

March 5, 1986

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USNRC

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

'86 MAR -6 P3:25

Before the Atomic Safety and Licensing Board

OFFICE OF REGULATORY  
DOCKETING & SERVICE  
BRANCH

In the Matter of:	:	
	:	
GEORGIA POWER COMPANY, <u>et al.</u>	:	DOCKET NOS. 50-424
	:	50-425
(Vogtle Electric Generating	:	
Plant, Units 1 and 2)	:	

APPLICANTS' MOTION TO STRIKE TESTIMONY  
OF WILLIAM LAWLESS ON CONTENTION 7  
(GROUND-WATER)

I. Introduction

Applicants hereby move the Board to strike "Inter-  
venors' Testimony Before the Atomic Safety and Licensing  
Board March 11, 1986: Contention 7, Groundwater Contamina-  
tion," dated February 23, 1986 (hereinafter "Lawless testi-  
mony"), and "Analysis of the Atomic Safety and Licensing  
Board's November 12, 1985 Memorandum and Order (Ruling on  
Motion for Summary Disposition of Contention 7 re Ground-  
water Contamination)," dated December 15, 1985 and designated  
an attachment to Mr. Lawless' testimony. This testimony and  
attachment are untimely, irrelevant, immaterial, and improper.

## II. Legal Standard

The Commission's Rules of Practice state that "[o]nly relevant material and reliable evidence which is not unduly repetitious will be admitted." 10 C.F.R. § 2.743(c). The Rules further provide that the presiding officer may strike argumentative, repetitious, cumulative, or irrelevant evidence. 10 C.F.R. § 2.757(c). The Appeal Board has also held that submissions that are insufficient or improper, unauthorized (e.g., filed by a non-party), or untimely may be stricken. Tennessee Valley Authority (Hartsville Nuclear Plant Units 1A, 1B, 2A and 2B), ALAB-409, 5 N.R.C. 1391, 1396-97 (1977).

## III. The Lawless Testimony Is Untimely and Improperly Filed

By Memorandum and Order of January 14, 1986, the Licensing Board directed that testimony be prefiled by February 24, 1986. Also, section 2.743(b) of the Commission's Rules of Practice requires that testimony be prefiled at least fifteen days in advance of the session of the hearing at which the testimony is to be presented, which would dictate that testimony be filed by February 24, 1986.

On February 24, 1986, Joint Intervenors served upon the parties an "attachment" to the prefiled testimony of William Lawless. The attachment is entitled "Analysis of the Atomic Safety and Licensing Board's November 12, 1985 Memorandum and Order (Ruling on Motion for Summary Disposition of

Contention 7 re: Groundwater Contamination)." <sup>1</sup> In a cover letter enclosing the attachment, Joint Intervenors asserted that Mr. Lawless' testimony was being filed separately on the same date. Mr. Lawless' testimony, however, was not received by the Applicants until Saturday, March 1, 1986, and the envelope enclosing the testimony was postmarked February 26, 1986. Mr. Lawless' testimony was not accompanied by certificate of service or service list.

IV. The Lawless Testimony and Attachment are Irrelevant, Immaterial, Argumentative, and Improper

By Memorandum and Order dated November 12, 1986 (Ruling on Motion for Summary Disposition of Contention 7 re: Groundwater Contamination) (hereinafter "November 12, 1985 Memorandum and Order"), the Board designated five specific issues to be adjudicated. Mr. Lawless' testimony and the attachment virtually ignore these issues, and instead pertain almost entirely to the issues that Licensing Board decided in Applicants' favor and removed from consideration at the hearing. For this and the other reasons detailed below, Mr. Lawless' testimony and attachment are inadmissible and should be stricken.

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This document was previously submitted to the Licensing Board without conformity to the Rules of Practice, and was rejected by the Board. See Letter from M. Margulies, Esq., to T. Johnson (Dec. 26, 1985).

### A. The Attachment

The first nine pages of the attachment are devoted to argument that the Licensing Board erred in resolving certain issues in the Applicants' favor in its November 12, 1985 Memorandum and Order. At these pages, the attachment contains arguments pertaining to the Licensing Board's rejection of: (1) "Sr-90 Contamination of Groundwater at VEGP" (allegedly due to SRP operation) (see November 12, 1985 Memorandum and Order at 9-10); (2) "Statistical Analysis of Hydrological Data" (see id. at 10); (3) "Effect of Settlement on the Marl" (see id. at 10-11); (4) "Leakage of Radioactive Water from Auxiliary Building" (see id. at 11-12); (5) "Hazardous Chemical Wastes" (see id. at 16); and (6) "Contamination of the Cretaceous Aquifer at SRP" (see id. at 17-21). These arguments do not address the issues designated by the Board for hearing, are nothing more than an untimely attack on the Board's rulings, are for the most part vague and speculative, and should not be admitted.

Only on the last two pages of the attachment, under the heading of "Groundwater Travel Time," are there any statements even colorably related to the issues delegated for hearing; but this section of the attachment is again argument and is immaterial. In essence, the section advocates the adjudication of ground-water travel time by arguing that SRP experience

suggests that the methodology Applicants used to calculate ground-water travel time may be in error. The Licensing Board, however, has already designated ground-water travel time as an issue to be adjudicated, and it is now incumbent on the parties to present factual evidence and analysis. The last section of the attachment focuses solely on events at the SRP, contains no meaningful analysis of methodology, and thus has no probative value.

B. Lawless Testimony

Paragraph 1 of the summary in Mr. Lawless' testimony relates to the need for statistical treatment of data -- an issue considered and decided in Applicants' favor by the Board at page 10 of the November 12, 1985 Memorandum and Order -- and is therefore irrelevant (i.e., outside the scope of the hearing). Furthermore, the statements in paragraph 1 are vague (offering no specifics), speculative (alleging that data "appears" to be inadequate), and conclusory.

Paragraph 2 of the summary again relates to the statistical analysis of hydrological data, and is irrelevant.

Paragraph 3 of the summary pertains to the effect of settlement on the marl -- an issue considered and decided in Applicants' favor at pages 10-11 of the November 12, 1985 Memorandum and Order -- and is irrelevant. The paragraph is also vague and speculative.

Paragraph 4 of the summary pertains to wells as a pathway for contaminants -- an issue considered and decided in Applicants' favor by the Board at pages 21-23 of the November 12, 1985 Memorandum and Order -- and is therefore irrelevant. It is also vague, speculative and conclusory.

Paragraph 5 of the summary relates to statistical analysis of hydrological data -- an issue decided in Applicants' favor by the Board at page 10 of the November 12, 1985 Memorandum and Order -- and is irrelevant.

Paragraph 6 of the summary relates to wells as a pathway for contaminants -- an issue decided in Applicants' favor at pages 21-23 of the November 12, 1985 Memorandum and Order and is therefore irrelevant. Paragraph 6 is also vague and speculative.

Paragraph 7 is argument, not testimony. Moreover, the argument, that the NRC Staff should provide ground-water contamination results from all other NRC licensed facilities in order for the public and intervenors to be able to test the efficacy of the NRC licensing process, is irrelevant to any issue in this proceeding. Paragraph 7 can also be construed as an attack on the Commission's regulations and the NRC itself. This paragraph is irrelevant, immaterial, argumentative, and improper.

Paragraph 8 is argument and pertains to chemical wastes. In its November 12, 1985 Memorandum and Order, the Board ruled that chemical wastes are beyond the scope of Contention 7. Paragraph 8 is argumentative and irrelevant.

Paragraph 9 of the summary relates to alleged contamination of the VEGP area from SRP emissions. This paragraph is irrelevant to the issues designated by the Board for hearing. This proceeding is one to adjudge the operation of VEGP, not SRP. Furthermore, with respect to Sr-90, the paragraph relates to an issue already resolved in Applicants' favor by the Licensing Board. See November 12, 1985 Memorandum and Order at 9-10.

Paragraph 10 of the summary alleges that improved surface runoff and "apparently" significantly different K's between the power block and surrounding area "may be" a cause of "some concern." The statement is vague and speculative, and has no probative value.

Paragraph 11 states that the ground-water travel time calculated by VEGP "could" lead to a significant undercalculation of the actual travel times as was done by SRP. This paragraph is confusing, vague, speculative, and conclusory.

Paragraph 12 is immaterial.

On the fifth and sixth unnumbered pages of the Lawless testimony (in the first and second paragraphs under the heading "Adequacy of Geological/Hydrological Exploration"), Mr. Lawless again argues for a statistical treatment of data. Again, this issue has already been considered and resolved in Applicants' favor by the Board. November 12, 1985 Memorandum and Order at 10.

On the sixth unnumbered page, in the last paragraph under the heading, "Adequacy of Geological/Hydrological Exploration," Mr. Lawless speculates concerning the effect of settlement. The paragraph is vague, speculative, and irrelevant, addressing an issue already resolved in Applicants' favor at pages 10-11 of the November 12, 1985 Memorandum and Order.

At the bottom of the sixth unnumbered page, under the heading of "Uncertainty in Data on Marl Thickness and Permeability," Mr. Lawless again, without specifics, argues for a statistical treatment of data. This paragraph is argumentative and irrelevant, addressing an issue already considered and decided in the Applicants' favor by the Board at page 10 of the November 12, 1985 Memorandum and Order.

On the seventh unnumbered page, under the heading, "Data on Marl Continuity," Mr. Lawless again speculates concerning the effects of settlement on the marl and the possibility of wells as a pathway for contaminants. Both of these topics were considered and resolved in Applicants' favor by the Board. November 12, 1985 Memorandum and Order at 10-11, 21-23. Mr. Lawless then continues with argument for statistical treatment of data -- an issue also previously considered and resolved in Applicants' favor by the Board. Id. at 10. This paragraph is argumentative, speculative, and irrelevant.



Finally, on the seventh and eighth unnumbered pages, under the heading of "Groundwater Travel Time," Mr. Lawless once again argues for statistical treatment of data and speculates that the "potential for rapid water transport through fissures in the backfilled material exists." This paragraph is vague, speculative, and conclusory, and the argument for statistical treatment of data has already been considered and resolved in the Applicants' favor by the Board.

#### V. Conclusion

Accordingly, for the reasons stated above, Applicants submit that the "Intervenors' Testimony Before the Atomic Safety and Licensing Board March 11, 1986: Contention 7, Groundwater Contamination," dated February 23, 1986, and the "Analysis of the Atomic Safety and Licensing Board's November 12, 1985 Memorandum and Order (Ruling on Motion for Summary Disposition of Contention 7 re: Groundwater Contamination)," dated December 15, 1985, and designated as an attachment to Mr. Lawless' testimony, should be stricken.

Respectfully submitted,



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Dated: March 5, 1986

March 5, 1986

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OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

CERTIFICATE OF SERVICE

I hereby certify that copies of Applicants' Motion To Strike Testimony Of William Lawless On Contention 7 (Ground-Water) was served this 5th day of March, 1986, by deposit in the U.S. mail, first class, postage prepaid, upon the parties listed on the attached Service List, except that those whose names are marked by asterisk were served by hand delivery this 5th day of March, 1986.

  
Hugh M. Davenport  
Counsel for Applicants

Dated: March 5, 1986

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Units 1 and 2) )

Docket Nos. 50-424  
50-425

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