

Applicants have not shown, pursuant to 10 CFR Part 50 Appendix E, IV D.2 and 50.47(b)(7) that adequate and credible education and notification procedures will be followed during normal plant operation and in the event of an accident at Vogtle. These requirements include "basic emergency planning information," "general information as to the nature and effects of radiation," "signs or other measures... helpful if an accident occurs." 10 CFR Appendix E, IV, D.2.

As set out in the Board's Order, at 32, Contention EP-6 was admitted by the Board for the purpose of providing Joint Intervenors with an opportunity to litigate "the contents of the printed [public information brochure], the [telephone book] advertisement and the warning notices [to be posted for transients]." Applicants move the Board for reconsideration of the contention on two grounds. The first ground urged by Applicants is that as defined for admission by the Board, Contention EP-6 was not specifically raised by Joint Intervenors. Secondly, Applicants argue that any contention which challenges the content of public information or education materials for Vogtle is premature since these materials are not yet available.

While it is true that Intervenors did not specifically raise the public information and education materials specifically enumerated by the Board in admitting Contention EP-6, the Board's ruling is a logical interpretation of the Contention proposed by Intervenor. See NUREG-0654, at 49-50. Thus, the Staff does not support Applicants' motion as to Contention EP-6 on the "definitional" ground urged by Applicants.

The Staff, however, agrees with Applicants that the Contention, as admitted, is clearly premature since Applicants have not yet made copies of any public information or educational materials available to Joint Intervenors (or the Staff). Therefore, as urged by Applicants, there is no basis at this time for a Contention which challenges the adequacy of

materials which are not yet available to the public; nor, in the absence of such materials could Joint Intervenors be expected to frame a contention with any degree of specificity.

Accordingly, Contention EP-6 must be rejected as premature. However, as recognized by Applicants' Joint Intervenors should also be granted an opportunity to file specific proposed contentions within a reasonable period of time (30 days) of their receiving each of the three types of public educational/informational materials set out in the Board's Order ^{3/}.

B. Contention EP-7

Contention EP-7 as admitted by the Board asserts that

Applicants claim that the Department of Energy (Savannah River Plant Operations Office, Aiken, South Carolina) will provide radiological assistance (advice and emergency action essential for the control of immediate hazards to health and safety) in the event of an emergency at Vogtle. It fails to address the possibility that an emergency situation (for example, an earthquake) which threatens the safe operation of Vogtle might also endanger operations at Savannah River Plant. In this event, not only would Department of Energy offices be prevented from providing aid to Vogtle, other federal, state and local assistance resources would be divided between the two sites.

^{3/} The Staff does not, of course, know at this time whether the printed material in question will be made available as a group or on an individual basis by Applicants. In any event, at the time any such printed material is made available and Joint Intervenors file proposed contentions, they are required to also address the five factors listed in 10 C.F.R. §§2.714(a)(1) concerning late filed contentions See Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1045-47 (1983); reversing ALAB-687, 16 NRC 460 (1982)

Applicants do not address the impacts of simultaneous evacuation from both plants, or overload of medical facilities and emergency vehicles in the event of injury to persons by the operation of both plants. Nor do Applicants adequately discuss coordination of activities of Georgia and South Carolina's agencies.

The Board at Page 33 of its Order noted Applicants' and Staff's position that litigation of Contention EP-7, at least as regards earthquakes, was barred by prior Commission opinions. See Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 & 3), CLI-81-33, 14 NRC 1091, 1092 (1981); Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 & 2), CLI-84-33, 20 NRC 249, 253-54 (1984). See also 49 Fed. Reg. 49640 (December 21, 1984). The Board nonetheless admitted Contention EP-7 on the ground that the earthquake emergency is only an example of the types of emergencies that might compromise the safe operation of Vogtle and the Department of Energy's Savannah River Plant (SRP). While the above cited cases consider the occurrence of earthquakes in the preparation of emergency plans, the reasoning in these cases is also applicable to other low-probability, naturally occurring events which licensed nuclear plants are designed to withstand, such as tornadoes. The Commission stated in San Onofre:

. . . For the intervenor [prior to rulemaking], the proximate occurrence of an accidental radiological release and an earthquake that could disrupt normal emergency planning appears sufficiently unlikely that consideration in individual licensing proceedings pending generic consideration of the matter is not warranted.

Section 3.3.2 of the Safety Evaluation Report for Vogtle considers tornadoes and concludes (at 3-5):

The use of these procedures provides reasonable assurance that in the event of a design-basis tornado, the structural integrity of the plant structures that have to be designed for the tornado will not be impaired, and, in consequence, safety-related systems and components located within these structures are adequately protected and will perform their intended safety functions if needed. Thus, the requirement . . . is satisfied.

See 10 C.F.R. Part 50, Appendix A, General Design Criteria 4. To paraphrase the San Onofre case, the proximate occurrence of an accidental radiation release (from a plant built to withstand tornadoes) and a tornado that could disrupt normal emergency planning appears sufficiently unlikely that consideration in an individual licensing proceedings is not warranted. The unlikelihood of the events in the subject contention is even greater as the contention not only postulates a tornado at the time of an accidental radiological release, but also a similar occurrence concurrently affecting the Savannah River Plant. ^{4/} As the reasoning of the above cases indicates, such matters are too remote to be enquired into in individual licensing proceedings.

However, portions of Contention EP-7 do set out valid matters for examination at a hearing. The Board stated at pages 33 and 34 of its Order:

^{4/} The Commission in its Notice of Proposed Rulemaking on the consideration of the effects of earthquakes in emergency planning, stated that it was also considering extending the proposed rule to cover "tornadoes and any similar low-probability naturally occurring phenomena which are presumed to occur proximate in time with an accidental release of radioactive material" 49 Fed. Reg. at 49642.

The wording of this contention exhibits scant evidence that Joint Intervenors have familiarized themselves with details of the planning materials submitted so far. However, the Board finds that there are major problems with these materials. As noted previously, information is lacking on emergency planning for that part of the VEGP EPZs within South Carolina, and the various emergency assistance resources within South Carolina are not identified nor are their duties and responsibilities discussed. How the communication, coordination and cooperation amongst South Carolina and Georgia resources would function following a VEGP emergency is not described. It is not at all clear from the material at hand that there would or could be effective emergency responses from the resources within both states in the event of simultaneous emergencies at VEGP and SRP. By way of example, Georgia's Base Plant at page 8 of Annex D identifies the U.S. Department of Energy (DOE) as a federal resource available to support the response to a VEGP emergency. How DOE will be coordinated into the cooperative responses of the various agencies from the two states and will be able simultaneously to discharge its responsibilities at SRP are not described. The viability of support from DOE in the event of simultaneous emergencies at VEGP and SRP is even more in question.

See also Order at 24-25. The Applicant has not addressed these matters in its Motion for Reconsideration.

The Staff believes that, at least for purposes of admitting Contention EP-7, the Board has noted significant deficiencies in the emergency planning documents submitted to the NRC by Applicants in regard to how emergency planning will be carried out in South Carolina and how actions by Georgia and South Carolina will be coordinated.^{5/} Until such time as Applicants cure the defects noted by the Board, the Staff is of the view that the Board's decision allowing litigation of those matters should not be disturbed. The Staff, however, continues to believe that litigation of this contention should not include consideration of

^{5/} Review of the emergency planning documents by the Federal Emergency Management Agency may or may not disclose additional deficiencies with respect to the subject matter of Contention EP-7.

earthquakes, tornadoes or any similar low-probability, naturally occurring phenomena which are presumed to occur both at Vogtle and SRP in proximate time with an accidental release of radioactive material. Litigation should only include a determination as to whether Applicants have cured the deficiencies in the Applicants' emergency planning materials identified by the Board at pages 24-25 and 33-34 of the Board's Order.

III. CONCLUSION

For the reasons set out above, the Staff supports Applicants' motion for reconsideration as to Contention EP-6. The Board should reject this contention as being premature. However, the Board should provide Intervenor's an opportunity to propose a contention within a reasonable period of time after receipt from Applicants of the relevant printed matter. The Staff in part supports and in part opposes Applicants' motion with respect to Contention EP-7. The rationale of prior Commission action should bar consideration of any low-probability naturally occurring phenomena, such as tornadoes, to occur in proximity to an accident that could effect SRP and Vogtle. However, part of Contention EP-7 is admissible to test possible deficiencies in the emergency response plans submitted by Applicants in regard to emergency planning activities in South Carolina, and coordination between Georgia and South Carolina.

Respectfully submitted,

Bernard M. Bordenick b, ncr
Bernard M. Bordenick
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 15th day of September, 1985

DOCKETED
USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

*85 SEP 26 P12:42

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)
)
GEORGIA POWER COMPANY,)
 et al.)
)
(Vogtle Electric Generating Plant,)
 Units 1 and 2))

Docket Nos. 50-424
50-425
(OL)

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO APPLICANTS' MOTION FOR RECONSIDERATION AND CLARIFICATION OF AUGUST 12 MEMORANDUM AND ORDER" 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 25th day of September, 1985.

Morton B. Margulies, Esq., Chairman*
Administrative Judge
Atomic Safety and Licensing Board
Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Mr. Gustave A. Linenberger, Jr.*
Administrative Judge
Atomic Safety and Licensing Board
Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. Oscar H. Paris*
Administrative Judge
Atomic Safety and Licensing Board
Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Bradley Jones, Esq.
Region 1 Counsel
U.S. Nuclear Regulatory Commission
Suite 3100
101 Marietta Street
Atlanta, GA 30303

Bruce W. Churchill, Esq.
David R. Lewis, Esq.
Shaw, Pittman, Potts & Trowbridge
1800 M Street, N.W.
Washington, D.C. 20036

Douglas C. Teper
1253 Lenox Circle
Atlanta, GA 30306

Atomic Safety and Licensing
Board Panel*
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Laurie Fowler, Esq.
218 Flora Ave. NE
Atlanta, GA 30307

Docketing and Service Section*
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Atomic Safety and Licensing
Appeal Board Panel*
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

James E. Joiner, Esq.
Troutman, Sanders, Lockerman,
& Ashmore
127 Peachtree Street, N.E.
Candler Building, Suite 1400
Atlanta, GA 30043

Ruble A. Thomas
Southern Company Services, Inc.
P.O. Box 2625
Birmingham, AL 35202

Tim Johnson
Executive Director
Campaign for a Prosperous Georgia
175 Trinity Avenue, S.W.
Atlanta, GA 30303



Robert G. Perlis
Counsel for NRC Staff