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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:
Morton B. Margulies, Chairman
Gustave A. Linenberger, Jr.
Dr. Oscar H. Paris

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In the Matter of
GEORGIA POWER COMPANY, ET AL.
Vogtle Electric Generating
Plant, Units 1 and 2)

Docket Nos. 50-424 OL
50-425 OL
(ASLBP No. 84-499-01-OL)
October 3, 1985

MEMORANDUM AND ORDER
(Ruling on Motion for Summary Disposition
of Contention 8 re: Vogtle Quality Assurance)

Introduction and Background

In this contention Joint Intervenors Campaign for a Prosperous Georgia and Georgians Against Nuclear Energy challenge the adequacy of Applicants' Quality Assurance Program (QAP) for the Vogtle Electric Generating Plant (VEGP) construction effort. On June 24, 1985, Applicants filed a motion for summary disposition of the contention pursuant to 10 CFR 2.749. The NRC Staff (Staff) filed a response in support of the motion on August 8, 1985. Joint Intervenors opposed the motion by a filing on July 31, 1985. They claim that the motion is premature because the Advisory Committee on Reactor Safeguards had not issued its letter containing its views on the project. That letter was issued on August 13, 1985 and does not affect the subject issue. We

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find this matter now to be ripe for determination, and for the reasons discussed below, we grant the motion.

Applicable Law on Summary Disposition

The law pertaining to summary disposition under 10 CFR 2.749 is well established. Licensing Boards are empowered to grant summary disposition on the pleadings on motion of a party to a proceeding if materials before the Board show that there is no outstanding genuine issue of material fact and that the moving party is entitled to a decision as a matter of law. The Commission has encouraged the use of summary disposition so that hearing time is not unnecessarily devoted to matters as to which no genuine issue of material fact exists. Statement of Policy in Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 457 (1981).

The party seeking summary disposition must carry the burden of proving the absence of any genuine issue of material fact, Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-443, 6 NRC 741, 753 (1977), with the record viewed in the light most favorable to the motion's opponent, Dairyland Power Cooperative (LaCrosse Boiling Water Reactor), LBP-82-58, 16 NRC 512, 519 (1982). A party opposing a motion may not rely upon a simple denial of material facts stated by the movant, but must set forth specific facts showing that there is a genuine issue of fact remaining. Virginia Electric Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-584, 11 NRC 451, 453 (1980).

A party cannot avoid summary disposition on the basis of guesses or suspicions or on the hope that at the hearing the licensee's evidence may be discredited or that something may turn up. Gulf States Utilities Co. (River Bend Station, Units 1 and 2), LBP-75-10, 1 NRC 246, 248 (1975).

All material facts adequately set forth in a motion and not adequately controverted by the responses are deemed to be admitted, 10 CFR 2.749 (a); however, the proponent of a motion must meet the burden of proof in establishing that there is no genuine issue of material fact, even if the opponent fails to controvert the conclusions reached in the motion's supporting papers. (Perry, supra, at 754).

Discussion

As admitted, Contention 8 states the following:

Applicants have not and will not implement a Quality Assurance program for Plant Vogtle for welding, for properly documenting the placement of concrete, for adequately testing concrete, for the preparation of correct concrete quality test records, for procuring material and equipment that meet applicable standards, for protecting equipment and for taking corrective action as required, so as to adequately provide for the safe functioning of diverse structures, systems and components, as required by 10 CFR Part 50, Appendix B, such that reasonable assurance exists that the operation of the facility will not endanger the public health and safety.

10 CFR Part 50, Appendix B, Introduction, provides that quality assurance "comprises all those planned and systematic actions necessary to provide adequate confidence that a structure, system, or component will perform adequately in service." The purpose of a quality assurance program is to reasonably assure that a nuclear power plant will be

constructed in a manner such that it can be operated in a manner so as not to endanger the public health and safety. The Commission's quality assurance criteria are set forth in 18 categories within Appendix B.

The standard as to how effective the functioning of a quality assurance program should be is set forth in Union Electric Co. (Calloway Plant, Unit 1), ALAB-740, 18 NRC 343 (1983), as follows:

A recurring issue in reactor operating license proceedings is whether the facility has been properly constructed. In most instances, the focus is upon the execution of the quality assurance program designed to eliminate the possibility that construction deficiencies of potential safety significance will go undetected and therefore unrectified.

In any project even remotely approaching in magnitude and complexity the erection of a nuclear power plant, there inevitably will be some construction defects tied to quality assurance lapses. It would therefore be totally unreasonable to hinge the grant of an NRC operating license upon a demonstration of error-free construction. Nor is such a result mandated by either the Atomic Energy Act of 1954, as amended, or the Commission's implementing regulations. What they require is simply a finding of reasonable assurance that, as built, the facility can and will be operated without endangering the public health and safety. 42 U.S.C. §§ 2133(d), 2232(a); 10 C.F.R. § 50.57(a)(3)(i). Thus, in examining claims of quality assurance deficiencies one must look to the implication of those deficiencies in terms of safe plant operation.

Obviously, this inquiry necessitates careful consideration of whether all ascertained construction errors have been cured. Even if this is established to be the case, however, there may remain a question whether there has been a breakdown in quality assurance procedures of sufficient dimensions to raise legitimate doubt as to the overall integrity of the facility and its safety-related structures and components. A demonstration of a pervasive failure to carry out the quality assurance program might well stand in the way of the requisite safety finding.

To support the contention, Joint Intervenor identified twenty-five discrepant situations that fall within four of the five specific categories of construction activities identified. (The five categories involve welding activities, concrete testing and placement, procurement practices, storage adequacy and corrective actions; the last category was devoid of any specific challenge.) Joint Intervenor has made it clear, however, that their basic concern transcends the existence of specific discrepant situations (irrespective of whether the discrepancies have been corrected) and that the contention focuses upon the totality of them as being indicative of a lack of an adequate QAP and of a breakdown of that program. That leads them to conclude that there is inadequate assurance that the VEGP will operate in a manner not dangerous to the public health and safety.

Applicants' motion for summary disposition of June 24, 1985 is accompanied by a statement of alleged material facts for which there are no litigable issues, by ten supporting affidavits, and by thirty-seven attachments also in support thereof. The ten affiants comprise eight Georgia Power Company (GPC) employees representing management and supervisory personnel, all having line authority and supervisor responsibilities related to plant construction; the other two are persons employed by a major contractor of Applicants and by a sister company of GPC, both persons having VEGP construction site related responsibilities. The thirty-seven attachments comprise for the most part reports that originated from NRC's Inspection and Enforcement (I&E) Region II office. These reports document the discovery of discrepant

situations (some of which were discovered by Applicants and their contractors) and also document the subsequent resolution of the discrepancies. The statement of facts comprises eighty-seven items that fall into two subject areas: a description of the QAP that shows the existence of program elements corresponding to each of the eighteen criteria of 10 CFR Part 50, Appendix B; and an item by item discussion of each of the discrepant situations reported by Joint Intervenors (many of which derived from the April 1985 deposition of Mr. Douglas Teper, of Georgians Against Nuclear Energy). There are, by our reckoning, twenty-five such discrepant matters distributed among the five categories of the contention as follows: welding-8, concrete-9, procurement-5, storage-3, and corrective actions-0. These covered a time span from 1974 (pre construction permit) to 1984 for plants that are now nearing the end of their construction phase. Steps taken by Applicants to rectify each item are described along with QAP upgrading actions to minimize the recurrence of such items.

We find Applicants' alleged statement of facts for which there are no litigable issues to be correct and complete on the issues. The facts are supported by appropriately qualified affiants, whose discussions make it clear that the QAP not only meets the formal requirements of Appendix B but also functions in accordance with the intent of Appendix B. In addition, Applicants state that they have initiated a Readiness Review Program (RRP) for the purpose of gaining added assurance of the operational readiness of the VEGP. The motivation for and description of the RRP are discussed by one of the affiants. The

RRP was undertaken in consonance with generic considerations of the NRC regarding ways to improve the efficacy of QA efforts throughout the nuclear industry. The RRP is not a substitute for Applicants' QAP but is an overlay to that effort serving to increase the confidence of management in the operational readiness of the VEGP.

Joint Intervenor's opposing submittal of July 31, 1985 consists of a Statement of Material Facts in Response to Applicants' Motion for Summary Disposition and includes twenty-one numbered statements not supported by affidavits. It summarizes their longer statement (same submittal date) of alleged facts and law related to the subject contention. Joint Intervenor's offer nothing substantive and specific beyond the discrepant situations dealt with by Applicants, which they do not controvert; nor do they offer anything specific and probative in support of their allegation that the QAP is not working. In addition, Intervenor's submittals address the following, none of which establishes the existence of conflicting material facts:

- o What they intend to do in the future through testimony and cross-examination;
- o Intention to identify witnesses, including plant workers, whom they will attempt to bring to the hearing;
- o The enlistment of a public interest group to assist them;
- o The allegation that Applicants' affidavits present new information that abrogates their due process rights (no specifics given);
- o The claim that the Teper deposition cited numerous discrepant items not addressed by Applicants, nor identified by Intervenor's; and,

- o The unsupported allegation that the RRP is an inappropriate substitute by Applicants for the QAP.

In summary, Joint Intervenors have failed to defeat Applicants' motion.

The Staff's submittal in support of Applicants' motion explains the bases for Staff's position that Joint Intervenors cannot support their claims regarding safety concerns deriving from discrepant situations at the VEGP and the breakdown of or lack of an effective QAP. Their submittal is accompanied by a statement of acceptance of all of Applicants' material facts not in issue and by nine affidavits of ten personnel from the NRC's Region II office. All affiants have been or currently are directly involved with VEGP construction activities embraced by the contention and are judged to have acceptable qualifications. Each affirms that Applicants have competently responded to discrepant situations in the affiant's area of involvement and that there has been no breakdown of the QAP in each of these areas. One of these affiants is the I&E Branch Chief for Region II who has overall responsibility for the I&E effort at VEGP. It is his conclusion that Applicants' overall QAP is effective. We agree with Staff's position, having found it to be convincingly supported.

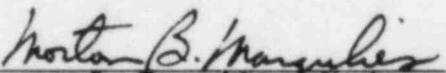
Mindful of the complexities that frequently inhere with the assessment of the adequacy of quality assurance programs and their implementation, the Board has carefully considered all of the foregoing both as to content and in light of applicable law. Based upon all of these considerations, we find there is no outstanding issue of material

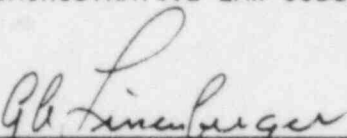
fact and that none of the enumerated discrepant situations discussed has been shown to carry any material safety significance with respect to plant operation nor does the totality of them indicate a pervasive breakdown of Applicants' QAP. Hence, we conclude that Applicants have prevailed with their motion, and that Joint Intervenors' conclusion that reasonable assurance with respect to public health and safety is lacking for Vogtle operation is without foundation.

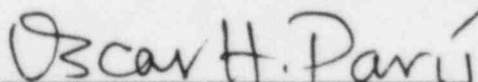
ORDER

The Board grants Applicants' motion for summary disposition of Contention 8 and the Contention is dismissed.

THE ATOMIC SAFETY AND
LICENSING BOARD


Morton B. Margulies, Chairman
ADMINISTRATIVE LAW JUDGE


Gustave A. Linenberger, Jr.
ADMINISTRATIVE JUDGE


Dr. Oscar H. Paris
ADMINISTRATIVE JUDGE

Dated at Bethesda, Maryland
this 3d day of October, 1985.