



Tim Johnson. An additional affidavit prepared by Dennis Creech was submitted by CPG at the prehearing conference on May 30, 1984. The Board at that time directed that the time to respond to CPG's Waiver Request would run from May 30, 1984. The Staff herein responds to the Waiver Request.<sup>2/</sup>

## II. STANDARDS FOR A WAIVER

Section 2.758 of the Commission's regulations provides that the Commission's regulations shall not be subject to attack in Commission adjudicatory proceedings unless a party petitions for a waiver of that rule in a particular proceeding. The sole ground for a waiver shall be that "special circumstances with respect to the subject matter of the particular proceeding are such that application of the rule or regulation (or provision thereof) would not serve the purposes for which the rule or regulation was adopted." 10 C.F.R. § 2.758(b). A waiver petition must be accompanied by an affidavit setting forth the specific subject matter of the proceeding as to which application of the rule or regulation would not serve the purposes for which it was adopted and setting forth "with particularity the special circumstances alleged to

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<sup>2/</sup> Staff counsel erroneously calculated the time allotted to the Staff to respond to the Waiver Request. This response was due to be filed on June 14, 1984; the Staff apologizes for the error and respectfully requests that the Board accept this late filing.

justify the waiver or exception requested." Id. If the petitioner for waiver makes a prima facie showing that application of the regulation would not serve the purposes for which it was adopted, the presiding officer shall certify directly to the Commission the matter of whether the regulation should be waived for the particular proceeding.  
10 C.F.R. § 2.758(d).

### III. CPG'S REQUEST

As noted, CPG is requesting a waiver of 10 C.F.R. § 51.53(c) prohibiting the consideration of need for power in operating license proceedings. To support its request, CPG submitted affidavits from Tim Johnson and Dennis Creech. Mr. Creech's affidavit asserts that the yearly energy demand for domestic water heating is 22 million BTU and that conservation and solar energy systems could account for 15.4 million BTU of this demand. Mr. Johnson asserts in his affidavit that the growth in electricity consumption in Georgia Power Company's service area is substantially less than anticipated when the Vogtle construction permit was issued; that Georgia Power Company already has an excess of generating capacity; that the additional capacity from Vogtle is not needed; and that even if the capacity were needed, that solar energy and conservation could provide the necessary power at less cost and with less harm to the environment. Even if Mr. Johnson's and Mr. Creech's statements are accepted at face value,<sup>3/</sup> CPG has not made a

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<sup>3/</sup> It is unclear from their affidavits that either affiant possesses the technical expertise to support the statements presented in the affidavits.

prima facie case that Section 51.53(c) would not serve the purposes for which it was adopted, and the waiver request must therefore be denied.

The Commission published its proposed rule prohibiting consideration of need for power at the operating license stage on August 3, 1981. See 46 Fed. Reg. 39440. In explaining the basis for this rule, the Commission stated:

In accordance with the Commission's NEPA responsibilities, the need for the power to be generated by a proposed nuclear power plant and alternative energy sources for the generation of the power, including no additional generating capacity at all, are considered and resolved in the construction permit proceeding associated with the proposed facility.

. . .

The situation is significantly different at the operating license stage. This stage of the licensing process is reached only after a finding at the construction permit stage that there existed a need for the power and that, on balance, no superior alternative energy sources existed. At the time of the operating license decision, construction related environmental impacts have already occurred at the site and the construction costs have been incurred by the licensee. The facility is essentially completely constructed and ready to operate when the Commission's Atomic Safety and Licensing Board renders its decision on the operating license application.

Operation of a nuclear power plant entails some environmental cost which should be justified, under NEPA, by some benefit from plant operation. In all cases to date, and in all foreseeable future cases, there will be some benefit in terms of either meeting increased energy needs or replacing older less economical generating capacity. Experience shows that completed plants are in fact used to their maximum availability for either purpose. Such facilities are not abandoned in favor of some other means of generating electricity. For purposes of this proposed rule the Commission has assumed, conservatively, that the plant is not needed to satisfy increased energy needs, but rather is justified, if at all, as a substitute for other generating capacity.

46 Fed. Reg. at 39440-441 (emphasis added).

The Commission went on to point out that past experience suggested that alternative energy sources, including use of existing fossil-fired

units, were not environmentally superior to operation of a nuclear facility and that the operating costs of completed nuclear plants were less than the operating costs of other available methods of baseload fossil generation. 46 Fed. Reg. at 39441.

In adopting the proposed rule, the Commission reiterated these conclusions. See 47 Fed. Reg. 12940 (March 28, 1982). In particular, the Commission noted that even if conservation and some alternate energy forms are cheaper than the operation of nuclear plants,

substantial information exists, such as that cited in the Supplementary Information of the proposed rule, which shows that nuclear plants are lower cost to operate than fossil plants. If conservation lowers demand, then utility companies take the most expensive operating plants off-line first. Thus a completed nuclear plant would be used as a substitute for less economical generating capacity.

47 Fed. Reg. at 12941 (footnote omitted).

CPG's affidavits only attempt to show that Vogtle's power is not needed and that, even if it were needed, conservation and solar energy would be cheaper and have less environmental impact. Even if this information is accepted as true, it does not call into question the basis for Section 51.53(c) published by the Commission in 1981 and 1982. Even where the new capacity may not be needed, the Commission stated its belief that operation of the nuclear facility would be justified as a substitute for older generating capacity already in use. To this end, the Commission noted that fossil fired facilities are neither environmentally superior nor cheaper to operate than nuclear facilities. See 46 Fed. Reg. at 39441.

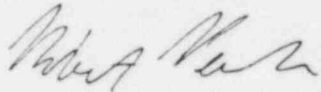
In sum, even if CPG is correct that the capacity from Vogtle is not needed to satisfy new demand, CPG has not called into question the

Commission's assumption that operation of Vogtle will be cheaper and more environmentally benign than continued use of existing generating capacity and hence will be used to replace that capacity if no new capacity is needed. For that reason, CPG's Request for Waiver must fail.

IV. CONCLUSION

For the reasons presented herein, the Staff submits that CPG's Request for Waiver must be denied.

Respectfully submitted,



Robert G. Perlis  
Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 18th day of June, 1984

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
GEORGIA POWER CO.	)	Docket Nos. 50-424
<u>et al.</u>	)	50-425
(Vogtle Electric Generating Plant,	)	(OL)
Units 1 and 2)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO CPG'S REQUEST FOR WAIVER" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 18th day of June, 1984:

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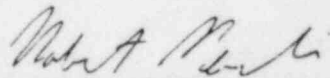
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