

January 31, 1986

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



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

Docket Nos. 50-424 OL  
50-425

APPLICANTS' MOTION FOR SUMMARY DISPOSITION  
OF JOINT INTERVENORS' CONTENTION EP-1/EP-1(a)/EP-2(b)  
(24-HOUR STAFFING OF BURKE COUNTY ENN LINK)

Pursuant to 10 C.F.R. § 2.749, Applicants hereby move the Atomic Safety and Licensing Board ("Board") for summary disposition in Applicants' favor of Joint Intervenor's Contention EP-1/EP-1(a)/EP-2(b). Applicants base this motion on the grounds that no genuine issue exists to be heard as to any material fact with respect to Contention EP-1/EP-1(a)/EP-2(b) and that Applicants are entitled to a decision in their favor as a matter of law on this contention.

In support of this motion for summary disposition of Contention EP-1/EP-1(a)/EP-2(b), Applicants rely upon:

- (1) "Applicants' Statement of Material Facts As to Which No Genuine Issue Exists to Be Heard Regarding Contention EP-1/EP-1(a)/EP-2(b)";
- (2) "Affidavit of Richard L. Bryant on Contention EP-1/EP-1(a)/EP-2(b)," dated January 31, 1986 ("Bryant Affidavit"); and

(3) all filings in this proceeding, depositions, and answers to interrogatories, together with the statements of the parties.

### I. Background

As initially proposed by Joint Intervenor, Contention EP-1 alleged generally:

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).

The thrust of Joint Intervenor's concern was specified in subpart (a) of EP-1, which asserted:

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.

Contention EP-2(b) further alleged:

[T]he Acting Director of Emergency Management of Richmond County, Pam Smith, states that she occasionally has difficulty contacting emergency personnel in Burke County due to the lack of a full-time emergency planner.

See "Joint Intervenor's Revised Contention Relating To Emergency Response" (June 24, 1985), at 2-3.

In its August 12, 1985 "Memorandum and Order (Ruling On Joint Intervenor's Proposed Contentions On Emergency Planning)" ("August 12 Order"), the Board noted:

We consider the allegation [of EP-2(b)] regarding communications 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.

August 12 Order, at 7. Focusing on NUREG-0654, Criterion F.1.a, which requires (in relevant part) "24-hour per day manning of communications links that initiate emergency response actions," the Board observed that Applicants had indicated that the telephone number of the Burke County Sheriff's Department had been designated as an alternate to that of the Burke County Emergency Operations Center ("EOC") for initial emergency notification. August 12 Order, at 8. The Board expressed concern as to:

\* \* \* 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.

August 12 Order, at 9 (emphasis supplied). The Board therefore admitted EP-1/EP-1(a)/EP-2(b) to the extent that "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." August 12 Order, at 10. Thus, the gravamen of EP-1/EP-1(a)/EP-2(b), as admitted, is the 24-hour staffing of the Burke County ENN link.

Since the admission of Joint Intervenor's Contention EP-1/EP-1(a)/EP-2(b), the parties have undertaken discovery related to that contention. The written discovery pursued by the parties has consisted of:

"Applicants' First Set of Interrogatories and Requests For Production of Documents on Emergency Planning Contentions" (September 20, 1985), at 5-8, 37, 38;

"NRC Staff's Emergency Planning Interrogatories To Joint Intervenor's Campaign For A Prosperous Georgia (CPG) and Georgians Against Nuclear Energy (GANE)" (October 7, 1985), at 4-6;

"Intervenor's First Set of Interrogatories and Requests To Produce Relating To Emergency Planning" (October 15, 1985), at 4;

"Intervenor's Response to Applicants' First Set of Interrogatories and Requests To Produce Concerning Emergency Response Contentions" (October 28, 1985), at 1-2;

"Applicants' Response To Intervenor's First Set of Interrogatories and Requests For Production of Documents on Emergency Planning Contentions" (November 13, 1985), at 19-24;

"Applicants' Second Set of Interrogatories and Requests For Production of Documents on Emergency Planning Contentions" (November 15, 1985), at 5-7;

"Intervenor's Response to Applicants' Second Set of Discovery Relating to Emergency Response" (January 5, 1986), at 1; and

"Intervenor's Response To NRC Staff's Interrogatories Relating To Emergency Planning" (January 24, 1986), at 1-2.

On January 6, 1986, Applicants deposed Mr. Seymour Shaye, whom

Joint Intervenors had indicated would testify on the subject of emergency planning. "Intervenors' Response To Applicants' First Set of Interrogatories and Requests to Produce Concerning Emergency Response Contentions" (October 28, 1985), at Response to Interrogatory G-5(a).

## II. Legal Standards for Summary Disposition

The admission of a contention for adjudication in a licensing proceeding under the standards enunciated in 10 C.F.R. § 2.714 does not constitute an evaluation of the merits of that contention. Instead, such a ruling reflects merely the determination that the contention satisfies the criteria of specificity, asserted basis, and relevance. The admission of a contention also does not dictate that a hearing be held on the issues raised. Section 2.749(a) of the NRC's Rules of Practice authorizes a licensing board to grant a party to the proceeding summary disposition of an admitted contention without proceeding to a hearing.

That section provides that "[a]ny party to a proceeding may move, with or without supporting affidavits, for a decision by the presiding officer in that party's favor as to all or part of the matters in the proceeding." 10 C.F.R. § 2.749(a). Delineating the standard to be applied by a licensing board in ruling upon such a motion, that section further states:

The presiding officer shall render the decision sought if the filings in the proceeding, depositions, answers to interrogatories, and admissions on file, together with the statements of the parties and the affidavits, if any, show that there is no genuine issue of fact and that the moving party is entitled to a decision as a matter of law.

10 C.F.R. § 2.749(d).

The standards governing summary disposition motions in an NRC licensing proceeding are quite similar to the standards applied by federal district courts to summary judgment motions under Rule 56 of the Federal Rules of Civil Procedure. Alabama Power Co. (Joseph M. Farley Nuclear Plant, Units 1 and 2), ALAB-182, 7 A.E.C. 210, 217 (1974); Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B and 2B), ALAB-554, 10 N.R.C. 15, 20 n.17 (1979). Where, as here, a motion for summary disposition is properly supported pursuant to the Commission's Rules of Practice, a party opposing the motion may not rest upon the mere allegations or denials of its answers. Rather, an opposing party must set forth specific facts showing that a genuine issue of fact exists. 10 C.F.R. § 2.749(b). Where the movant has made a proper showing for summary disposition and has supported his motion by affidavit, the opposing party must proffer countering evidentiary material or an affidavit explaining why it is impractical to do so. Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), LBP-83-32A, 17 N.R.C. 1170, 1174 n.4 (1983), citing Adickes v. Kress & Co., 398 U.S. 144, 160-61 (1970).

The Commission and its adjudicatory boards have encouraged the use of the summary disposition process where the proponent of a contention cannot establish that a genuine issue exists, so that evidentiary hearing time is not unnecessarily devoted to such issues. Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 N.R.C. 452, 457 (1981); see also Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 N.R.C. 542, 550 (1980) ("[T]he Section 2.749 summary disposition procedures provide in reality as well as in theory, an efficacious means of avoiding unnecessary and possibly time-consuming hearings on demonstrably insubstantial issues.")

In the case of contested offsite emergency planning issues, there is special reason to give the summary disposition process the diligent effort required to scrutinize the parties' pleadings and eliminate all matters as to which there is no genuine issue to be heard. The expenditure of hearing time on truly baseless allegations would be contrary to not only the interests of the public at large and the parties to the proceeding, but also the numerous non-party State and local agency personnel (and perhaps representatives of private response organizations) whose participation would be required.

### III. Argument

Applying the Commission's summary disposition standards to the facts of this case, it is clear that the instant motion for

summary disposition of Contention EP-1/EP-1(a)/EP-2(b) should be granted. Joint Intervenor's assertions that difficulty can be expected in notifying Burke County of an emergency at Vogtle simply have no basis in fact. Indeed, as explained below, each of the four redundant means which might be used to notify Burke County of a Vogtle emergency is staffed 24 hours per day, 365 days per year, in full compliance with NUREG-0654 Criterion F.1.a, which provides for (in relevant part) "24-hour per day manning of communications links that initiate emergency response actions."

The primary means for notification to Burke County of a Vogtle emergency is the Emergency Notification Network ("ENN"), a dedicated telephone network linking offsite emergency response officials with Plant Vogtle. As first back-up to the ENN, Burke County could be notified via commercial phone lines using a specific emergency number at the Burke County Emergency Operations Center ("EOC"). The second back-up means of notification would be the Burke County Emergency Management Agency ("EMA") radio network. Bryant Affidavit at ¶4. A receiver for each of these three means of notification -- the ENN, the EOC emergency number, and the Burke County EMA radio network -- will be located on the central dispatcher's console in the new Burke County EOC. Burke County will staff the central dispatcher's position on a 24-hour-per-day basis. Thus, each of the three above-identified communications systems will be



staffed on a 24-hour-per-day basis, and the use of any of them would place Plant Vogtle in direct contact with the Burke County EOC. Bryant Affidavit at ¶5.

The fourth (third back-up) means of emergency notification to Burke County from Plant Vogtle is via commercial phone lines to a specific emergency number for the Burke County Sheriff's Department. That phone is located on the Sheriff's Dispatcher's console, which is also staffed on a 24-hour-per-day basis. Pursuant to procedure,<sup>1/</sup> the Sheriff's Dispatcher would then advise the central dispatcher (in the EOC) of the notification from Plant Vogtle, sending a member of the Sheriff's staff to hand deliver the message if necessary. Bryant Affidavit at ¶6. Thus, the Sheriff's Office has no role in the initiation of Burke County response to an emergency at Vogtle. Instead, the role of the Sheriff's Office is limited to relaying notification to the County EOC -- and even that role (as third back-up) is a very remote one.

Regardless of which of the four means is used to notify Burke County of an emergency, the procedure for initiation of Burke County emergency response is the same -- and it does not involve the Sheriff. Upon notification of an emergency at Plant Vogtle (via any of the identified means), the central

---

<sup>1/</sup> This level of detail is properly included in procedures rather than emergency plans. As NUREG-0654 notes (at page 29), "the plans should be kept as concise as possible."

dispatcher's procedure directs the central dispatcher to contact one of the following persons in succession: EMA Director,<sup>2/</sup> first Deputy EMA Director, second Deputy EMA Director, EMA Operations Officer, and EMA Training Officer. The EMA Director, or any of the listed designated alternates, has the authority to initiate Burke County's emergency response. This line of succession was specifically developed to assure the 24-hour-per-day availability of an official with the authority to respond to an emergency at Plant Vogtle. Bryant Affidavit at ¶7.

In summary, there is assurance that Burke County adequately provides for "24-hour per day manning of communications links that initiate emergency response actions." In response to the Board's concerns, Applicants have demonstrated conclusively "that the EOC [specifically, the central dispatcher's console, including the ENN] is staffed continuously." See August 12 Order, at 10.

Moreover, when Applicants directed Joint Intervenor's attention to a full description of the Burke County central dispatching system, Joint Intervenor's were unable to identify either any system changes or other actions asserted to be necessary to provide for 24 hour per day manning of Burke

---

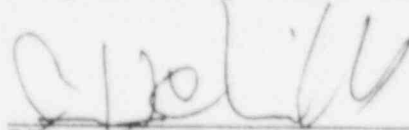
<sup>2/</sup> Contrary to Joint Intervenor's assertions in EP-1(a), Mr. Bryant has served since 1984 as the first full-time Director of the Burke County Emergency Management Agency. Bryant Affidavit at ¶1; Bryant Affidavit at Exhibit A.

County emergency notification links. See "Intervenors' Response To Applicants' Second Set of Discovery Relating To Emergency Response" (January 5, 1986), at Responses to Interrogatories EP-1(a)-16 through EP-1(a)-21. Joint Intervenors cannot avoid summary disposition of EP-1/EP-1(a)/EP-2(b) on the basis of mere speculation that the concerns expressed in the contention will not be resolved by the 24-hour staffing of the central dispatching system (as well as the Sheriff's Dispatcher's position). Nor can Joint Intervenors avoid summary disposition on the basis of guesses or suspicions, or on the hope that at the hearing Applicants' evidence may be discredited or that "something may turn up." See Gulf States Utilities Co. (River Bend Station, Units 1 and 2), LBP-75-10, 1 N.R.C. 246, 248 (1975). Joint Intervenors' personal skepticisms alone are simply insufficient to invoke a hearing under the Commission's Rules of Practice.

#### IV. Conclusion

Because there is no genuine issue of material fact to be heard on the issue of the 24-hour staffing of the Burke County EOC (specifically, the central dispatcher's console, including the ENN), Applicants respectfully request that the Board grant their motion for summary disposition of Contention EP-1/EP-1(a)/EP-2(b).

Respectfully submitted,



Bruce W. Churchill, P.C.  
Delissa A. Ridgway  
David R. Lewis

SHAW, PITTMAN, POTTS & TROWBRIDGE  
1800 M Street, N.W.  
Washington, D.C. 20036  
(202) 822-1000

James E. Joiner, P.C.  
Charles W. Whitney  
Kevin C. Greene  
Hugh M. Davenport

TROUTMAN, SANDERS, LOCKERMAN  
& ASHMORE  
1400 Candler Building  
Atlanta, Georgia 30043  
(404) 658-8000

Counsel for Applicants

Dated: January 31, 1986