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March 3, 1986UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARDOFFICE OF THE  
DOCKET  
BRANCH

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

Docket Nos. 50-424 *OK*  
50-425

APPLICANTS' MOTION FOR SUMMARY DISPOSITION  
OF JOINT INTERVENORS' CONTENTION EP-2/EP-2(a)  
(ADMINISTRATIVE CONTROLS OVER ENN USE)

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 Intervenors' Contention EP-2/EP-2(a). 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(a) 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(a), 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(a)";

(2) "Affidavit of Jean M. DiLuzio on Contention EP-2/EP-2(a)," dated March 3, 1986 ("DiLuzio Affidavit");

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- (3) "Affidavit of Richard L. Bryant on Contention EP-2/EP-2(a)," dated March 3, 1986 ("Bryant Affidavit");
- (4) "Affidavit of Billy J. Clack on Contention EP-2/EP-2(a)," dated March 3, 1986 ("Clack Affidavit");
- (5) "Affidavit of Bobby R. Mauney on Contention EP-2/EP-2(a)," dated March 3, 1986 ("Mauney Affidavit");
- (6) "Affidavit of Harold W. Awbrey on Contention EP-2/EP-2(a)," dated March 3, 1986 ("Awbrey Affidavit");
- (7) "Affidavit of Herman E. Wald on Contention EP-2/EP-2(a)," dated March 3, 1986 ("Wald Affidavit");
- (8) "Affidavit of Thomas A. Gardner on Contention EP-2/EP-2(a)," dated March 3, 1986 ("Gardner Affidavit");
- (9) "Affidavit of Kevin P. Twine on Contention EP-2/EP-2(a)," dated March 3, 1986 ("Twine Affidavit"); and
- (10) all filings in this proceeding, depositions, and answers to interrogatories, together with the statements of the parties.

#### I. Background

As initially proposed by Joint Intervenors, 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 Intervenors' concern was specified in subpart (h) of EP-2, which asserted:

[T]he Burke County plan states that the means of communication among local governments and respective department/agency personnel within the Plume Exposure Pathway EPZ are, primarily, dedicated circuits and commercial phone lines, and secondly, radio systems. This plan ignores the probability that both dedicated and commercial phone lines will quickly become overloaded and incapacitated and in the event of a radiological accident at the plant the limited radio bands made available to emergency response vehicles will just as quickly become congested.

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

In its August 12, 1985 "Memorandum and Order (Ruling On Joint Intervenors' Proposed Contentions On Emergency Planning)" ("August 12 Order"), the Board noted that commercial phone lines and radio channels serve as secondary means of communication. Thus, while it is conceivable that commercial phone lines could become overloaded after public notification of an emergency at Vogtle, the Board considered it "unlikely" that such a situation "could seriously interfere with emergency communications because of the existence of dedicated phone lines and emergency radio channels." The Board further observed that, while radio channels "might become quite busy" in an emergency, "the low population density around VEGP and the small size of the response organizations" make it "extremely unlikely that the emergency radio channels would become overloaded." August 12 Order, at 13. With respect to the dedicated phone lines, the Board noted its agreement with

Applicants and the Staff that the dedicated lines could not be overloaded by calls involving non-emergency personnel. However, the Board expressed concern as to whether "administrative controls are in place to restrict the use of the dedicated lines to the transmission of official and necessary messages." August 12 Order, at 12-13. The Board therefore admitted Contention EP-2/EP-2(a) "on the limited basis that Applicants have not shown that such administrative controls exist." August 12 Order, at 14. Thus, the gravamen of EP-2/EP-2(a), as admitted, is the existence of administrative controls over the use of the Emergency Notification Network ("ENN").

Since the admission of Joint Intervenors' Contention EP-2/EP-2(a), 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 8-10, 38-39;

"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 6-7;

"Intervenors' First Set of Interrogatories and Requests To Produce Relating To Emergency Planning" (October 15, 1985), at 4-5;

"Intervenors' Response to Applicants' First Set of Interrogatories and Requests To Produce Concerning Emergency Response Contentions" (October 28, 1985), at 2-3;

"Applicants' Response To Intervenors' First Set of Interrogatories and Requests For Production of Documents on Emergency Planning Contentions" (November 13, 1985), at 24-28;

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

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

"Intervenors' Response to NRC Staff's Interrogatories Relating to Emergency Planning" (January 24, 1986) at 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

The issue to be litigated in Contention EP-2/EP-2(a), as admitted by the Board, is the existence of administrative controls over the ENN, to assure its ready availability for "the transmission of official and necessary messages." August 12 Order, at 12-14. 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.

The ENN is a dedicated, "hard-wired" telecommunications system exclusively for use in a radiological emergency. The ENN system links Plant Vogtle with the principal organizations for emergency response within the Vogtle plume exposure pathway Emergency Planning Zone ("EPZ") -- specifically, the States of Georgia and South Carolina; Burke County, Georgia; Aiken, Allendale, and Barnwell Counties, in South Carolina; and the Savannah River Plant. DiLuzio Affidavit at ¶ 3. As the Board has recognized, because the ENN system involves dedicated lines, it cannot be overloaded by calls involving non-emergency personnel. August 12 Order, at 12.



Further, physical access to the ENN is restricted. Clack Affidavit at ¶ 4; Bryant Affidavit at ¶ 3; Gardner Affidavit at ¶ 4; Mauney Affidavit at ¶ 4; Awbrey Affidavit at ¶ 4; Wald Affidavit at ¶ 3; Twine Affidavit at ¶¶ 4-5; DiLuzio Affidavit at ¶ 6. In addition, all ENN terminals will be subject to administrative controls, to assure the ready availability of the ENN during an emergency for the transmission of official and necessary messages. Clack Affidavit at ¶ 5; Bryant Affidavit at ¶ 4; Gardner Affidavit at ¶ 5; Mauney Affidavit at ¶ 5; Awbrey Affidavit at ¶ 5; Wald Affidavit at ¶ 4; Twine Affidavit at ¶ 5; DiLuzio Affidavit at ¶ 7.<sup>1/</sup>

Moreover, because of the physical characteristics of the ENN system, it cannot be "overloaded" even by ENN users. Once the ENN system is activated, all parties at ENN terminals would automatically hear everything said at any of the other connected terminals, and would physically be able to speak up at any time. Thus, the ENN system is designed to assure the constant physical capability to transmit official and necessary messages. DiLuzio Affidavit at ¶ 4.

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<sup>1/</sup> It is of no moment that the administrative controls, as set out in the procedures, are not available for review. The Commission's regulatory scheme does not contemplate its adjudicatory hearings being "bogged down with litigation about such details." Accordingly, the detailed procedures for implementing the emergency plans are not subject to scrutiny in licensing proceedings. Louisiana Power & Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-732, 17 N.R.C. 1076, 1107 (1983).

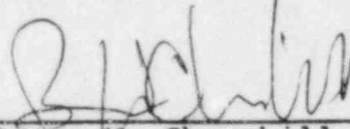
In summary, all ENN terminals will be both physically and administratively controlled. The physical controls will prevent unauthorized access to the ENN. The administrative controls will assure its ready availability during an emergency for the transmission of official and necessary messages. Clack Affidavit at ¶ 6; Bryant Affidavit at ¶ 5; Gardner Affidavit at ¶ 6; Mauney Affidavit at ¶ 6; Awbrey Affidavit at ¶ 6; Wald Affidavit at ¶ 5; Twine Affidavit at ¶ 5; DiLuzio Affidavit at ¶ 8. Joint Intervenors cannot avoid summary disposition on the basis of mere 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). The undisputed facts presented here conclusively demonstrate the provisions for administrative controls over the use of the ENN -- the sole issue of Contention EP-2/EP-2(a) -- and compel a decision in Applicants' favor.

#### IV. Conclusion

Because there is no genuine issue of material fact to be heard on the issue of the existence of administrative controls over use of the Emergency Notification Network, Applicants

respectfully request that the Board grant their motion for summary disposition of Contention EP-2/EP-2(a).

Respectfully submitted,



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