

DOCKETED  
USNRC  
February 14, 1986

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

'86 FEB 18 A11:40

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-2/EP-2(c)  
(USE OF NOAA TONE ALERT RADIOS)

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-2/EP-2(c). 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-2/EP-2(c) 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-2/EP-2(c), Applicants rely upon:

(1) "Applicants' Statement of Material Facts As to Which No Genuine Issue Exists to Be Heard Regarding Contention EP-2/EP-2(c)";

(2) "Affidavit of David N. Keast on Contention EP-2/EP-2(c)," dated February 14, 1986 ("Keast Affidavit"); and

8602190423 860214  
PDR ADCCK 05000424  
G PDR

DS03

(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-2 alleged generally:

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).

The thrust of Joint Intervenor's concern was specified in subpart (c) of EP-2, which asserted:

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.

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

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

The fact that Applicants plan to use the NOAA Weather Radio alert system lends credence to Joint Intervenor's 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.

August 12 Order, at 15. Accordingly, the Board admitted Contention EP-2/EP-2(c) "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." August 12 Order, at 16.

Since the admission of Joint Intervenors' Contention EP-2/EP-2(c), 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 10-14, 39-40;

"NRC Staff's Emergency Planning Interrogatories To Joint Intervenors Campaign For A Prosperous Georgia (CPG) and Georgians Against Nuclear Energy (GANE)" (October 7, 1985), at 7-8;

"Intervenors' First Set of Interrogatories and Requests To Produce Relating To Emergency Planning" (October 15, 1985), at 5;

"Intervenors' Response to Applicants' First Set of Interrogatories and Requests To Produce Concerning Emergency Response Contentions" (October 28, 1985) ("Intervenors' 10/28/85 Responses"), at 3-5;

"Applicants' Response To Intervenor's First Set of Interrogatories and Requests For Production of Documents on Emergency Planning Contentions" (November 13, 1985), at 28-33;

"Applicants' Second Set of Interrogatories and Requests For Production of Documents on Emergency Planning Contentions" (November 15, 1985), at 8-9;

"Intervenors' Response to Applicants' Second Set of Discovery Relating to Emergency Response" (January 5, 1986) ("Intervenors' 1/5/86 Responses"), at 1-2; and

"Intervenors' Response to NRC Staff's Interrogatories Relating to Emergency Planning" (January 24, 1986) ("Intervenors' 1/24/86 Responses"), at 2-3.

On January 6, 1986, Applicants deposed Mr. Seymour Shaye, whom Joint Intervenor's 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), AIAB-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. 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 Co. (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 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

The issue to be litigated in Contention EP-2/EP-2(c), as admitted by the Board, is "whether Applicants should be allowed to use the NOAA Weather Radio alerting system or required to utilize some other form of radio alerting system." August 12 Order, at 16. Applying the Commission's summary disposition standards to the facts of this case, it is clear that the instant motion for summary disposition should be granted. There is no reason to believe that members of the public would be

more likely to retain and use some type of radio alerting system other than the NOAA system. In fact -- in contrast to other radio alerting systems (which lack day-to-day utility) -- the NOAA system provides useful information to members of the public on a daily basis, so that NOAA radios are actually more likely to be retained and used than other types of radio alert receivers. In any event, public notification of a Vogtle emergency is not dependent on the NOAA weather radios. Georgia Power Company is also installing a system of fixed sirens throughout the EPZ, which can be relied upon to alert all EPZ residents, including any who may have disabled their NOAA weather radios. Thus, the public alert/notification system for Vogtle will provide both tone alert radio and fixed siren coverage to all residents within the plume exposure pathway Emergency Planning Zone ("EPZ").

As discussed in the attached Keast Affidavit, the NOAA weather radio system serves two purposes. First, the weather radios will offer the capability to hear routine, continuous broadcasts of the latest weather information direct from the local National Weather Service Office (particularly valuable to farmers, sportsmen, etc.); and, second, the weather radios will be automatically activated to provide public notification of weather-related emergencies, as well as any Vogtle emergency. Thus, unlike other radio alerting systems (which lack day-to-day utility and therefore may not be as widely used by

members of the public), the NOAA weather radio system has utility to the public on a routine, daily basis. This is a unique feature of the NOAA weather radio system as opposed to other radio alerting systems for the public. Because the NOAA weather radio broadcasts have proven to be a widely-accepted, highly valuable public service elsewhere across the nation, the broadcasts can be expected to enjoy similar popularity within the Vogtle EPZ, particularly considering the predominance of agricultural activities in the area. Keast Affidavit, ¶¶ 3-4.

Further, the NOAA weather radio system has been in use across the country for about a decade, and is a proven technology. No other radio alerting system for the public has been applied on such a large scale. Thus, there is much more operating experience with the NOAA weather radio system than with any other radio alerting system for the public. In short, there is no other radio alerting system for the general public that is as proven in its reliability and effectiveness as the NOAA system. Keast Affidavit, ¶ 5.

The extensive operating experience with NOAA weather radios demonstrates that they do not "go off frequently without reason," as Joint Intervenors allege. Although Applicants repeatedly sought the basis for the allegation that NOAA radios "go off frequently without reason," Joint Intervenors failed to provide any specific information to substantiate their claim. See "Intervenors' 10/28/85 Responses," at responses to

Interrogatories EP-2(c)-10 through EP-2(c)-14; "Intervenors' 1/5/86 Responses," at response to Interrogatory EP-2(c)-22; Deposition of Seymour Shaye (January 6, 1986), at 40-46. As with any type of public alert and notification system, isolated cases of spurious activation may sometimes occur during installation testing and system "shakedown". Such problems -- should they occur -- are quite temporary in nature and readily resolved. Thus, they do not affect the long-term utility and reliability of the NOAA weather radio system. Keast Affidavit, ¶ 6.

Nor will the NOAA weather radio system within the Vogtle EPZ broadcast weather information which is inapplicable to the Vogtle area. While in some cases (elsewhere in the country) the NOAA transmitter is remote from the weather station which controls the transmitter, this will not be a problem at Plant Vogtle. The NOAA weather radio system for the Vogtle EPZ will include a new transmitter at the Vogtle site, which will be controlled from Bush Field (only 15 miles away). Thus, the routine weather information, as well as the weather emergency broadcasts, will be applicable to the Vogtle area. Indeed, the automatic activation of the NOAA weather radios within the EPZ due to weather conditions will be limited to those storm "watches" and "warnings" directly applicable to the four counties in the EPZ, as well as the Georgia counties of Screven and Jenkins. Keast Affidavit, ¶ 7.

National Weather Service data have been analyzed to determine the expected frequency of activation of NOAA weather radios in the Vogtle EPZ due to severe weather watches and warnings. These data indicate an average of 25 storm watches and warnings per year for the area (described above) to be covered by the Vogtle system. However, the automatic activation of the NOAA weather radios for certain weather events is actually at the discretion of the local National Weather Service office; the actual number of weather-related activations per year is therefore likely to be lower than the number of watches and warnings issued. Thus, the NOAA weather radios within the Vogtle EPZ would be activated a maximum of 25 times per year (on average) due to severe weather. Keast Affidavit, ¶ 8.

There is no indication that this predicted automatic activation pattern for the NOAA weather radios in the Vogtle EPZ will be likely to cause any significant number of households to disable their radios,<sup>1/</sup> particularly considering the usefulness of the up-to-date weather information broadcast over the radios on a

---

<sup>1/</sup> It is important to recognize that storm watches and warnings are not evenly distributed throughout the year. Rather, about 85% of the storm watches and warnings in the Vogtle area occur between March and July, when public awareness of "storm season" is high and public acceptance of safety information at its peak. Similarly, storm watches and warnings are not evenly distributed over a 24-hour period. Instead, approximately 93% of the storm watches and warnings occur between 6:00 a.m. and midnight, when any disruptive effect of a severe weather message not applicable to an individual listener would be minimized. Keast Affidavit, ¶ 9.

daily basis. Certainly there is no reason to believe that members of the public would be more likely to retain and use some other type of radio alerting system having no utility on a day-to-day basis. Keast Affidavit, ¶ 9.

In any event, even if some EPZ residents did turn off their NOAA weather radios, those individuals would still be warned of an emergency at Vogtle, via the fixed siren system being installed throughout the EPZ. This siren system has been designed to provide a minimum of 60 dBC coverage to all residences within the EPZ, in accordance with the guidance of Appendix 3 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." Keast Affidavit, ¶ 10.

In summary, the premise of Contention EP-2/EP-2(c) -- that some other form of radio alerting system might be more effective than the NOAA system -- is simply invalid. Thus, there is no factual basis for Joint Intervenor's contention. Indeed, the NOAA weather radio tone alert system is expressly sanctioned by the applicable regulatory guidance. See NUREG-0654, at 3-2, 3-3, 3-16. The contention is thus lacking in legal basis as well. Moreover, although the topic was the subject of extensive, detailed discovery requests, Joint Intervenor never identified any type of public alert/notification system which they would deem acceptable for use in the Vogtle EPZ.<sup>2/</sup> See

---

<sup>2/</sup> As recognized in FEMA-43, "Standard Guide For The Evaluation of Alert and Notification Systems For Nuclear Power

"Intervenors' 10/28/85 Responses", at 3-5; "Intervenors' 1/5/86 Responses", at 1-2; "Intervenors' 1/24/86 Responses", at 2-3; Deposition of Seymour Shaye (January 6, 1986), at 46 (indicating that Mr. Shaye has not looked into what type of public alerting system Intervenors might consider satisfactory).

In any event, in addition to the NOAA weather radio system, Georgia Power Company is also installing a system of fixed sirens throughout the Vogtle EPZ, which can be relied upon to alert any EPZ residents who have turned off their NOAA weather radios. No other nuclear plant in the country has installed a public alert/notification system which provides both tone alert radio and fixed siren coverage to all residences within the EPZ. Keast Affidavit, ¶ 10. In the face of this indisputable fact, and the arguments set forth above, the unsupported doubts and skepticisms of Joint Intervenors should not suffice to invoke a hearing on Contention EP-2/EP-2(c).

---

(Continued)

Plants" (September 1983), applicants are permitted to employ any of a number of means to alert the public. "The means of alert is at the option of the licensee." FEMA-43, at E-3.

#### IV. Conclusion

Because there is no genuine issue of material fact to be heard on the issue of Contention EP-2/EP-2(c), Applicants respectfully request that the Board grant this motion for summary disposition.

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: February 14, 1986