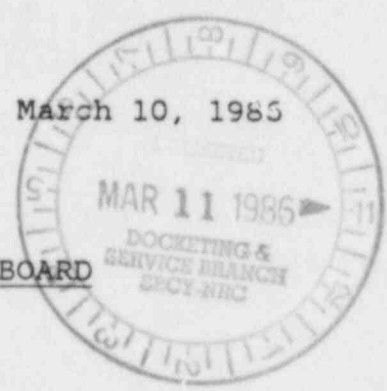


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March 10, 1985

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  
50-425

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APPLICANTS' MOTION FOR SUMMARY DISPOSITION  
OF JOINT INTERVENORS' CONTENTION EP-2/EP-2(h)  
(PUBLIC INFORMATION FOR TRANSIENTS)

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(h). 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(h) 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(h), 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(h)";

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- (2) "Affidavit of Richard L. Bryant on Contention EP-2/EP-2(h)," dated March 10, 1986 ("Bryant Affidavit");
- (3) "Affidavit of Bobby R. Mauney on Contention EP-2/EP-2(h)," dated March 10, 1986 ("Mauney Affidavit");
- (4) "Affidavit of Harold W. Awbrey on Contention EP-2/EP-2(h)," dated March 10, 1986 ("Awbrey Affidavit");
- (5) "Affidavit of H.E. Wald on Contention EP-2/EP-2(h)," dated March 10, 1986 ("Wald Affidavit");
- (6) "Affidavit of Kevin P. Twine on Contention EP-2/EP-2(h)," dated March 10, 1986 ("Twine Affidavit");
- (7) "Affidavit of Jean M. DiLuzio on Contention EP-2/EP-2(h)," dated March 10, 1986 ("DiLuzio Affidavit"); and
- (8) 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:

Applicants provide no assurance that transients who are unfamiliar with the area will understand the implications of a warning signal in the event they are able to hear it.

See "Joint Intervenors' Revised Contention Relating To Emergency Response" (June 24, 1985), at 4.

In its August 12, 1985 "Memorandum and Order (Ruling On Joint Intervenors' Proposed Contentions On Emergency Planning)" ("August 12 Order"), the Board acknowledged the existing commitment to place signs for transients along the Savannah River, and to place a notice in local phone directories, but ruled:

Neither the Vogtle Plan nor the Burke County Plan \* \* \* mention the placing of notices elsewhere where the remaining transient population may be within the EPZ. On this basis we find Contention EP-2(h) admissible.

August 12 Order, at 19-20.

Since the admission of Joint Intervenors' Contention EP-2/EP-2(h), 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 15-17, 40-41;

"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 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 5-6;

"Applicants' Response To Intervenors' First Set of Interrogatories and Requests For Production of Documents on Emergency Planning Contentions" (November 13, 1985), at 34-35; and

"Intervenors' Response To NRC Staff's Interrogatories Relating To Emergency Planning" (January 24, 1986), at 3.

On January 6, 1986, Applicants deposed Mr. Seymour Shaye, whom Joint Intervenors had indicated would testify on the subject of emergency planning. Intervenors' 10/28/85 Responses, at Response 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

As discussed more fully below, a thorough survey of the Vogtle plume exposure pathway Emergency Planning Zone ("EPZ") has been conducted to identify all transient populations in the area, and a comprehensive program has been designed to assure that transients are provided with information needed for response to a Vogtle emergency. Bryant Affidavit at ¶¶ 4, 16; Mauney Affidavit at ¶ 4; Awbrey Affidavit at ¶ 4; Wald Affidavit at ¶ 4; Twine Affidavit at ¶ 3. Applying the Commission's summary disposition standards to the facts of this case, it is

therefore clear that the instant motion for summary disposition of Contention EP-2/EP-2(h) should be granted.

A. Burke County

The transient population in that portion of Burke County which lies within the EPZ is comprised of non-resident (1) sportsmen, (2) motorists passing through the area, (3) employees working in the area, and (4) individuals making occasional brief visits to attend church, the Plant Vogtle Visitors Center, commercial establishments, or for other such reasons. Also included in this analysis are the staff and students of Girard Elementary School (the only school in the EPZ), although the school will be closed permanently no later than September 1987. Bryant Affidavit at ¶ 3.

The Burke County program for dissemination of Vogtle emergency public information to transients has a number of elements. These include the emergency public information brochure, information placed in the local telephone directory, stickers on or near public phones, and large warning signs (for outdoor use) and smaller warning signs (for indoor use) for posting at strategic locations in the EPZ, such as commercial establishments, gas stations, and areas used by sportsmen. Each of these will provide the basic information needed by a



transient to respond effectively to a warning of an emergency at Plant Vogtle. Each will inform the reader that he is near Plant Vogtle, indicate how notification of an emergency would be provided, explain what actions should be taken if a warning is received, and list appropriate EBS stations for the area. The signs and stickers will also refer the reader to the telephone directory insert, which will include more detailed information. Bryant Affidavit at ¶¶ 16-17. The use of each of these means is described in greater detail below.

At the up-river and down-river boundaries of the EPZ, warning signs will be posted on both banks of the Savannah River, to provide information to sportsmen. Georgia Power Company will also provide outdoor warning signs to appropriate local officials and landowners, for posting at Miller's Pond and at the boat launches within the Burke County portion of the EPZ. In addition, Georgia Power Company will provide each hunting club in the EPZ with a supply of the brochures, for distribution to their membership. Sportsmen will also be informed by warning notices posted in commercial establishments within the EPZ, where they stop for supplies, gasoline, food, or lodging. Finally, the public telephone stickers and the telephone directory insert are additional means of informing sportsmen. Bryant Affidavit at ¶ 19; DiLuzio Affidavit at ¶¶ 7, 14.

Motorists traveling through the area will be informed by the warning notices posted in commercial establishments (when they stop for gasoline, food, lodging, etc.), and by the information on the public telephone stickers and in the telephone directory. Those who do not stop will spend a maximum of 25 minutes in the EPZ. Bryant Affidavit at ¶ 20.

The greatest number of non-resident employees is the Plant Vogtle work force. All Vogtle construction workers, plant personnel and contractor personnel receive instruction on the methods of personnel notification and required protective actions in the event of a Vogtle emergency. Bryant Affidavit at ¶ 21; DiLuzio Affidavit at ¶ 3. Measures are also being taken to assure that other non-EPZ residents who work within the EPZ receive appropriate pre-emergency information. Georgia Power Company will provide all commercial establishments within the EPZ -- as well as all timber companies operating in the EPZ -- with a supply of the brochures, for distribution to non-resident employees. Further, all area farmers are required to register annually with the Agricultural Stabilization and Conservation Service ("ASCS") of the U.S. Department of Agriculture in Augusta. The ASCS office has agreed to post a warning sign to provide information to area farmers, and to distribute copies of the brochures to farmers using land in the

EPZ. Finally, non-resident employees will be informed by the warning notices posted in commercial establishments within the EPZ, the public telephone stickers, and the telephone directory insert. Bryant Affidavit at ¶ 22; DiLuzio Affidavit at ¶¶ 5-6, 9, 16.

In addition, measures are also being taken to provide emergency public information to occasional visitors to the EPZ. Georgia Power Company will provide the single motel in the EPZ with a supply of brochures for distribution to guests. Georgia Power Company is also providing the pastors of all churches in the Burke County portion of the EPZ with supplies of the brochures, for distribution to the church congregations. The churches will also be provided with indoor warning notices, for posting on church premises. Bryant Affidavit at ¶ 23; DiLuzio Affidavit at ¶¶ 5, 12, 16. At the Vogtle Visitors Center, warning signs will be posted and brochures will be available to all visitors. Both church-goers and Vogtle visitors, as well as any other occasional visitors in the area such as those patronizing commercial establishments, will also be informed by means of the warning information posted in commercial establishments (such as the motel) and at public telephones, and the information in the local telephone directory. Bryant Affidavit at ¶¶ 24-25; DiLuzio Affidavit at ¶ 4. Finally, prior to fuel

load, and annually thereafter (until the school closes, in September 1987 or sooner), Georgia Power Company will provide Girard Elementary School with a supply of brochures, for distribution to school staff and parents of students attending school. Thus, adequate measures are being taken to provide emergency public information to transients in that portion of Burke County which lies within the Vogtle EPZ. Bryant Affidavit at ¶¶ 26-27; DiLuzio Affidavit at ¶ 8.

#### B. Aiken County

The portion of Aiken County that lies within the EPZ consists of part of the Savannah River Plant (discussed below in Section III.E) and part of the Cowden Plantation. Cowden Plantation is privately owned and is used principally for hunting and occasionally for fishing. Access to the plantation is restricted, and hunting and fishing are limited to defined areas and to individuals who have the express permission of the plantation owner. There are no phone booths, or hotels, motels, gas stations or other such commercial establishments in the Aiken County portion of the EPZ. The transient population at Cowden Plantation is therefore limited to sportsmen and employees of the plantation, as well as any Seaboard Coast Line crew operating in the area. Mauney Affidavit at ¶ 3.

Measures are being taken to provide pre-emergency public information to these transients. Georgia Power Company will provide Cowden Plantation management with a supply of the Vogtle emergency public information brochure, for distribution to all employees and sportsmen at the plantation. In addition, Georgia Power Company will provide Seaboard Coast Line railroad with a supply of the brochures, for distribution to all railroad employees who work within the EPZ. Finally, the local telephone directory will include emergency public information such as means of notification, actions to be taken if a warning is received, and appropriate EBS stations for the area. Thus, adequate measures are being taken to provide emergency public information to transients in that portion of Aiken County which lies within the Vogtle EPZ. Mauney Affidavit at ¶¶ 5-7; DiLuzio Affidavit at ¶¶ 11, 13.

#### C. Allendale County

The portion of Allendale County that lies within the EPZ consists of approximately one and one half square miles of the Creek Plantation. The Creek Plantation is a privately-owned breeding farm for quarter horses, which extends into neighboring Barnwell County. There is a section of track of the Seaboard Coast Line within the Allendale County portion of the

EPZ, and a short segment (less than one-half miles) of South Carolina Route 125 bounds the EPZ on the north. There are no phone booths, or hotels, motels, gas stations or other such commercial establishments in the Allendale County portion of the EPZ. The transient population in this part of the EPZ is therefore limited to Creek Plantation employees and visitors, motorists on Route 125, and any Seaboard Coast Line crew operating in the area. Awbrey Affidavit at ¶ 3.

Measures are being taken to provide pre-emergency public information to these transients. Georgia Power Company is providing Creek Plantation management with a supply of the Vogtle emergency public information brochure, for distribution to all employees and visitors to the plantation. Any motorists on the short segment of Route 125 within the Allendale County portion of the EPZ either are visitors to the Creek Plantation or are simply passing through this part of the EPZ. Any motorists who do not stop at the Creek Plantation will spend less than two minutes within the Allendale County portion of the EPZ. As discussed above, Georgia Power Company will provide Seaboard Coast Line railroad with a supply of the emergency public information brochures, for distribution to all railroad employees who work within the EPZ. Finally, the local telephone directory will include emergency public information such as means of



notification, actions to be taken if a warning is received, and appropriate EBS stations for the area. Thus, adequate measures are being taken to provide emergency public information to transients in that portion of Allendale County which lies within the Vogtle EPZ. Awbrey Affidavit at ¶¶ 5-8; DiLuzio Affidavit at ¶¶ 10, 13.

D. Barnwell County

The portion of Barnwell County that lies within the EPZ consists of part of the Savannah River Plant and approximately one and one half additional square miles. The Creek Plantation accounts for most of the portion of the EPZ for which Barnwell County is responsible. Also included within the Barnwell County portion of the EPZ are St. Mary's Baptist Church, Steel Creek Landing (a boat launch), and a section of track of Seaboard Coast Line. A short segment (less than one-half mile) of South Carolina Route 125 partially bounds the EPZ on the north. There are no phone booths, hotels, motels, gas stations or other such commercial establishments in the Barnwell County portion of the EPZ. The transient population in this part of the EPZ is therefore limited to Creek Plantation employees and visitors, motorists on Route 125, sportsmen using Steel Creek Landing, the church congregation, and any Seaboard Coast Line crew operating in the area. Wald Affidavit at ¶ 3.

Measures are being taken to provide pre-emergency public information to these transients. As noted elsewhere, Georgia Power Company is providing Creek Plantation management with a supply of the Vogtle emergency public information brochure, for distribution to all employees and visitors to the plantation. Georgia Power Company will also provide outdoor warning signs for posting near Steel Creek Landing, to provide emergency public information to sportsmen in the area. In addition, Georgia Power Company will provide the pastor of St. Mary's Baptist Church with a supply of the emergency public information brochures, for distribution to the congregation of the church. The church will also be provided with an indoor warning notice, for posting on church premises. Any motorists on the small segment of Route 125 within the Barnwell County portion of the EPZ either are visitors to the Creek Plantation, Steel Creek Landing, or the church, or are simply passing through this part of the EPZ. Any motorists who do not stop at the plantation, the landing, or the church spend less than two minutes within the Barnwell County portion of the EPZ. Finally, as discussed above, Georgia Power Company will provide Seaboard Coast Line railroad with a supply of the emergency public information brochures, for distribution to all railroad employees who work within the EPZ. Thus, adequate measures are being taken to

provide emergency public information to transients in that portion of Barnwell County which lies within the Vogtle EPZ. Wald Affidavit at ¶¶ 5-9; DiLuzio Affidavit at ¶¶ 10, 12, 13, 14, 16.

#### E. Savannah River Plant

By definition, all persons in Savannah River Plant ("SRP")-controlled areas of the Plant Vogtle EPZ are considered to be transients. These transients fall into seven categories: (1) Personnel working in fixed SRP facilities; (2) Department of Energy ("DOE") or contractor personnel working outdoors within the Plant Vogtle EPZ; (3) Forest Service personnel and contractors working within the Plant Vogtle EPZ; (4) Hunters onsite during deer-hunting season; (5) Hunters in the Crack-erneck Section of the Sumter National Forest (National Forest land secured by the SRP); (6) Motorists transiting the SRP site on Route 125; and (7) Railroad personnel passing through the SRP site. Twine Affidavit at ¶ 3.

All personnel working in fixed SRP facilities receive employee training, which includes instruction in emergency signals/announcements, rally points, and evacuation routes. The initial training is reinforced by protective action exercises conducted several times a year. DOE and DOE-contractor

personnel working out-of-doors and away from fixed facilities in the EPZ receive, at a minimum, an orientation program outlining warning procedures and required responses to notification of an emergency. In addition, signs, flyers, and printed instructions (e.g., emergency procedures summarized on the back page of all SRP telephone books) are used to continually remind all employees of emergency procedures. U.S. Forest Service personnel and timber contractors working within the SRP portion of the Plant Vogtle EPZ receive an orientation including information on means of emergency notification, emergency conditions, and protective actions prior to their entry to the work site. Twine Affidavit at ¶¶ 4-5.

Hunters using lands on the SRP portion of the EPZ are informed of emergency notification and evacuation procedures each day prior to the hunt by the SRP Hunt Coordinator. Access for hunters to the Crackerneck Section of the Sumter National Forest is also controlled by SRP, and is limited to those with a special permit. Access is restricted to specific hours, and all hunters must sign in and out on a log sheet maintained by Security Contractor personnel at the only entrance to the property. Each person entering the area receives an orientation card describing notification procedures and protective actions in case of a radiological emergency. Twine Affidavit at ¶ 6.

Motorists traveling on Route 125, which traverses the EPZ, must pass through security barricades operated continuously by SRP. All vehicles receive passes and are time-checked to verify that they have completed their passage within a specified period. Upon notification of an emergency at Plant Vogtle, SRP would be closed to civilian traffic and any motorists then on Route 125 within the SRP boundaries would be intercepted by mobile patrols. The stringent controls of SRP staff over the movement of motorists on Route 125, and their ability to provide immediate personal notification and individual instructions to those motorists in the event of an emergency, obviate the need for specific pre-emergency public information measures directed at the motorists. Twine Affidavit at ¶ 7.

Finally, as noted above, Georgia Power Company is providing a supply of the Vogtle emergency public information brochure to the Seaboard Coast Line railroad, for distribution to all railroad employees who work within the EPZ. Thus, adequate measures are being taken to assure that all transients on the SRP site will take appropriate actions in the event of an emergency at Plant Vogtle. Twine Affidavit at ¶¶ 8-9; DiLuzio Affidavit at ¶13.

In summary, a thorough survey of the Vogtle EPZ has been conducted to identify all transient populations in the area, and a comprehensive program has been designed to assure that transients are provided with information needed for response to a Vogtle emergency. Evaluation Criterion G.2 of NUREG-0654/FEMA-REP-1 (Rev. 1, Nov. 1980) provides, in pertinent part:

Signs or other measures (e.g., decals posted notices or other means, placed in hotels, motels, gasoline stations and phone booths) shall also be used to disseminate to any transient population within the plume exposure pathway EPZ appropriate information that would be helpful if an emergency or accident occurs. Such notices should refer the transient to the telephone directory or other source of local emergency information and guide the visitor to appropriate radio and television frequencies.

As discussed above, the Vogtle emergency public information program for transients includes all elements specified by NUREG-0654. Joint Intervenorors themselves have endorsed these same means of providing emergency public information to transients within the EPZ. See, e.g., Intervenorors' 10/28/85 Responses, at Response EP-2(h)-5; Deposition of Seymour Shaye (January 6, 1986), at Tr. 50, 53 (suggesting signs posted for



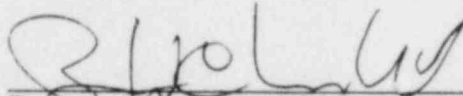
hunters, and notices posted in phone booths, motels, and service stations). Moreover, although Applicants probed the bases for Contention EP-2/EP-2(h) through discovery, Joint Intervenor failed to identify any specific transient populations which allegedly might not "understand the implications of a warning signal." Intervenor's 10/28/85 Responses, at Response EP-2(h)-2.

Joint Intervenor cannot avoid summary disposition of EP-2/EP2-(h) on the basis of mere speculation about the effectiveness of the comprehensive Vogtle emergency public information program for transients within the EPZ. Nor can Intervenor 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 Intervenor's personal skepticisms will not suffice 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 provision of emergency public information for transients within the Vogtle EPZ, Applicants respectfully request that the Board grant their motion for summary disposition of Contention EP-2/EP-2(h).

Respectfully submitted,



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