outside of the 10-mile plume exposure pathway. Applicants further observe that if such persons choose to evacuate without official instructions to do so they would move away from the plant site rather than toward it, which would not impede the EPZ evacuation. Thus, Applicants would have us deny the admission of the contention. The Staff would likewise have us deny the admission of this contention, also for the reason that Augusta is beyond the evacuation EPZ. Neither of the parties addresses the last (non) sentence of the contention.

As above, the Board notes the striking similarity of this contention to certain of the material submitted by each of the Joint Intervenors in their April 1984 filings. We concur with Applicants and Staff that Augusta is too distant from the plant site to be included within the established 10-mile plume exposure pathway. In addition, we have reviewed the Nuclear Safety article cited by Intervenors. We find in it no support for a consideration that any spontaneous evacuation of residents of the Augusta area might be expected to impede the evacuation

of the Vogtle 10-mile EPZ. We therefore deny admission of Contention EP-8.

Contention EP-9

That portion of Joint Intervenors' Emergency Planning contention designated by Applicants as EP-9 is stated as follows:

> 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.

Applicants and Staff both note that litigation of this contention is precluded due to the pendency of rulemaking (49 Fed. Reg. 29640 (December 21, 1984)). In addition, the Staff also cites specific prior Commission rulings that proscribe such litigation.

We deny the admissibility of this contention.

Contention EP-10

That portion of Joint Intervenors' Emergency Planning contention designated by Applicants as EP-10 is stated as follows:

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

Applicants and Staff both note the lack of a regulatory requirement to provide such a list. Applicants further point out that plans for the states of Georgia and South Carolina do include provisions for milk and food processors subsequent to a Vogtle emergency. Intervenors fail to specify how these provisions are deficient nor do they explain why the lack of a nonrequired listing of orchards and farms is fatal to the needs of the plan. The fact that Scorep-84 seems not to focus anywhere

upon the Vogtle Plants' existence is not per se an impediment to the basic structure of the South Carolina plan, nor is this addressed by Joint Intervenors.

We deny admissibility of this contention.

Contention EP-11

The final portion of Joint Intervenors' Emergency Planning contention, designated by Applicants as EP-11, states as follows:

> 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 of Unit 2.

Applicants and Staff both note that this contention is factually in error since the emergency planning materials before us do indeed take cognizance of a construction work force at Unit 2 while Unit 1 is in operation. Both parties further point out that the contention lacks specificity by not addressing any manner in which effective emergency planning is impaired by the presence of such a work force. Thus, both parties recommend rejection of the contention.

We concur completely with the responses of Applicants and Staff. Accordingly, we deny admissibility of Contention EP-11.

Order

Based upon all of the foregoing, it is hereby ordered that:

(1) Proposed Contentions and Subcontentions EP-1 and EP-1(a), EP-2 and EP-2(a), (b), (c), and (h), EP-4, EP-5, EP-6 and EP-7 are admitted for litigation to the extent and in the manner set forth in the Memorandum; and

(2) Proposed Contentions and Subcontentions EP-1(b), 2(d), (e), (f), (g) and (i), EP-3, EP-8, EP-9, EP-10 and EP-11 are rejected and dismissed.

THE ATOMIC SAFETY AND
LICENSING BOARD

Morton B. Margulies, Chairman
ADMINISTRATIVE LAW JUDGE

Dr. Oscar H. Paris
ADMINISTRATIVE JUDGE

Gustave A. Linenberger, Jr.
ADMINISTRATIVE JUDGE

Dated at Bethesda, Maryland
this 12th day of August, 1985.