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February 10, 1986

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF 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 OL-
50-425

APPLICANTS' MOTION FOR SUMMARY DISPOSITION
OF JOINT INTERVENORS' CONTENTION EP-7
(EMERGENCY PLANNING IN SOUTH CAROLINA)

Pursuant to 10 C.F.R. § 2.749, the Applicants hereby move the Atomic Safety and Licensing Board ("Board") for summary disposition in Applicants' favor of Joint Intervenor's Contention EP-7. As grounds for this motion, Applicants state that no genuine issue of material fact exists to be heard with respect to Contention EP-7 and that Applicants are entitled to a decision in their favor on that contention as a matter of law.

In support of this motion for summary disposition of Contention EP-7, Applicant rely upon:

- (1) Applicants' Statement of Material Facts as to Which No Genuine Issue Exists to Be Heard Regarding Contention EP-7;
- (2) Affidavit of Jean M. DiLuzio on Contention EP-7;
and

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- (3) All the filings in the proceeding, depositions, answers to interrogatories, and admissions on file, together with the statements of the parties.

I. Background

As set forth in Joint Intervenor's Revised Contention Relating to Emergency Response, filed on June 24, 1985, Contention EP-7 alleged:

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.

Id. at 5.

In its Memorandum and Order of August 12, 1985 (Order of August 12, 1985), the Board admitted Contention EP-7. The primary concern expressed by the Board was that the planning materials submitted by the Applicants lacked information about emergency planning for that part of the Vogtle emergency planning zones within South Carolina. Based upon its analysis of the information before it, the

Board concluded that the emergency planning materials provided by the Applicants were incomplete and that Contention EP-7 was admissible. (Order of August 12, 1985 at 33-34.)

In response to a Motion for Reconsideration and Clarification filed by the Applicants, the Board issued a Memorandum and Order on October 1, 1985 (Order of October 1, 1985) that provided a further explanation of its prior ruling admitting Contention EP-7. The Board again emphasized the lack of planning materials for that portion of the VEGP plume EPZ lying within South Carolina and concluded that "the litigable issue extant in EP-7 is Applicants' alleged failure to provide an emergency response plan for the VEGP which encompasses that part of the plume EPZ within South Carolina." (Order of October 1, 1985 at 8.) Having found that more information concerning emergency planning in South Carolina was needed, the Board ruled that once the Applicants provided such additional information, the Intervenor would have thirty days to submit proposed contentions. Id.

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 proceedings, 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 Company (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 NRC's Rules of Practice, a party opposing the motion may not rest upon the mere allegations or denials of its answers. A party cannot avoid summary disposition on the basis of guesses or suspicions, or on the hope that at the hearing the movant's evidence may be discredited or that "something may turn up." Gulf States Utilities Company (River Bend Station, Units 1 and 2), LBP-75-10, 1 N.R.C. 246, 248 (1975). Rather, an opposing party must set forth specific facts showing that a genuine issue of fact remains. 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 Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-90, 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, a special reason warrants giving 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

As made clear by the Board in its Order of October 1, 1985, the sole focus of Contention EP-7 is upon the availability of emergency response plans for that part of the VEGP plume EPZ within South Carolina. In South Carolina, the plume EPZ encompasses parts of Aiken County, Allendale County, and Barnwell County with most of that area falling within the boundaries of the U.S. Department of Energy's Savannah River Plant facility. Affidavit of Jean M.

DiLuzio on Contention EP-7 at ¶3. On February 5, 1986, the Applicants provided to the Board and the other parties copies of site specific emergency response plans developed for emergencies arising at VEGP by the State of South Carolina, Aiken County, Allendale County, Barnwell County, and the U.S. Department of Energy's Savannah River Operations Office. Id. at ¶4. These plans establish the framework within which the different governmental authorities having jurisdiction over the areas in South Carolina within the VEGP plume EPZ would respond to an emergency at VEGP. Id.

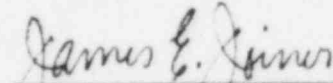
Because the "litigable issue extant in EP-7 is Applicants' alleged failure to provide an emergency response plan for the VEGP which encompasses that part of the plume EPZ in South Carolina" (Order of October 1, 1985 at 8), the Applicants' submission of these emergency plans to the Board and the other parties on February 5, 1986 resolves that contention. Under the Board's Order of October 1, 1985, any challenge by the Intervenors to the substance of these emergency plans must be made within 30 days thereafter (March 7, 1986) in the form of specific proposed contentions with statements of bases. Id. Thus, the availability of emergency response plans for those portions of the VEGP plume EPZ in South Carolina satisfies the only issue raised by Contention EP-7, as defined by

the Board, and warrants the granting of summary disposition in favor of the Applicants on Contention EP-7.

IV. Conclusion

Because no genuine issue of material fact remains to be heard concerning the availability of emergency response plans for that part of the VEGP plume EPZ within South Carolina, the Applicants respectfully request the Board to grant their motion for summary disposition of Contention EP-7.

Respectfully submitted,



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Dated: February 10, 1986.