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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD

'86 OCT 17 A10:29

Administrative Judges:

Gary J. Edles, Chairman
Christine N. Kohl
Howard A. Wilber

OFFICE OF SECRETARY
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BRANCH

October 16, 1986
(ALAB-851)

SERVED OCT 17 1986

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

Bruce W. Churchill and David R. Lewis, Washington,
D.C., for applicants Georgia Power Company, et al.

Tim Johnson, Atlanta, Georgia, for Campaign for a
Prosperous Georgia.

Bernard M. Bordenick for the Nuclear Regulatory
Commission staff.

MEMORANDUM AND ORDER

Applicants, Georgia Power Company, et al., move to
"strike" (i.e., dismiss) the September 8, 1986, Notice of
Appeal of Campaign for a Prosperous Georgia (CPG). CPG's
appeal is from the Licensing Board's August 27, 1986,
partial initial decision in this operating license
proceeding, LBP-86-28, 24 NRC ____, and from earlier
unspecified Board rulings.¹ Applicants argue that CPG

¹ Intervenor Georgians Against Nuclear Energy (GANE)
has also appealed the Licensing Board's partial initial
decision and other unidentified rulings. GANE's appeal is
not at issue here.

voluntarily withdrew from this proceeding in March of this year and therefore has no right to appeal. The NRC staff supports the motion; CPG opposes it in a pleading filed beyond the prescribed time limit.² For the reasons set forth below, we grant the motion and dismiss CPG's appeal.

Our precedent makes clear that "[p]arties may not dart in and out of proceedings on their own terms and at their convenience and still expect to enjoy the benefits of full participation without the responsibilities." Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-691, 16 NRC 897, 907 (1982), review declined, CLI-83-2, 17 NRC 69 (1983). Cf. Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-845, 24 NRC ____, ____ (Aug. 28, 1986) (slip opinion at 51-52). Once a party effectively withdraws from a proceeding, its appeal rights are waived. Midland, 16 NRC at 907. The issue here is thus a simple,

² Applicants served their motion to strike on CPG's representative on September 19, 1986. See Applicants' Supplemental Certificate of Service (Sept. 22, 1986). Under the Commission's Rules of Practice, CPG's reply to the motion was to be filed (i.e., mailed) no later than October 6, 1986. See 10 C.F.R. §§ 2.730(c), 2.710, 2.712(d)(3). CPG's reply to applicants' motion is contained within its brief on the merits of its appeal. This brief is accompanied by a certificate of service dated October 8 and postmarked October 9, 1986. Thus, CPG's reply to the motion to strike is clearly out of time (without explanation). Under the Rules, we could find CPG in default and grant applicants' motion on that ground alone. See 10 C.F.R. § 2.707. In view of our decision here, however, such action is unnecessary.

factual one: whether CPG's actions constituted a voluntary withdrawal from the proceeding so as to extinguish its appeal rights.³ The record leaves no room to doubt that the answer to that question is "yes."

CPG was originally granted intervenor status and had several contentions admitted for litigation. See LBP-84-35, 20 NRC 887 (1984). In its opening statement on the very first day of hearing on those contentions before the Licensing Board, CPG took the opportunity to express unequivocally its dissatisfaction with and contempt for the NRC's entire licensing process. Tr. 229-40. Before abruptly leaving the hearing room, CPG's representative stated:

We cannot in good conscience participate in such a sham. Therefore, on behalf of the members of Campaign for a Prosperous Georgia and the citizens of Georgia and South Carolina, we refuse to contribute further to this cruel hoax and will not participate in this dog and pony show you call the licensing hearings.

Tr. 240 (emphasis added). CPG now argues that it only refused to participate in the proceedings before the Licensing Board, and that it should have the right to appeal

³ Contrary to CPG's suggestion, the issue here is not whether this is the proper time to appeal certain Licensing Board rulings. Nor is it whether one intervenor can pursue issues on appeal that were originally raised by another intervenor. Rather, the question is whether CPG still has any party status at all in this licensing hearing.

at least those issues decided by the Board prior to CPG's walkout. But the other participants, including intervenor GANE and the Licensing Board, clearly understood -- and the record shows -- that CPG, in fact, withdrew completely and for good. Tr. 246-47; LBP-86-28, 24 NRC at ___ (slip opinion at 5). Indeed, CPG made no effort to preserve any right to appeal or to participate in any way in the future. In the circumstances, through its own words and inaction, CPG has forfeited its right to participate further in this proceeding. See generally Midland, 16 NRC at 905-08.

Applicants' motion is granted and CPG's appeal is dismissed.⁴

It is so ORDERED.

FOR THE APPEAL BOARD


C. Jean Shoemaker
Secretary to the
Appeal Board

Mr. Edles did not participate in this Memorandum and Order.

⁴ Accordingly, CPG's brief on the merits (supra note 2) is rejected. We note in passing, however, that a large portion of CPG's brief is virtually identical to GANE's brief on the merits of its appeal.