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June 28, 1984

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
) 50-425
(Vogtle Electric Generating Plant,)
Units 1 and 2)

APPLICANTS' RESPONSE TO GANE'S
AMENDMENT TO GANE CONTENTION NUMBER 2

I. Introduction

In untitled pleadings dated June 13, 1984, but postmarked June 15, 1984, GANE submitted purportedly new information as a substitute basis for its proposed contention GANE-2 on cumulative effects. As discussed at the Prehearing Conference, the purpose of the submission was to address such new information as might be in the L-Reactor Final Environmental Impact Statement (hereinafter FEIS); and as agreed during the Prehearing Conference, the information was to be submitted as a late-filed amendment to the contention, which must be justified in

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accordance with the factors set forth in 10 C.F.R. § 2.714(a)(1)(i)-(v). Tr. 125-126.

Applicants object to and oppose this amendment. Hardly any of the information contained in the amendment is new -- i.e. unavailable to GANE prior to the filing of its proposed contention. Furthermore, contrary to the instructions of the Licensing Board, no attempt has been made by GANE to relate the information to the incremental environmental impact attributable to Vogtle. See id. In addition, GANE no longer appears concerned with the L-Reactor, the only facility whose contribution to the cumulative impact has not been previously assessed by the NRC Staff in the Construction Permit Stage Final Environment Statement. For these reasons, as elaborated upon below, GANE's amendment should be rejected.

II. The Five Lateness Factors

A late-filed amendment to a supplement to petition for leave to intervene may only be accepted upon a showing that the five factors set forth in 10 C.F.R. § 2.714(a)(1)(i)-(v) so militate. 10 C.F.R. § 2.714(a)(3), (b). These factors are:

- i) Good cause, if any, for failure to file on time.
- ii) The availability of other means whereby the petitioner's interest will be protected.
- iii) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.

- iv) The extent to which the petitioner's interest will be represented by existing parties.
- v) The extent to which the petitioner's participation will broaden the issues or delay the proceeding.

Based on a balancing of these factors, GANE's amendment should be rejected.

1. GANE Does Not Have a Good Cause for its Failure to File on Time

GANE provides as its amended basis the statement of William F. Lawless. However, much if not all of the information discussed in this statement was either contained in the L-Reactor Draft Environmental Statement (DEIS), published in September 1983, or contained in other, not very recent documents.

On pages 1 to 3 of Mr. Lawless' statement, Mr. Lawless cites pages 5-35 to 5-36 of the FEIS, but is actually quoting from pages 5-49 to 5-50. With the exception of a few minor changes, nearly identical information was stated in the DEIS at pages 5-32 to 5-33.

On page 4 of his statement, Mr. Lawless refers to the FEIS at page 4-32 in support of his discussion of cesium-137 and cobalt-60. The identical information is contained on page 4-30 of the DEIS.^{1/} Mr. Lawless also quotes the comments of

^{1/} Note that neither the FEIS nor the DEIS states that these radionuclides will be remobilized from off-site locations as a result of the L-reactor restart.

Professor Hess. These comments, however, were contained in the Natural Resources Defense Council publication entitled "The L-Reactor Controversy: Comments on the Draft EIS" (1983), and Professor Hess was actually quoted from this source by GANE in GANE's Supplement to Petition for Leave to Intervene and Request for Hearing (April 11, 1984) at 6.

On page 5 of his statement, Mr. Lawless references a 1982 and 1977 report in connection with turtles and deer.^{2/} No connection is shown to the FEIS.

On the same page, Mr. Lawless refers to the tritium concentrations in air given in Table 5-23 of the FEIS. He refers to the 200 pCi/m³ value, which is the airborne concentration attributable to present SRP operation. (The cumulative value is estimated to be 240 pCi/m³.) The same information is given in Table 5-20 of the DEIS. With respect to tritium and krypton, Mr. Lawless then references, on pages 5 through 11, a number of publications dating from 1974 through 1983.

In Mr. Lawless' discussion of the M-Area Seepage Basin on pages 12-14 of his statement, all of the "footnotes" presumably refer to the FEIS, but only for footnote 41 is a page number provided. See note 2, supra. It is difficult, therefore, to determine whether Mr. Lawless is discussing any new

^{2/} Note that all "footnotes" in Mr. Lawless' statement refer to the FEIS, unless otherwise indicated on page 2 of Mr. Lawless' list of references. No page numbers are provided.

information. However, the sampling-well data that he discusses are contained in both Appendix E of the DEIS and Appendix F of the FEIS; the M-area clean-up plans were fully discussed in a draft "SRP Groundwater Protection Implementation Plan" (Sept. 1983); and page 3-29 of the FEIS, referenced by footnote 41, coincides with page 3-25 of the DEIS.

In sum, it is doubtful that any of the information discussed by Mr. Lawless was previously unavailable; and GANE's assertion that "[t]he information upon which GANE bases this contention is contained only in the Final Environmental Impact Statement. . ." is certainly incorrect. GANE does not have good cause for its late-filed amendment.

2. There Are Other Means Whereby GANE's
Interest Will Be Protected

As a reading of the Lawless statement indicates, GANE's concern is not with the Vogtle facility. Although GANE stated at the Prehearing Conference that it would relate its amendment to Vogtle, it clearly has not done so. See Tr. 126. Vogtle is hardly mentioned. Without some demonstration (or even allegation) that the incremental impact from Vogtle is made more significant by the operations at Savannah River, the environmental impact of the Savannah River Plant is irrelevant. Westside Property Owners v. Schlessinger, 597 F.2d 1214, 1217 (9th Cir. 1979). See also Tr. 116-117; 125-126.

GANE's true concern is with the Savannah River Plant. Accordingly, GANE should press its case before the Department of Energy and, if in fact GANE believes that the Savannah River Plant is violating legal standards, before the courts. Not only does GANE have available to it these other forums in which to protect its interest, but this licensing proceeding offers GANE nothing. The Licensing Board has no jurisdiction to order mitigation of the environmental impact of Savannah River Plant operations.

3. Acceptance of GANE's Late-Filed Amendment
Would Not Assist in Developing A Sound Record

As discussed above, GANE has made no effort in its amendment to connect its discussion of the Savannah River Plant to the incremental impact of Vogtle. For this reason, GANE's amendment is irrelevant.^{3/}

The Lawless statement also makes no effort to address the proposed operation L-Reactor, the only facility whose contribution to cumulative effects has not been previously assessed by

^{3/} Perhaps the best example of this failing is Mr. Lawless' discussion of the M-Area Seepage Basin. Mr. Lawless discusses data in Appendix F of the FEIS on groundwater contamination at the Savannah River Plant. However, he simply ignores the explicit statement at page F-20 that "groundwater in the Tuscaloosa formation does not cross from South Carolina into Georgia or from Georgia into South Carolina." See also DEIS at F-15. There will be no combined groundwater contamination, and the Savannah River Plant data is irrelevant to cumulative effects.

the NRC Staff. GANE has also failed to substantiate the assertion it made at the Prehearing Conference that new information indicates that SRP releases are greater than those considered at the Vogtle construction permit stage. Tr. 110. This assertion was incorrect. Estimated concentrations of radionuclides from routine operation of the Savannah River Plant, as determined by DOE in the FEIS, are quite close to and generally slightly smaller than those measured concentrations included in the Vogtle CP-FES.

<u>Radionuclide</u>	<u>L-Reactor FEIS</u>	<u>Vogtle CP-FES</u>
H-3 in air	$2 \times 10^2 \text{ pCi/m}^3$	$1.6 \times 10^{-10} \text{ } \mu\text{Ci/cm}^3 = 1.6 \times 10^2 \text{ pCi/m}^3$
H-3 in water	$3 \times 10^3 \text{ pCi/l}$	$5.6 \times 10^{-6} \text{ } \mu\text{Ci/cm}^3 = 5.6 \times 10^3 \text{ pCi/l}$
Sr-90 in water	$4.8 \times 10^{-2} \text{ pCi/l}$	$9 \times 10^{-10} \text{ } \mu\text{Ci/cm}^3 = 9 \times 10^{-1} \text{ pCi/l}$
Cs-137 in water	$2.4 \times 10^{-2} \text{ pCi/l}$	$1.6 \times 10^{-10} \text{ } \mu\text{Ci/cm}^3 = 1.6 \times 10^{-1} \text{ pCi/l}$

Compare FEIS, Table 5-23, with CP-FES, § 2.8.2. Because GANE has provided no new information that would cast doubt on the NRC Staff's assessment, and because it is apparently no longer concerned with the contribution from the L-Reactor, there is no basis for requiring a supplemental assessment. See Applicants' Response to GANE and CPG Supplements to Petitions for Leave to Intervene (May 7, 1984) at 21.

Aside from its lack of relevance, much of Mr. Lawless' discussion is simply incomprehensible.

For example, in his discussion of tritium (Mr. Lawless' principal topic) on page 5, Mr. Lawless notes that an earlier Dupont Report had calculated a smaller average tritium

concentration in air from SRP operation (110 pCi/m^3 compared to the 200 pCi/m^3 in the FEIS). This certainly does not discredit the FEIS. He then refers on page 6 to a "Table 1," presumably to provide his own estimates of tritium and krypton concentrations. No Table 1, however, can be found in his statement. He also refers on page 8 to "Figure 1," where he supposedly plots tritium concentration in burial groundwater at plant center and in Par Pond (a closed cycle cooling pond currently used for the P-reactor and previously also used for the R-reactor).^{4/} No Figure 1 exists in his statement. Mr. Lawless does state, however, that the SRP plant boundary airborne tritium concentration, according to his calculation, is 14.9 pCi/m^3 , and he compares this to the 100 pCi/m^3 reported by Dupont. He states that "[t]he difference between these two calculations is about five orders of magnitude." To the contrary, Mr. Lawless' calculated airborne concentration at the plant boundary is about 1/7th of the Dupont value and about

^{4/} As far as Applicants can fathom from the description, Mr. Lawless plots on log paper these two tritium concentrations (in burial groundwater at plant center and in Par Pond) against distance from plant center. Apparently, he then draws a straight line through the two points to derive an exponential equation for tritium concentration versus distance. If this is indeed what he has done, such a two point fit is, of course, mathematically meaningless; and his choice of data points is highly suspect. Mr. Lawless then apparently assumes that the tritium concentration in air at plant center is the same as it is in burial groundwater, and he uses his tritium in groundwater v. distance equation to determine the airborne concentration 19 kilometers away.

1/13th of the FEIS 200 pCi/m³ value (i.e., the FEIS is far more conservative). Finally, on page 10, Mr. Lawless concludes that there is reason to believe that airborne tritium releases are too low by two or more orders of magnitude. As discussed above, this conclusion is not supported by his previous discussion; and in the very next sentence, he acknowledges that actual field surveys conducted by EPA corroborated DOE's reported values.

Similarly, in Mr. Lawless' discussion of krypton, he refers on page 12 to "Figure 2" to contrast his calculated airborne concentrations with those in an unspecified Dupont Report. However, no Figure 2 exists.

Finally, on pages 15-17 of his statement, Mr. Lawless discusses tritium concentrations in water vapor, but confuses the applicable maximum permissible concentration with EPA's drinking water standard. The maximum permissible soluble tritium concentration in water is 3000 pCi/mℓ, and the maximum permissible soluble tritium concentration in air is 0.2 pCi/mℓ. See 10 C.F.R. Part 20, App. B, Table II, Col. II.5/ The EPA's drinking water standard is simply inapplicable.6/ The 50 pCi/mℓ maximum-reported tritium concentration in water vapor

5/ DOE has adopted these concentration limits in DOE Order 5480.1A.

6/ The EPA's drinking water standard, however, is an average annual concentration assumed to produce a total body or organ dose of 4 mrem per year. 40 C.F.R. § 141.16(b), Table A.

is far below the 3000 pCi/ml maximum permissible concentration in water. To compare the 50 pCi/ml maximum reported tritium concentration in water vapor with the maximum permissible soluble tritium concentration in air, one must reduce the 50 pCi/ml value by the fraction of water vapor in air (approximately 3.1×10^{-5} at 90% humidity, 90°F) -- a reduction which Mr. Lawless ignores. The result, 0.0015 pCi/ml, is considerably smaller than the 0.2 pCi/ml maximum permissible concentration.

4. GANE's Interest Can Be Represented By
the NRC Staff

To the extent there is any significant new information that has been revealed by the L-Reactor FEIS, such information can be incorporated into the Staff's Draft Environmental Statement. With respect to information on cumulative effects contained in L-Reactor FEIS, the NRC Staff could well elect to adopt the information in its DES. See Silentman v. FPC, 566 F.2d 237 (D.C. Cir. 1977). To the extent GANE seeks to challenge operational practices at the Savannah River Plant, its interest exceeds the scope of this proceeding.

5. The Amendment Would Unduly Broaden
the Proceeding

The proper focus of environmental inquiry in this proceeding is with the incremental impact attributable to Vogtle. If external factors affect the size or the cost of the incremental impact of Vogtle, those factors are relevant. However, GANE's attempt to litigate the environmental impact of Savannah River Plant operations without any connection to the incremental impact attributable to Vogtle threatens to broaden the proceeding beyond permissible limits and to delay or obstruct it.

III. GANE's Amended Basis Does Not Support the Contention

As discussed above, the five 10 C.F.R. § 2.714(a)(1) factors weigh strongly against permitting this late-filed amendment. Accordingly, the amendment should be rejected. However, even if the Board permits the untimely amendment of the basis for GANE's proposed contention 2, it should still reject that contention. The information in the amended basis does not support the contention. GANE-2 alleges that Applicants failed to assess "the addition of Plant Vogtle within 20 miles of SRP. . . ." The amended basis simply does not relate the impact attributable to Vogtle, but instead attacks the operation of Savannah River Plant.

Moreover, as Applicants pointed out in their previous response, the NRC Staff has assessed the cumulative impact of

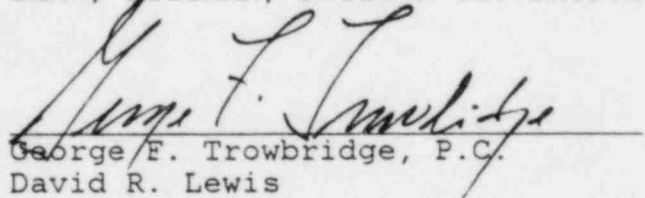
Vogtle and the Savannah River Plant in its CP-FES. The recent L-Reactor FEIS corroborates its accuracy of that assessment. To the extent that the proposed operation of the L-Reactor might alter the assessment slightly -- a matter which GANE apparently no longer cares to pursue -- the conclusions of the L-Reactor FEIS can be adopted or relied upon by the Staff.

IV. Conclusion

For all of the above stated reasons, GANE's late-filed amendment to its basis for GANE-2 should be disallowed and GANE-2 rejected.

Respectfully submitted,

SHAW, BITTMAN, POTTS & TROWBRIDGE



George F. Trowbridge, P.C.
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Counsel for Applicants

Dated: June 28, 1984

June 28, 1984

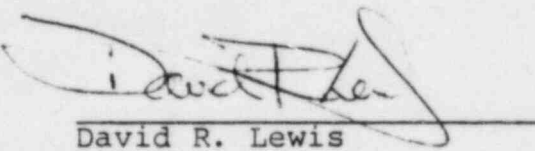
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CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicants' Response to GANE's Amendment to GANE Contention Number 2," dated June 28, 1984, were served upon the persons on the attached Service List by deposit in the United States mail, postage prepaid, or where indicated by an asterisk by hand delivery, this 28th day of June, 1984.



David R. Lewis

DATED: June 28, 1984

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