

DOCKETED  
January 4, 1994

UNITED STATES OF AMERICA '94 JAN -5 10:52  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of \*  
\*  
GEORGIA POWER COMPANY, \* Docket Nos. 50-424-OLA-3  
et al. \* 50-425-OLA-3  
\*  
(Vogtle Electric \* Re: License Amendment  
Generating Plant, \* (Transfer to Southern  
Units 1 and 2) \* Nuclear)  
\*  
\* ASLBP No. 93-671-01-OLA-3

GEORGIA POWER COMPANY'S  
MOTION TO COMPEL NRC STAFF  
RESPONSE TO CERTAIN INTERROGATORIES

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I. INTRODUCTION.

Pursuant to 10 C.F.R. § 2.720(h)(2)(ii), Georgia Power Company ("GPC") hereby moves the Atomic Safety and Licensing Board for an order compelling the NRC Staff to respond to certain GPC interrogatories. Because those interrogatories requested information that goes to the very heart of the issue in this proceeding, a response to those interrogatories is necessary both for hearing preparation and for a proper decision in this proceeding. Furthermore, this information is not available from another source.

## II. Background.

On October 8, 1993, with NRC Staff's agreement, GPC served Georgia Power Company's First Set of Interrogatories and Second Request for Production of Documents to the NRC Staff which included the following interrogatories:

9. With respect to the matters included in Phase I of this proceeding pursuant to the Licensing Board's September 24, 1993 Order (LBP-93-21), state in detail the NRC Staff's current opinion, and the bases therefor, regarding the character, competence, integrity, candor, truthfulness and willingness to abide by regulatory requirements of each of the following current or former GPC and/or Southern Nuclear employees:
  - a. Mr. George Bockhold, Jr.
  - b. Mr. W. George Hairston, III
  - c. Mr. C. Kenneth McCoy
  - d. Mr. William B. Shipman
  - e. Mr. N. Jackson Stringfellow
  - f. Mr. John G. Aufdenkampe
  - g. Mr. Allen L. Mosbaugh

Identify all documents which relate in any way to such NRC Staff opinions.

10. Identify by name the interviewees referred to in NRC Staff Supplemental Response to Intervenor's First Set of Interrogatories and Request for Production of Documents, dated September 15, 1993, at 15-17, and identify the general subject matter of the interview.

On December 20, 1993, the NRC Staff responded to GPC's October 8, 1993 discovery request. The Staff objected to interrogatory no. 9 on the following basis:

[t]he NRC as a collective whole does not in the normal course of business formulate an opinion as to the integrity of named persons whose work is subject to the Atomic Energy Act. Further, the issue here is not the character of particular individuals, but whether the proposed transferee organization has the necessary attributes to receive a license.

The Staff also objected to interrogatory no. 10 on the basis that "it calls for premature disclosure of information gathered by the Office of Investigations during the course of an investigation."

### III. Discussion.

#### A. Interrogatory No. 9.

GPC's interrogatory no. 9 requests information concerning the character, competence, integrity, candor, truthfulness and willingness to abide by regulatory requirements (hereinafter collectively referred to as "character") of seven individuals, all of whom were involved to varying extents in the events which are at issue in this proceeding. Four of them (Messrs. Hairston, McCoy, Shipman and Stringfellow) currently hold positions within Southern Nuclear which, as the proposed exclusive operating licensee of Plant Vogtle, will be responsible for all licensed activities within the jurisdiction of the NRC.<sup>1</sup> The NRC Staff's view of the facts pertaining to the specific allegations to be litigated in Phase I of this proceeding as they relate to the character of these individuals will be an important consideration for the Board in reaching a decision in this case.

The other three individuals (Messrs. Bockhold, Aufdenkampe and Mosbaugh) held managerial positions within GPC in 1990 and

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<sup>1</sup> Of course, three of those individuals (Messrs. Hairston, McCoy and Shipman) are also current employees of GPC and, as such, presently exercise authority over licensed activities at Plant Vogtle.

were involved with the issuance of LER 90-006 to the NRC on April 19, 1990, concerning the condition of the Plant Vogtle diesel generators following the March 20, 1990 site area emergency. Although these individuals no longer hold positions within the GPC or Southern Nuclear Plant Vogtle organizations, the NRC's view of the involvement of these individuals in the issuance of LER 90-006 bears directly on the veracity of these individuals and on the accuracy of Mr. Mosbaugh's allegation concerning LER 90-006.

The Staff has based its objection to interrogatory no. 9 simply on the assertions that the NRC "as a collective whole does not in the normal course of business formulate an opinion as to the integrity of named persons..." and that "the issue here is not the character of particular individuals, but whether the proposed transferee organization has the necessary attributes to receive a license." The Staff's objection, however, fails to establish an appropriate ground for its refusal to answer interrogatory no. 9.

The Staff is wrong with respect to what is the issue in this proceeding. The matters to be litigated in Phase I of this proceeding do indeed concern the character of particular individuals as reflected in the specific events that are at issue in this proceeding, pursuant to the Board's September 24, 1993 order (LBP-93-21).<sup>2</sup> These events involve a limited number of

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<sup>2</sup> LBP-93-21 held that only those matters that were "discussed" in Intervenor's Amended Petition were included in Phase I of this proceeding. Those include specific events in

individuals. Any determination of character of the proposed transferee with respect to those specific events must, of necessity, be based on the actions of the individuals involved in those events.

The Staff appears to be confusing its evaluation of the license application pursuant to 10 C.F.R. § 50.80(c) (to determine whether the proposed transferee is qualified) with the review of the specific events that are at issue in Phase I of this proceeding. GPC's interrogatory no. 9 simply requests the Staff to state, with respect to the matters included in Phase I of this proceeding, its view of particular individuals' involvement in those events. The Staff should have no difficulty expressing its view in these regards since it has previously performed an analysis of the illegal license transfer allegation<sup>3</sup> and it either has reached, or shortly will reach, a conclusion on the merits of the allegation concerning GPC statements in LER 90-006, dated April 19, 1990.<sup>4</sup> There is no good reason why the

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which it is alleged that certain then GPC personnel were involved in willful violations of NRC regulations.

<sup>3</sup> On April 23, 1990, the Staff issued a Partial Director's Decision which included an analysis of the alleged illegal transfer of licenses. Although the Commission vacated that decision and remanded it to the Staff (see CLI 93-15, 38 N.R.C. 1), the Commission's decision "intimate[d] no view on the soundness of the Staff's analysis of the issues in DD-93-8." 38 N.R.C. at 3.

<sup>4</sup> The Staff's Office of Investigations ("OI") has conducted an extensive review of the allegation concerning LER 90-006. Presently, it is GPC's understanding that OI's investigation is complete and the OI investigative report has been forwarded to the Office of Enforcement for a decision on whether enforcement action is warranted. According to prior Staff filings, the NRC

Staff cannot or will not express its views of the facts pertaining to these subjects.

Further, contrary to the Staff's assertion, the Staff frequently addresses the character of particular individuals, as reflected by particular actions or events, in the "normal course of business." In any case where serious allegations of misconduct are raised, the Staff makes a determination on the character (e.g., culpability) of the particular individuals whose actions are in question. The Staff's view of the actions of particular individuals who were involved in the events which are to be litigated in Phase I of this proceeding are necessary to a proper decision in the proceeding and are not available from another source.

B. Interrogatory No. 10.

GPC's interrogatory no. 10 requested the Staff to identify the names of individuals who have been interviewed by OI, and the general subject matter of the interview, with respect to particular interviews which the Staff had only identified by date and the employer of the interviewee. The Staff has objected to this interrogatory on the ground that "it calls for premature disclosure of information gathered by the Office of Investigations during the course of an investigation."

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Staff's decision is expected, barring unforeseen circumstances, to be forwarded to the Commission by February 18, 1994.

It is GPC's position that, when questions were raised regarding the accuracy of diesel start data reported to the NRC in LER 90-006, GPC employees promptly communicated with the NRC Staff to ensure that the NRC was aware of the facts as GPC understood them at the time. While there is some contemporaneous reference to these communications in Mr. Mosbaugh's tapes, additional information which the NRC may possess concerning these communications is critical to reaching a proper decision in this proceeding. In response to GPC's interrogatories to the NRC Staff, however, the recollections expressed by NRC personnel is general at best. Because the OI interviews of NRC personnel date back to August of 1991, the recorded recollections of those individuals may add important details to present day general recollections.

The purpose of GPC's interrogatory no. 10 was to more fully identify OI interviews of present or former NRC employees in order to allow GPC to determine whether historic statements of key witnesses exist. GPC has not yet sought production of the interview transcripts and cannot understand how the mere disclosure of the possible existence of material statements is protected.

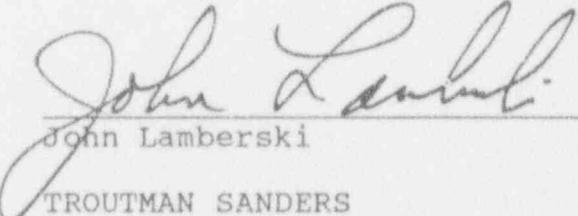
The NRC Staff's position that it is premature to release the names of the interviewees and the general subject matter of the interviews is surprising given the very limited nature of GPC's interrogatory as well as the extensive briefings concerning, and the resolution of, prior GPC requests for investigative materials

in this proceeding. The Staff's position flies in the face of the Board's November 17, 1993 ruling (LBP-93-22). Moreover, releasing the identity of OI interviewees and the general subject matter of the interview cannot have any effect on the investigation or the enforcement action.

IV. Conclusion.

For the reasons stated above, GPC moves the Licensing Board for an order compelling the NRC Staff to respond to interrogatory nos. 9 and 10 of Georgia Power Company's First Set of Interrogatories and Second Request for Production of Documents to the NRC Staff, dated October 8, 1993.

Dated: January 4, 1994.

  
John Lamberski

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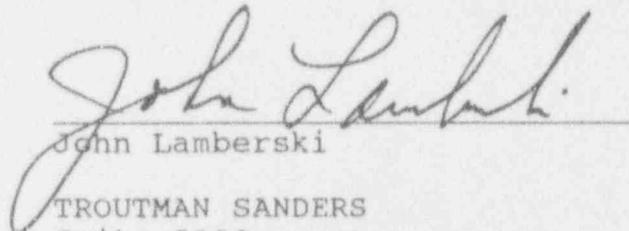
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CERTIFICATE OF SERVICE

This is to certify that copies of the within and fore-  
going "Georgia Power Company's Motion to Compel NRC Staff  
Response to Certain Interrogatories" and the cover letter to  
the Atomic Safety and Licensing Board from John Lamberski  
were served on all those listed on the attached service list  
by depositing same with an overnight express mail delivery  
service.

This is the 4th day of January, 1994.

  
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