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September 18, 1986
USNRC

'86 SEP 22 P2:22

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

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

APPLICANTS' MOTION TO STRIKE NOTICE OF
APPEAL OF CAMPAIGN FOR A
PROSPEROUS GEORGIA

Georgia Power Company et al. ("Applicants") hereby move the Atomic Safety and Licensing Appeal Board to strike the Notice of Appeal filed in this proceeding on September 8 by Campaign for a Prosperous Georgia (CPG). CPG is no longer a party to this proceeding and has no right to appeal.

At the advent of this licensing proceeding, the Atomic Safety and Licensing Board admitted two intervenors: Georgians Against Nuclear Energy (GANE) and CPG. LBP-84-35, 20 N.R.C. 887, 916 (1984). Since GANE's and CPG's admitted contentions were identical (see id.), the Licensing Board, with the concurrence of

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the intervenors, consolidated CPG and GANE. Letter from L. Fowler, Counsel for CPG/GANE, to the ASLB (Sept. 27, 1984); ASLB Memorandum and Order (Nov. 5, 1984).

Following discovery and summary disposition, the Licensing Board scheduled hearings on the remaining contentions. At the outset of these hearings, CPG's Executive Director (Mr. Tim Johnson) castigated the Licensing Board and hearing process. Tr. 229-240. Describing the proceeding as a "sham", a "hoax," and a "dog and pony show," Mr. Johnson announced that CPG would not participate further in the proceeding. Tr. 240. Upon Applicants' request for clarification, Intervenor confirmed that CPG had withdrawn from the proceeding, and the Licensing Board ruled that CPG will no longer be considered as a party to the proceeding. Tr. 246-47. See also ASLB Partial Initial Decision (Aug. 27, 1986) at 5. GANE elected to remain a party and participated in the hearing.^{1/} Tr. 241-44. CPG has not participated in the proceeding since its withdrawal.

It is beyond cavil that a non-party may not appeal a Licensing Board decision. Duke Power Co. (Perkins Nuclear Station, Units 1, 2 and 3), ALAB-433, 6 N.R.C. 469 (1977); Consolidated

^{1/} GANE has filed a separate appeal in this proceeding. See Notice of Appeal and Amendment to Service List (Sept. 8, 1986).

Edison Co. of New York, Inc. (Indian Point Station, Unit No. 2), ALAB-369, 5 N.R.C. 129 (1977); Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-294, 2 N.R.C. 663, 664 (1975); Public Service Electric & Gas Co. (Hope Creek Generating station, Units 1 and 2), ALAB-251, 8 A.E.C. 993, 994 (1974), Tennessee Valley Authority (Bellefonte Nuclear Plant, Units 1 and 2), ALAB-237, 8 A.E.C. 654 (1974). Under the Commission's Rules of Practice, only a party may take an appeal. 10 C.F.R. § 2.762.

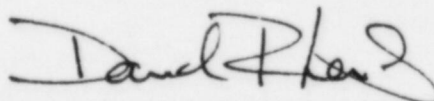
This principle is not only embodied in NRC regulation and precedent, but is also a fundamental precept of administrative law. To perfect a right of review requires not merely initiating and participating in an administrative proceeding, but pursuing the process to its appropriate conclusion. Coy v. Folsom, 228 F.2d 276, 280 (3d Cir. 1955), citing Aircraft & Diesel Equipment Corp. v. Hirsh, 331 U.S. 752, 767 (1947). It is not enough that a party takes initial steps and then abandons the process. Jordan v. U.S., 522 F.2d 1128, 1132 (8th Cir. 1975).

CPG's voluntary withdrawal from this proceeding terminated its party status and right to appellate review. Accordingly, CPG's Notice of Appeal is an improper submittal of a non-party and should be stricken. See Tennessee Valley Authority

(Hartsville Nuclear Plant, Units 1A, 2A, 1B and 2B), ALAB-409, 5
N.R.C. 1391, 1396-97 (1977). The Appeal Board should entertain
only the separate appeal filed by GANE.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE



Bruce W. Churchill, P.C.
David R. Lewis

Counsel for Applicants

Dated: September 18, 1986

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NUCLEAR REGULATORY COMMISSION

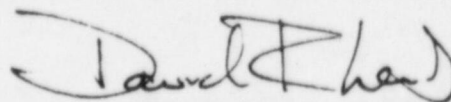
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CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicants' Motion to Strike Notice of Appeal of Campaign for a Prosperous Georgia," dated September 18, 1986, were served upon those persons on the attached Service List by deposit in the United States mail, postage prepaid, this 18th day of September, 1986.



David R. Lewis

Dated: September 18, 1986

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Appeal Board

In the Matter of)
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GEORGIA POWER COMPANY, et al.) Docket No. 50-424
) 50-425
(Vogtle Electric Generating Plant,)
Units 1 and 2))

SERVICE LIST

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