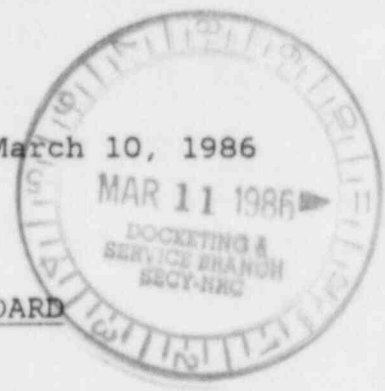


March 10, 1986



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
GEORGIA POWER COMPANY, et al.) Docket Nos. 50-424 α
) 50-425
(Vogtle Electric Generating Plant,)
Units 1 and 2))

APPLICANTS' MOTION FOR SUMMARY DISPOSITION
OF JOINT INTERVENORS' CONTENTION EP-5
(RECEPTION CENTER CAPACITY)

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-5. 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-5 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-5, Applicants rely upon:

- (1) "Applicants' Statement of Material Facts as to Which No Genuine Issue Exists to Be Heard Regarding Contention EP-5";
- (2) "Affidavit of Richard L. Bryant on Contention EP-5," dated March 10, 1986 ("Bryant Affidavit");

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(3) "Affidavit of Bobby R. Mauney on Contention EP-5," dated March 10, 1986 ("Mauney Affidavit");

(4) "Affidavit of Harold W. Awbrey on Contention EP-5," dated March 10, 1986 ("Awbrey Affidavit"); and

(5) 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-5 asserted that "[t]he Plan does not specify whether the designated Reception Center, the Burke County Comprehensive High School, has developed an adequate plan for early evacuation." 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 that the proposed contention was "poorly drafted"; still, the Board discerned its thrust to be "the ready availability of the reception center for evacuees in case of a radiological emergency at VEGP." August 12 Order, at 28. Specifically, the Board noted:

The Burke County Plan provides no indication that the County has determined that should a radiological emergency arise at VEGP when school is in session, the reception centers are of sufficient capacity that pupils need not be dismissed and both

they and the evacuees will be accommodated at the same time.

August 12 Order, at 28. The Board further observed:

The plan does not indicate the size of the facilities, and it is indicated that there is the potential that all of the residents within the Burke County portion of the EPZ may use the facilities. Irrespective of this, the plan itself should be specific as to the action the County will take that will assure the ready availability of the reception centers for evacuees in case of a radiological emergency at VEGP. * * * The plan should relate as to how it will provide for the ready availability of the emergency centers for evacuees in case of an emergency. If it can be accomplished with the students remaining in attendance, the plan itself should so state. If study has disclosed that it cannot be so accomplished, the plan should provide another mechanism for it to be achieved, including the possibility of early dismissal of the students, and for its implementation.

August 12 Order, at 29. Accordingly, the Board admitted the following as Contention EP-5:

The offsite emergency response plans for VEGP do not meet the requirement of 10 CFR 50.47(b)(8) because the plans do not reasonably assure that adequate emergency facilities, namely reception centers, will be readily available for use in the event of a radiological emergency at VEGP.

August 12 Order, at 29.

Since the admission of Joint Intervenor's Contention EP-5, 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 19-21, 42-43;

"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 10;

"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 6-7;

"Applicants' Response To Intervenors' First Set of Interrogatories and Requests For Production of Documents on Emergency Planning Contentions" (November 13, 1985), at 38-39;

"Applicants' Second Set of Interrogatories and Requests For Production of Documents on Emergency Planning Contentions" (November 15, 1985), at 10-11;

"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) ("Intervenors' 1/24/86 Responses"), at 3-4.

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 to Interrogatory G-5(a). In his deposition, Mr. Shaye

stated that he would not be testifying on Contention EP-5.
Deposition of Seymour Shaye at Tr. 54.

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 gravamen of EP-5, as admitted by the Board, is the availability of the schools identified as reception centers^{1/}

^{1/} Although the term "shelter" is used in all South Carolina plans, the generic term "reception center" is used in this motion to describe both the Georgia and South Carolina facilities used to register (and, if necessary, monitor and decontaminate) evacuees in a Vogtle emergency.

to accommodate evacuees from the plume exposure pathway Emergency Planning Zone ("EPZ") in a Vogtle emergency. In particular, noting the lack of emergency plan provisions for the release of students from the schools to be used as reception centers, the Board questioned whether "the reception centers are of sufficient capacity that pupils need not be dismissed and both they and the evacuees will be accommodated at the same time." August 12 Order, at 28. As discussed more fully below, the four counties in the Vogtle EPZ have made a detailed assessment of both the need for and the availability of reception center capacity in a Vogtle accident, and have identified sufficient reception center capacity to accommodate evacuees without the dismissal of school students. 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 EP-5 should be granted.

It is important to note that, in an actual evacuation, not all evacuees would arrive at reception centers at the same time. Rather, arrivals at reception centers would be staggered, so that many who arrive early in the evacuation would be processed and then permitted to leave the reception centers (for motels or homes of friends or family outside the EPZ) before the later evacuees arrive. Nevertheless, for purposes of identifying reception center capacity, the four counties have conservatively assumed that all EPZ evacuees would arrive

simultaneously, and have planned accordingly.^{2/} Bryant Affidavit at ¶ 6; Mauney Affidavit at ¶ 3; Awbrey Affidavit at ¶ 3.

1. Burke County

Burke County has designated four Waynesboro schools as reception centers: the Burke County Comprehensive High School (which would be available for use as a reception center by December 1986 and will be open to students no later than September 1987); the "old" Waynesboro High School; Waynesboro Elementary School; and the Blakeney Elementary and Junior High Schools. Bryant Affidavit at ¶ 3. Because the available capacity will vary depending on when Burke County Comprehensive High School is opened for use by students, and because the need for capacity will decrease over time (dropping dramatically when Vogtle Unit 2 is completed), Burke County examined three scenarios:

^{2/} Similarly, all Burke County analyses assume a need for Burke County to process the entire Vogtle work force at Burke County reception centers. This is a very conservative assumption, since plant personnel will generally be processed onsite, and then released to go to their homes. Therefore, in most emergencies -- where an evacuation occurs prior to the release of radiation offsite -- only those plant personnel who reside within the EPZ would actually report to reception centers. Bryant Affidavit at ¶ 7 n.1.

Scenario A: The Burke County Comprehensive High School is available for evacuee reception, but is not open for students (maximum time period of this scenario is December, 1986 to September, 1987).

Scenario B: The Burke County Comprehensive High School is in use as a school, with students present.

Scenario C: The same as Scenario B, except that construction has been completed at Vogtle, Unit 2.

In each scenario, it was assumed that school was in session.

Bryant Affidavit at ¶ 5.

Scenario A

In Scenario A, the Burke County Comprehensive High School (not yet open to students) will accommodate 5,980 evacuees for processing. All students at the remaining schools can be accommodated in the classrooms of their schools, leaving the common areas immediately available to receive 2,850 evacuees. Thus, the reception centers provide a combined capacity for 8,830 evacuees in Scenario A. Bryant Affidavit at ¶ 8. This compares with a total maximum of approximately 7,195 evacuees from the Burke County portion of the EPZ.^{3/} Accordingly, there

^{3/} This figure (7,195) reflects a maximum resident population of 1,949 persons (after deducting the approximately 300 Vogtle workers who live in the EPZ and the approximately 230 high school students who attend school outside the EPZ), as well as a maximum transient population of 5,246 persons (including 4,940 non-essential Vogtle workers, an estimated 50 non-EPZ residents attending Girard School, and an estimated 256 other transients). Bryant Affidavit at ¶ 9.

is sufficient capacity at Burke County reception centers under Scenario A -- even with students present, and even assuming that all evacuees arrive at reception centers simultaneously. Bryant Affidavit at ¶¶ 9-10.

Scenario B

In Scenario B, all Burke County Comprehensive High School students can be accommodated in the classrooms of the school, leaving the common areas immediately available to receive 4,675 evacuees. The remaining schools can accommodate 2,850 evacuees in common areas, with students present. Thus, the reception centers provide a combined capacity for 7,525 evacuees in Scenario B. Bryant Affidavit at ¶ 11. This compares with a total maximum of approximately 6,995 evacuees from the Burke County portion of the EPZ.^{4/} Therefore, there is sufficient capacity at Burke County reception centers under Scenario B -- even with students present, and even assuming that all evacuees arrive at reception centers simultaneously. Bryant Affidavit at ¶¶ 12-13.

^{4/} This figure (6,995) reflects a maximum resident population of 1,799 persons (calculated as for Scenario A except for the exclusion of the 150 EPZ residents who attend Girard School under Scenario A but who would attend school outside the EPZ under Scenario B, since Girard School will close upon the opening of Burke County Comprehensive High School), as well as a maximum transient population of 5,196 persons (calculated as for Scenario A, except that the 50 students living outside the EPZ who presently attend Girard School will -- under Scenario B -- be attending school outside the EPZ). Bryant Affidavit at ¶¶ 7, 12.

Scenario C

Scenario C would be the same as Scenario B, except that only operating staff would be present at Plant Vogtle. This staff would number approximately 700, which is substantially less than the estimated 4,940 plant workers who might require reception if an emergency were to occur before construction of Unit 2 is completed. Therefore, in Scenario C, the maximum number of evacuees to be processed at reception centers would drop dramatically, while the available capacity would remain the same as for Scenario B. Bryant Affidavit at ¶ 14. Thus, there is sufficient capacity at Burke County reception centers under Scenario C -- even with students present, and even assuming that all evacuees arrive at reception centers simultaneously.

The above analyses demonstrate conclusively that the schools identified as reception centers by Burke County have sufficient capacity to accommodate the maximum number of EPZ evacuees -- even with students present at the schools, and even assuming that all evacuees arrive at reception centers simultaneously. Nevertheless, if still more capacity was desired, school officials would dismiss students who were not residents of the evacuated area (a process estimated to require a total of approximately 1 1/2 hours), providing capacity for approximately 4,310 additional persons. Bryant Affidavit at ¶ 15.

The "Burke County Emergency Management Agency Radiological Emergency Plan For Nuclear Incidents/Accidents Involving Vogtle Electric Generating Plant" is being amended to list the Blakeney schools as reception centers. In addition, the revised plan will specify the capacity of each of the schools identified as reception centers (with and without students present), and will state that the schools have sufficient capacity (even with students present) to accommodate the maximum number of evacuees from the Burke County portion of the Vogtle EPZ. Thus, Burke County has given adequate consideration to the ready availability of schools for use as reception centers in the event of a radiological emergency at Vogtle. Bryant Affidavit at ¶ 16.

2. Aiken County

In the event of an emergency at Plant Vogtle during a school day, a maximum of approximately 200 persons would be evacuated from that part of the Vogtle EPZ which lies within Aiken County, South Carolina. This figure includes sportsmen and employees from the Cowden Plantation, and any Seaboard Coast Line railroad crew operating in the area. There are no residents within the Aiken County portion of the Vogtle EPZ. Mauney Affidavit at ¶ 3.

"Annex Q, Part 2, Fixed Nuclear Facility (FNF) Radiological Emergency Response Plan (RERP) To The Aiken County

Emergency Operations Plan (EOP)" ("Aiken County Plan") designates South Aiken High School and Kennedy Middle School (both in Aiken, South Carolina) as the reception centers for evacuees from the Aiken County portion of the EPZ. Mauney Affidavit at ¶ 4. The entire student body of South Aiken High School can be accommodated in the classrooms of the school, leaving the gymnasium area immediately available to accommodate approximately 100 evacuees. Similarly, the entire student body of Kennedy Middle School can be accommodated in the classrooms of that school, leaving area immediately available in the gymnasium to accommodate approximately 100 evacuees. Mauney Affidavit at ¶ 6.

This analysis demonstrates conclusively that the schools identified as reception centers by Aiken County have sufficient capacity to accommodate the maximum number of EPZ evacuees -- even with students present at the schools, and even assuming that all evacuees arrive at shelters simultaneously. Nevertheless, if still more capacity was desired, school officials would dismiss students (a process estimated to require a total of approximately 30 minutes), providing capacity for approximately 3,800 additional persons. These capacity figures for the schools identified as reception centers (with and without students present) are included in the Aiken County Plan. Thus, Aiken County has given adequate consideration to the ready availability of schools for use as reception centers in the

event of a radiological emergency at Vogtle. Mauney Affidavit at ¶¶ 7-8.

3. Allendale and Barnwell Counties

In the event of an emergency at Plant Vogtle during a school day, a maximum of approximately 235 persons would be evacuated from that part of the Vogtle EPZ which lies within Allendale and Barnwell Counties, South Carolina. This figure includes 35 residents from the Creek Plantation in Barnwell County, as well as visitors to the Creek Plantation, motorists on South Carolina Route 125, sportsmen using Steel Creek Landing, and any Seaboard Coast Line railroad crew operating in the Allendale and Barnwell County portions of the EPZ. Awbrey Affidavit at ¶ 3.

Because Barnwell County evacuees would evacuate into Allendale County, Allendale and Barnwell County evacuees would use the same reception centers. "Annex Q, Part 2, Fixed Nuclear Facility (FNF) Radiological Emergency Response Plan (RERP) To The Allendale County Emergency Operations Plan (EOP)" ("Allendale County Plan") and "Annex Q, Part 2, Fixed Nuclear Facility (FNF) Radiological Emergency Response Plan (RERP) To The Barnwell County Emergency Operations Plan (EOP)" ("Barnwell County Plan") designate Allendale Elementary School (in Allendale, South Carolina) and Fairfax Primary School (in Fairfax, South Carolina) as the reception centers for evacuees

from the Allendale and Barnwell County portions of the EPZ. Awbrey Affidavit at ¶ 4. The entire student body of Allendale Elementary School can be accommodated in the classrooms of the school, leaving the gymnasium area immediately available to accommodate approximately 250 evacuees. Similarly, the entire student body of Fairfax Primary School can be accommodated in the classrooms of that school, leaving area immediately available in the gymnasium to accommodate approximately 250 evacuees. Awbrey Affidavit at ¶ 6.

This analysis demonstrates conclusively that the schools identified as reception centers by Allendale and Barnwell Counties have sufficient capacity to accommodate the maximum number of EPZ evacuees -- even with students present at the schools, and even assuming that all evacuees arrive at shelters simultaneously. Nevertheless, if still more capacity was desired, school officials would dismiss students (a process estimated to require a total of approximately 30 minutes), providing capacity for approximately 700 additional persons. These capacity figures for the schools identified as reception centers (with and without students present) are included in the Allendale and Barnwell County Plans. Thus, Allendale and Barnwell Counties have given adequate consideration to the ready availability of schools for use as reception centers in the event of a radiological emergency at Vogtle. Awbrey Affidavit at ¶¶ 7-8.

In summary, the four counties in the Vogtle EPZ have evaluated both the need for and the availability of reception center capacity in a Vogtle accident. Their conservative analyses conclusively demonstrate that the schools identified as reception centers have sufficient capacity to accommodate the maximum number of EPZ evacuees, even with students present at the schools and even assuming that all evacuees arrive at reception centers simultaneously. Nevertheless, they have also assessed the time needed to dismiss students and the additional capacity which would then be available. Accordingly, all counties in the Vogtle EPZ have made adequate provisions for the ready availability of schools for use as reception centers in the event of a radiological emergency at Vogtle.

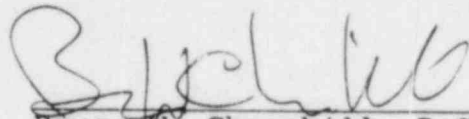
Joint Intervenor's discovery responses make it abundantly clear that they have no factual basis for their challenge to the ability of the schools to simultaneously accommodate students and evacuees from the Vogtle EPZ. See, e.g., "Intervenor's 10/28/85 Responses" at Response to Interrogatories EP-5-4 through EP-5-10; "Intervenor's 1/5/86 Responses" at Response to Interrogatories EP-5-13 and EP-5-14; "Intervenor's 1/24/86 Responses" at Response to Interrogatory 8; (declining to specify either the number of evacuees to be accommodated or the capacity of the identified reception centers). Accord, Deposition of Seymour Shaye (January 6, 1986), at Tr. 54-56. Intervenor's cannot avoid summary disposition on the basis of guesses or

suspensions, 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).

IV. Conclusion

Because there is no genuine issue of material fact to be heard on the issue of the ready availability of schools for use as reception centers for evacuees from the Vogtle E1Z, Applicants respectfully request that the Board grant their motion for summary disposition of Contention EP-5.

Respectfully submitted,



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