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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

APPLICANTS' MOTION FOR RECONSIDERATION AND CLARIFICATION OF AUGUST 12 MEMORANDUM AND ORDER

I. Introduction

By Memorandum and Order dated August 12, 1985, the Board admitted for litigation a number of Joint Intervenors' proposed emergency planning contentions. See "Memorandum and Order (Ruling on Joint Intervenors' Proposed Contentions on Emergency Planning)" (August 12, 1985) ("Memorandum and Order"). Applicants herein move for reconsideration and/or clarification of the Board's rulings admitting Contentions EP-6 and EP-7.

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II. Discussion

Contention EP-6

Joint Intervenors' Contention EP-6 alleges:

> 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.

The Board admitted EP-6 for the purpose of litigating "the contents of the printed brochure, the [telephone book] advertisement and the warning notices [to be posted for transients]." Memorandum and Order at 32. Applicants urge reconsideration of the admissibility of the contention on two separate but related grounds, set forth below.

First, the issue that the Board defined for litigation as Contention EP-6 was not raised by Joint Intervenors. As framed by Joint Intervenors, the contention challenges only the "procedures" for public education/information. In discussing EP-6, the Board acknowledged that Applicants had cited the portions of the various emergency plans containing the necessary "education and notification procedures." The Board further noted

that the plans contain "extensive material" addressing the regulatory requirements, and ruled that "Joint Intervenors have failed to indicate how or why such material * * * is unsatisfactory." See Memorandum and Order at 30-31. Because Joint Intervenors' contention was, by its terms, limited to the issue of adequate public education/information "procedures," and was not a challenge to the substantive content of the various means of public education/information, the Board need not have reached the latter issue, or have admitted the contention for purposes of litigating the latter issue. Contention EP-6 should therefore be rejected.

In any event, any contention which challenges the content of public information/education materials for the Vogtle EPZ is premature. As the Board correctly points out, "the contents of the printed brochure, the [telephone book] advertisement and the warning notices [for transients]" are not yet available. Memorandum and Order at 32. Therefore, there can be no basis for a contention challenging the adequacy of the materials; nor, in the absence of the materials themselves, can contentions be framed with the requisite specificity.

Accordingly, even if Contention EP-6 could be read to challenge the adequacy of the content of the public education/information materials, the Board must reject the contention as premature, for lack of basis and specificity -- recognizing Intervenors' opportunity to file specific proposed

contentions, with statements of bases,[1] within a specified period (e.g., 10 days)[2] after service of the content of each of the three specified types of public education/information materials.[3]

For these reasons, Applicants respectfully request that the Board reconsider its August 12 ruling, and reject Contention EP-6.

1/ In these circumstances, the Commission also requires an intervenor to address the five factors listed in 10 C.F.R. § 2.714(a)(1). See Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 N.R.C. 1041, 1045-47 (1983), reversing ALAB-687, 16 N.R.C. 460 (1982).

2/ Proposed contentions on emergency plans were due within 30 days of the filing of the plans. See LBP-84-35, 20 N.R.C. 887, 910-11 (1984). Given the relative brevity of public education/information materials, ten days after service should provide sufficient time for Joint Intervenors to review the materials and file any new proposed contentions.

3/ Similar procedures have been followed in other NRC cases. See, e.g., Carolina Power & Light Co. (Shearon Harris Nuclear Plant), Docket No. 50-400-OL, "Rulings On Specification of Eddleman Offsite Emergency Planning Contention 215 and On The Admissibility of Eddleman Contentions On The Public Information Brochure" (October 4, 1984), slip op. at 5.

Contention EP-7

Joint Intervenors' Contention EP-7 alleges:

> Applicants claim t' t 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.

In ruling on EP-7, the Board agreed with Applicants' and Staff's position that litigation of the contention, insofar as it dealt with earthquakes, was barred by the Commission's pending proposed rule on the consideration of earthquakes in emergency planning for nuclear plants (49 Fed. Reg. 49640; December 21, 1984). See Memorandum and Order at 33. The Board nevertheless admitted EP-7, reasoning 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.

Memorandum and Order at 33 (emphasis supplied).

However, the proposed rule cited by Applicants and the Staff is not limited to the need for consideration of earthquakes in nuclear emergency planning; rather, the request for comments extends also to "tornadoes or any similar low-probability naturally occurring phenomena which are presumed to occur proximate in time with an accidental release of radioactive material * * *." See 49 Fed. Reg. at 49642 (emphasis supplied). Thus, the Commission's rulemaking proceeding clearly bars litigation of EP-7 even if the contention is construed to encompass phenomena beyond that identified by Joint Intervenors.[4/]

4/ The Board previously noted, "Both Applicants and Staff fail to mention the last sentence of the contention, or discuss its significance." Memorandum and Order at 33. The last sentence of the proposed contention must be read in pari materia with the rest of the contention -- that is, as a challenge to the coordination of Georgia and South Carolina activities in the event of the postulated simultaneous emergencies at Vogtle and the Savannah River Plant. However, as discussed supra, Joint Intervenors' postulated scenario is not litigable; and certainly the last sentence of the proposed contention -- standing alone -- lacks the specificity and basis required by the Commis-

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Joint Intervenors' contention suggests that an earthquake would be the cause of radiological releases for which offsite emergency measures would be necessary, i.e., it would "[threaten] the safe operation of Vogtle" and would also "endanger operations at Savannah River Plant." However, the possibility of an earthquake causing a radiological emergency was specifically addressed by the Commission in its proposed rulemaking, when it stated that "nuclear plants are required to be designed to safely shut down for all earthquakes up to and including the "Safe Shutdown Earthquake, or SSE," Id. at 49641, and "[t]o explicitly consider earthquakes as causes for radioactive releases is inconsistent with the emergency planning basis used by NRC in adopting its regulations." Id. The Commission also noted that the proximate occurrence of an earthquake of substantial magnitude with an unrelated radiological release would have an even lower probability. Id. The Commission's logic, of course, is also applicable to tornadoes or other severe natural phenomena, which nuclear plants are also required to be designed to withstand. See, e.g., Vogtle FSAR § 3.3.

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sion's regulations. (In any event, the Vogtle plume EPZ includes no land in South Carolina, other than a part of the Savannah River Plant (which is a federal reservation operated by the U.S. Department of Energy). See, e.g., "Vogtle Electric Generating Plant Unit 1 and Unit 2 Emergency Plan," Vol. 2, App. 6, at 1-2 and 1-4.)

While these situations have been removed from the litigation arena by the Commission, which explicitly noted their extremely low probability of occurrence, Contention EP-7 postulates an even more incredible scenario -- that an earthquake (or tornado or other phenomena) would cause (or proximately and unrelatedly occur with) offsite radiological releases from two plants simultaneously. Thus, consideration of the contention is inconsistent with the NRC's planning basis in adopting its emergency planning regulations and is proscribed by the Commission's rulemaking proceeding.

In addition, to the extent that Joint Intervenors seek to litigate other, unspecified "emergency situations" which might affect both Vogtle and the Savannah River Plant, their contention is impermissibly vague. The Commission's regulations do not permit intervenors to expand the scope of a contention to unspecified scenarious by identifying a single scenario and denominating it an "example."[5/] Such pleading would be plainly impractical. In preparing responses to proposed contentions, applicants and the Staff would be required to not only address the "example" identified in the proposed contention, but also to postulate as many other additional examples as they could think of, and address them as well. In effect, applicants and the Staff would be required to both provide the requisite

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5/ This is particularly so where (as here) the sole "example" cited is not litigable.

specificity for the intervenor's proposed contention and address the litigability of the proposed contention. Such a scheme would be a patent perversion of the Commission's rules of practice, which place the burden of specificity squarely on the shoulders of the intervenor. See 10 C.F.R. § 2.714(b). As the Appeal Board has observed:

> The applicant is entitled to a fair chance to defend. It is therefore entitled to be told at the outset, with clarity and precision, what arguments are being advanced * * *.

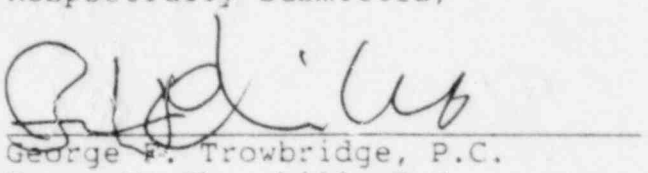
Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit No. 1), ALAB-279, 1 N.R.C. 559, 576 (1975) (emphasis supplied).

Accordingly, Applicants respectfully request that the Board reconsider its August 12 ruling, and reject EP-7 because its subject matter is at issue in a pending rulemaking, and because it lacks the specificity required by the Commission's regulations.

III. Conclusion

For all the foregoing reasons, Applicants request that the Licensing Board reconsider its August 12 rulings, and reject Joint Intervenors' Contentions EP-6 and EP-7.

Respectfully submitted,



George F. Trowbridge, P.C.
Bruce W. Churchill, P.C.
Delissa A. Ridgway
David R. Lewis
SHAW, PITTMAN, POTTS & TROWBRIDGE

James E. Joiner, P.C.
Charles W. Whitney
Kevin C. Greene
Hugh M. Davenport
TROUTMAN, SANDERS, LOCKERMAN
& ASHMORE

Counsel for Applicants

Dated: September , 1985

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicants' Motion For Reconsideration and Clarification of August 12 Memorandum and Order" were served this 5th day of September, 1985, by deposit in the U.S. mail, first class, postage prepaid, upon the parties listed on the attached Service List.

Delissa A. Ridgway
Delissa A. Ridgway

Dated: September 5, 1985

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SERVICE LIST

Morton B. Margulies, Chairman
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Mr. Gustave A. Linenberger, Jr.
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. Oscar H. Paris
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Bernard M. Bordenick, Esq.
Office of Executive Legal Director
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Atomic Safety and Licensing
Appeal Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Douglas C. Teper
1253 Lenox Circle
Atlanta, GA 30306

Laurie Fowler
Legal Environmental Assistance
Foundation
218 Flora Avenue, N.E.
Atlanta, GA 30307

Tim Johnson
Campaign for a Prosperous
Georgia
175 Trinity Avenue, S.W.
Atlanta, GA 30303

Docketing and Service Section
Office of the Secretary
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Bradley Jones, Esquire
Regional Counsel
U.S. Nuclear Regulatory
Commission
Suite 3100
101 Marietta Street
Atlanta, GA 30303