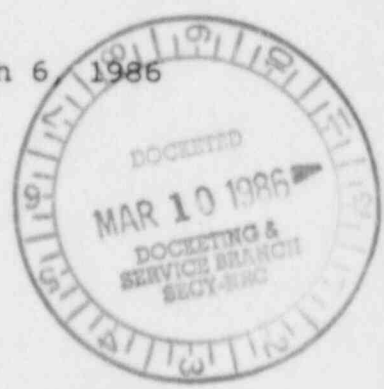


March 6 1986

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 *OL*
50-425

APPLICANTS' MOTION FOR SUMMARY DISPOSITION
OF JOINT INTERVENORS' CONTENTION EP-4
(IDENTIFICATION OF EXISTING HOSPITALS FOR
TREATMENT OF CONTAMINATED INJURED INDIVIDUALS)

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-4. 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-4 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-4, Applicants rely upon:

- (1) "Applicants' Statement of Material Facts as to Which No Genuine Issue Exists to Be Heard Regarding Contention EP-4";
- (2) "Affidavit of Jean M. DiLuzio on Contention EP-4," dated March 6, 1986 ("DiLuzio Affidavit");

- (3) "Affidavit of Richard L. Bryant on Contention EP-4," dated March 6, 1986 ("Bryant Affidavit");
- (4) "Affidavit of Billy J. Clack on Contention EP-4," dated March 6, 1986 ("Clack Affidavit");
- (5) "Affidavit of Bobby R. Mauney on Contention EP-4," dated March 6, 1986 ("Mauney Affidavit");
- (6) "Affidavit of Harold W. Awbrey on Contention EP-4," dated March 6, 1986 ("Awbrey Affidavit");
- (7) "Affidavit of Herman E. Wald on Contention EP-4," dated March 6, 1986 ("Wald Affidavit");
- (8) "Affidavit of Anthony Wynn on Contention EP-4," dated March 6, 1986 ("Wynn Affidavit");
- (9) "Affidavit of Kevin P. Twine on Contention EP-4," dated March 6, 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-4 asserted that there were insufficient facilities (allegedly four Burke County ambulances, and the Burke County Hospital) "to service a large number of injured in the event of a fairly serious radiological accident or of an accident external to the plant which results in injury to the plant, such as an

earthquake or a nuclear attack, where non-plant related injuries will also be rampant." 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 rejected Joint Intervenors' postulated scenarios (i.e., earthquake and nuclear attack), on the grounds that, inter alia, Commission regulations and case law do not require the consideration of such events in nuclear emergency planning. See August 12 Order, at 26-27. The Board further noted that -- contrary to Joint Intervenors' representations -- the emergency plans provided for four sources of ambulance services, and for the availability of three hospitals (not one of each, as the proposed contention suggested). See August 12 Order, at 26.

However, the Board found that the proposed contention was admissible in part, to the limited extent consistent with the Commission's ruling in Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), CLI-83-10, 17 N.R.C. 528 (1983), the partial reversal of the San Onofre decision in GUARD v. NRC, 753 F.2d 1144 (D.C. Cir. 1985), and the Commission's Statement of Policy on Emergency Planning Standard 10 CFR 50.47(b)(12), 50 Fed. Reg. 20892 (May 21, 1985). August 12 Order, at 22-23.

To the extent the proposed contention goes beyond the matter of whether the plans identify the medical facilities capable of treating the injured and contaminated it is nonlitigable and rejected.

August 12 Order, at 24.

Specifically, the Board observed that "the plan fails to identify treatment facilities for those contaminated injured individuals who would come from within the plume EPZ located in South Carolina." August 12 Order, at 24. The Board further held:

The plan's naming of the hospitals that are available in Georgia to treat injured and contaminated individuals is sufficiently confusing so that the matter is litigable. * * * The differing information as to the hospitals in the plans makes for a confusing situation as to identifying the hospitals that are to be available to treat injured and contaminated individuals.

August 12 Order, at 25-26. Accordingly, the Board admitted the following as Contention EP-4:

The offsite emergency response plans for Plant Vogtle do not meet the requirements of 10 CFR 50.47(b)(12) as to arrangements made for medical services for contaminated injured individuals whose condition results from a radiological emergency at VEGP, because the plans do not adequately identify medical service facilities capable of treating contaminated injured individuals.

See August 12 Order, at 27.

Since the admission of Joint Intervenor's Contention EP-4, 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 17-18, 41-42;

"NRC Staff's Emergency Planning Interrogatories To Joint Intervenor Campaign For A Prosperous Georgia (CPG) and Georgians Against Nuclear Energy (GANE)" (October 7, 1985), at 9;

"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 6;

"Applicants' Response To Intervenors' First Set of Interrogatories and Requests For Production of Documents on Emergency Planning Contentions" (November 13, 1985), at 35-37;

"Applicants' Second Set of Interrogatories and Requests For Production of Documents on Emergency Planning Contentions" (November 15, 1985), at 9-10;

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

Applying the Commission's summary disposition standards to the facts of this case, it is clear that the instant motion for summary disposition of Contention EP-4 should be granted. As discussed below, all emergency plans for the Vogtle plume exposure pathway Emergency Planning Zone ("EPZ") adequately identify medical facilities capable of treating contaminated injured persons.

Applicants' onsite emergency plan for Plant Vogtle is properly addressed to the identification of medical facilities for the treatment of contaminated injured individuals from the Plant Vogtle site. The "Vogtle Electric Generating Plant Unit 1 and Unit 2 Emergency Plan" ("Vogtle Plan") identifies Humana Hospital (in Augusta, Georgia) as the primary hospital to be used by Applicants for treatment of contaminated injured individuals from the Plant Vogtle site, with Burke County Hospital (in Waynesboro, Georgia) as a back-up facility. DiLuzio Affidavit at ¶ 3.

In contrast, the emergency plans of the State of Georgia and Burke County must identify medical facilities for the treatment of contaminated injured members of the general public in Georgia. "Annex D, Plant Vogtle, to The Georgia Radiological Emergency Plan" ("Georgia Plan") identifies Burke County Hospital as the primary medical facility for any members of the general public in Georgia who might be contaminated and injured, with Humana Hospital as a back-up facility.^{1/} In addition, the Georgia Plan provides that any victim of a radiological accident at Vogtle who requires care that cannot be provided at either Burke County Hospital or Humana Hospital can

^{1/} Thus, there is no inconsistency between the onsite and offsite plans vis-a-vis the designation of primary facilities; the plans simply address different populations, with planning coordinated to designate one facility as primary for onsite victims, and another facility as primary for offsite victims.

be treated at Oak Ridge Hospital of the Methodist Church (in Oak Ridge, Tennessee). Clack Affidavit at ¶¶ 3-5. To eliminate any potential confusion, the Georgia Plan is being revised to delete reference to Burke County Hospital and Humana Hospital as facilities for the care of individuals who are injured but not contaminated. Clack Affidavit at ¶¶ 3-4.

The "Burke County Emergency Management Agency Radiological Emergency Plan for Nuclear Incidents/Accidents Involving Vogtle Electric Generating Plant" ("Burke County Plan") is being amended to be completely consistent with the Georgia Plan. Thus, as revised, the Burke County Plan -- like the Georgia Plan -- will identify Burke County Hospital as the primary medical facility for the treatment of any members of the general public in Georgia who might be contaminated and injured, with Humana Hospital listed as a back-up facility. In addition, like the Georgia Plan, the revised Burke County Plan will provide that any victim of a Vogtle emergency who requires care that cannot be provided at either Burke County Hospital or Humana Hospital can be treated at Oak Ridge Hospital of the Methodist Church. Bryant Affidavit at ¶¶ 3-5. These clarifications of the Georgia Plan and the Burke County Plan, discussed above, eliminate the potential for confusion noted in the Board's August 12 Order. See August 12 Order, at 25-26.

The Board's August 12 Order also expressed concern about the identification of medical facilities for the treatment of

any contaminated injured individuals in the South Carolina portion of the Vogtle EPZ. See August 12 Order, at 24. The "Vogtle Electric Generating Plant Response Guide, SR 402.1" ("SRP Response Guide") identifies the Savannah River Plant ("SRP") Medical Building and the Dwight D. Eisenhower Army Medical Center (at Fort Gordon, South Carolina) as the medical facilities in the vicinity of Plant Vogtle for the treatment of any SRP transients or employees who might be contaminated and injured as a result of an accident at Plant Vogtle.^{2/} Twine Affidavit at ¶ 3. Further, the "Vogtle Electric Generating Plant Site Specific Radiological Emergency Response Plan, Part 7, SCORERP" ("South Carolina Plan") and the Vogtle-specific emergency plans for Aiken, Allendale, and Barnwell Counties^{3/} all consistently identify Aiken Community Hospital (in Aiken, South Carolina) and Humana Hospital (in Augusta, Georgia) as the medical facilities for the treatment of any other members of the general public in South Carolina who might be

^{2/} The SRP Response Guide also provides that additional radiological medical support can be obtained through the Radiation Emergency Action Center and Training Site ("REACTS") in Oak Ridge, Tennessee. Twine Affidavit at ¶ 4.

^{3/} "Annex Q, Part 2, Fixed Nuclear Facility (FNF) Radiological Emergency Response Plan (RERP) To The Aiken County Emergency Operations Plan (EOP)"; "Annex Q, Part 2, Fixed Nuclear Facility (FNF) Radiological Emergency Response Plan (RERP) To The Allendale County Emergency Operations Plan (EOP)"; and "Annex Q, Part 2, Fixed Nuclear Facility (FNF) Radiological Emergency Response Plan (RERP) To The Barnwell County Emergency Operations Plan (EOP)."

contaminated and injured as a result of an accident at Plant Vogtle. Wynn Affidavit at ¶ 3; Mauney Affidavit at ¶ 3; Awbrey Affidavit at ¶ 3; Wald Affidavit at ¶ 3. Thus, medical facilities have been identified for the treatment of any contaminated injured individuals in the South Carolina portion of the Vogtle EPZ.

In summary, all Vogtle-specific emergency response plans -- both onsite and offsite -- identify medical facilities for the treatment of contaminated injured individuals. DiLuzio Affidavit at ¶ 5; Clack Affidavit at ¶ 6; Bryant Affidavit at ¶ 6; Wynn Affidavit at ¶ 4; Mauney Affidavit at ¶ 4; Awbrey Affidavit at ¶ 4; Wald Affidavit at ¶ 4; Twine Affidavit at ¶ 5. Joint Intervenors have failed to identify any medical facilities in the Vogtle vicinity which have the capability to treat contaminated injured individuals but which are not included in the plans. See Intervenors' 10/28/85 Responses at Response EP-4-5.

Joint Intervenors have asserted that some of the identified facilities "lack the capability to treat contaminated individuals," which apparently means that they believe those facilities could not "treat the number of contaminated victims of a severe accident at Plant Vogtle." See Intervenors' 10/28/85 Responses at Responses EP-4-2, EP-4-3, EP-4-4; Intervenors' 1/5/86 Responses at Responses EP-4-8, EP-4-9 (emphasis supplied). But, as the Board here has noted, the Commission

has expressly precluded litigation of the capacity of the medical facilities for the treatment of the contaminated injured. See August 12 Order at 21-22, 26-27.

Moreover, to the extent that Joint Intervenor contend that the identified medical facilities lack the technical capability to treat contaminated injured individuals, any such allegations are flatly disproven by the affidavits accompanying this motion. Due to the extensive nuclear operations at the SRP site, the SRP Medical Building has a special Decontamination and Treatment Unit dedicated to the treatment of contaminated injured persons; and REACTS is a U.S. Department of Energy-operated facility which is a national center for the observation, assessment and treatment of radiation patients, including the contaminated injured. Twine Affidavit at ¶ 4. Similarly, Burke County Hospital, Humana Hospital, Oak Ridge Hospital, Aiken Community Hospital and Eisenhower Army Medical Center are all accredited by the Joint Commission for Accreditation of Hospitals, which requires approved procedures for treatment of contaminated injured individuals. DiLuzio Affidavit at ¶ 4; Clack Affidavit at ¶ 5.

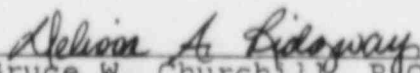
Joint Intervenor cannot avoid summary disposition of EP-4 on the basis of mere speculation that the identified medical facilities lack the capability to treat contaminated injured individuals. Nor can Intervenor avoid summary disposition on the basis of guesses or suspicions, or on the hope that at the

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 Intervenors' 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 identification of hospitals for the treatment of contaminated injured individuals, Applicants respectfully request that the Board grant their motion for summary disposition of Contention EP-4.

Respectfully submitted,


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