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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION 85 SEP 19 A9:19

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD
SECRETARY
DOCKETING & SERVICE
BRANCH

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

Docket Nos. 50-424
50-425
(OL)

NRC STAFF RESPONSE TO APPLICANTS' MOTION TO
STRIKE OR REPLY TO INTERVENOR'S RESPONSE TO
APPLICANTS' MOTION FOR SUMMARY DISPOSITION OF
CONTENTION 7 (GROUNDWATER)

On July 15, 1985, Applicants filed a motion for summary disposition of Contention 7 concerning the groundwater in the vicinity of the Vogtle facility. On August 9, 1985, Joint Intervenors filed a response to the motion; they filed an amended response on August 21st. On August 26th, Applicants filed a motion requesting the Board to strike Intervenors' response or, in the alternative, to permit the Applicants to file a substantive reply to Intervenors' response. The Staff herein responds to Applicants' motion.

I. THE MOTION TO STRIKE

Applicants move to strike Intervenors' response to the motion for summary disposition of Contention 7 based on two related grounds. First, Applicants point out that the "analysis" of William Lawless upon which Intervenors' response is based does not comport with the requirements of

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10 CFR §2.749 (which requires that factual responses to motions for summary disposition be supported by affidavits or discovery documents). Second, Applicants charge that even if Intervenor submitted a proper affidavit, Mr. Lawless is unqualified to support such an affidavit.

The analysis provided by Mr. Lawless falls short of the requirements for an affidavit in two respects: it is not a sworn statement and it does not "show affirmatively that the affiant is competent to testify to the matters stated therein" (see 10 CFR §2.749(b)). The lack of a sworn statement is easily remediable. The Staff assumes that Intervenor would not have submitted Mr. Lawless' analysis to the Board if Mr. Lawless were unwilling to aver to the matters contained therein; a signed sworn statement by Mr. Lawless to that effect would settle the matter. Of course, if Mr. Lawless were unwilling to sign such a statement, his analysis should not be considered by the Board. Under the circumstances, the Staff believes Intervenor should be provided the opportunity to provide the Board with a sworn statement from Mr. Lawless.

As to the issue of Mr. Lawless' qualifications to testify to the matters contained in his analysis, the Staff believes no additional papers are necessary. Although a demonstration of his qualifications should have been provided with his analysis, it is worth noting (as Applicants point out in their motion) that Mr. Lawless' qualifications are touched upon in Intervenor's Response to Applicants' 3rd Set of Interrogatories and were examined in detail during Applicants' deposition of Mr. Lawless on March 26, 1985 (see Deposition Tr. 8-62). It is clear from those documents that Mr. Lawless does not have professional training as a hydrologist or geologist; it is equally clear that Mr. Lawless does

have a background in engineering and at least some familiarity with the issues involved in Contention 7. Particularly since a good deal of his analysis is devoted to methodology and uncertainties, the Staff does not believe Mr. Lawless' analysis should be struck for lack of qualifications. While the Staff therefore does not support the motion to strike Mr. Lawless' analysis, it does believe that the Board should consider Mr. Lawless' qualifications in assessing the credibility to be accorded his analysis. ^{1/}

II. THE MOTION FOR LEAVE TO REPLY

Applicants have argued in the alternative that the Board allow the Applicants leave to reply to arguments contained in Mr. Lawless' analysis that are alleged to be either distortions of the record or arguments that should have been (but were not) provided to Applicants during discovery. Inasmuch as the purpose of summary disposition is to resolve issues without the use of an evidentiary hearing where there are no genuine issues of factual dispute, the Staff would not oppose the grant of the motion for leave to reply for the limited purpose of identifying distortions of the record or responding to arguments not provided during discovery, provided other parties are given the opportunity to respond to the Applicants' reply in a similarly limited fashion. The Staff does not

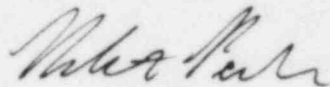
^{1/} Although the Staff does not support the motion to strike Mr. Lawless' analysis, the Staff does not waive any future objections it may have to Mr. Lawless' competence to proffer specific pieces of testimony in affidavits or otherwise.

believe the Board should entertain additional papers not limited in the fashion described above.

III. CONCLUSION

For the reasons presented above, the Staff submits that the Board should offer Intervenor's the opportunity to submit a sworn statement from Mr. Lawless attesting to the truthfulness of his analysis. If such a statement is provided, the Staff would oppose the motion to strike Intervenor's response to Applicants' motion for summary disposition. The Staff does not oppose the grant of Applicants' motion for leave to reply to Intervenor's response, provided the reply is limited to correcting record distortions and responding to new arguments not identified by Intervenor's during discovery and provided that the other parties are given the right to file similarly limited responses to Applicants' reply.

Respectfully submitted,



Robert G. Perlis
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 16th day of September, 1985

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

Docket Nos. 50-424
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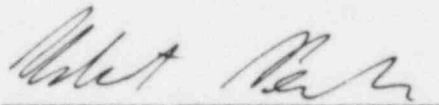
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