

ORIGINAL

OFFICIAL TRANSCRIPT OF PROCEEDINGS

Agency: Nuclear Regulatory Commission
Atomic Safety & Licensing Board

Title: Georgia Power Company, et al.
(Vogtle Electric Generating
Plant, Units 1 & 2)

Docket No. 50-424-OLA-3 and 50-425-OLA-3

LOCATION: Bethesda, Maryland

DATE: Thursday, January 27, 1994

PAGES: 152 - 239

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1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION

3
4 BEFORE THE ATOMIC SAFETY AND LICENSING BOARD
5

6 -----X

7 In the Matter of: Docket Nos. 50-424-OLA-3
8 GEORGIA POWER COMPANY, et al. : 50-425-OLA-3
9 (Vogtle Electric Generating :
10 Plant, Units 1 and 2) :

11 -----X

12 5th Floor Hearing Room

13 4350 East West Highway

14 Bethesda, Maryland 20814

15 Thursday, January 27, 1994
16

17 The above-entitled prehearing conference commenced
18 at 2:30 p.m.
19

20 BEFORE:

21 PETER B. BLOCH, Chairman

22 THOMAS D. MURPHY

23 JAMES H. CARPENTER

24 Administrative Judges
25

1 APPEARANCES:

2

3 On behalf of the Nuclear Regulatory Commission Staff:

4 CHARLES A. BARTH, ESQ.

5 EDWIN J. REIS, ESQ.

6 MITZI A. YOUNG, ESQ.

7 Office of General Counsel

8 United States Nuclear Regulatory Commission

9 Washington, D.C. 20555

10

11 On behalf of Georgia Power Company:

12 JOHN LAMBERSKI, ESQ.

13 Troutman Sanders

14 600 Peachtree Street, N.E.

15 Suite 5200

16 Atlanta, Georgia 30308-2216

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18 ERNEST L. BLAKE, JR., ESQ.

19 DAVID LEWIS, ESQ.

20 Shaw, Pittman, Potts & Trowbridge

21 2300 N Street, N.W.

22 Washington, D.C. 20037

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25

1 APPEARANCES [continued]:

2

3 On behalf of Intervenor:

4 MICHAEL D. KOHN, ESQ.

5 Kohn, Kohn, & Colapinto

6 517 Florida Avenue, N.W.

7 Washington, D.C. 20001

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1 P R O C E E D I N G S

2 [2:30 p.m.]

3 JUDGE BLOCH: Good afternoon, and welcome to an
4 informal prehearing conference in the matter of Georgia
5 Power Company, Vogtle Electric Generating Plant, Units 1 and
6 2, docket numbers 50-424-OLA-3 and 50-425-OLA-3.

7 My name is Peter Bloch, and with me today are my
8 fellow judges, Jim Carpenter and Tom Murphy. I think we all
9 know one another at the table, and the reporter has obtained
10 the names of each person attending, so they will be
11 reflected in the transcript.

12 We are all representing different positions here
13 today, I recognize that. But I also would like to stress
14 that what this proceeding is called on to do, is to balance
15 the concerns of efficiency and fairness, and we are asked by
16 the Commission to manage this case in a way that will
17 protect the legitimate interests of all the parties. I
18 think that's going to require that we be willing to state
19 what our true interests are, and listen to what the
20 interests of the other parties are. And if we are creative
21 in this way, we may be able to devise procedures that may
22 protect the interests of all of the parties. At least
23 that's what I like to urge that we attempt to do today. And
24 in doing that, I propose that everyone will have a chance to
25 present their positions, if they have them, but that we

1 proceed in a more informal way than we usually would in a
2 prehearing conference, by allowing anyone who would like to,
3 to offer suggestions about how we can accommodate interests
4 at this table.

5 I would comment that the schedule that has been
6 filed by the licensee, which is contained on page 4 of its
7 filing of January 24th, has the advantage of identifying
8 some of the specific aspects of the problem that we are
9 talking about, and it would allow to us make some progress
10 towards the goal of efficiently concluding this case, given
11 the fact that there is a simultaneous enforcement proceeding
12 going on, where the Staff is unwilling to release some of
13 the materials for enforcement reasons.

14 That's it. I'd just like to ask anyone who would
15 like, to comment on how we can make some progress in
16 scheduling the rest of the case and protecting the
17 legitimate interests of parties.

18 MR. BARTH: Your Honor, as pay preliminary
19 matter -- I am Charles Barth, I don't believe that I have a
20 copy of the January 4.

21 MS. YOUNG: Yes, if you have an extra.

22 MR. BLAKE: 24.

23 JUDGE BLOCH: January 24.

24 MR. BLAKE: It was our reaction to the Board's
25 order, the basic position.

1 JUDGE BLOCH: Did you not get that?

2 MS. YOUNG: Not yet.

3 JUDGE BLOCH: Well, it seems to me, it's important
4 enough that if the Staff hasn't studied it, we should take a
5 recess so the Staff can study it. Do you have an extra
6 copy? We'll take a brief recess.

7 [Recess.]

8 JUDGE BLOCH: Staff has announced that it has read
9 the document enough to be able to proceed at this point.
10 So, whoever would like to make the first comment.

11 I.R. KOHN: I'm more than happy to begin.

12 The intervenor was very troubled by the NRC's
13 response. We've looked -- we are unable to do anything
14 until we see the OI report and look at the interviews. Its
15 going to set forth the scope of discovery we are going to
16 need to do. It is a high probability that based on the
17 content of the report and the quality of the report, we
18 would be willing to proceed directly to a hearing in a very
19 short period of time. We believe the NRC's request not to
20 release the report is contrary to the regulations, and is
21 against -- in particular, I should note that under 10
22 CFR -- if I could find the right regulation, it seems to
23 me.

24 JUDGE BLOCH: Take your time. If you can find the
25 right one we'll be very happy.

1 MR. KOHN: 2.744 A -- excuse me, B. It speaks of
2 the executive director for operations objecting to producing
3 a requested record or document. I should note that Staff's
4 moving papers do not include an affidavit from executive
5 director of operations, and therefore, I believe, their
6 filing is not in accordance with the rules. I should also
7 note that 10 CFR part 2, Appendix A, Roman numeral 4 D, as a
8 general policy state -- which states that Staff documents
9 that are relevant to a proceeding will be publicly available
10 as a matter of course, unless there is a compelling
11 justification for the nondisclosure. And it goes on to
12 state that discovery has legitimate means of obtaining
13 information will not be inhibited.

14 We find our self in the position where we are
15 unable to go forward without the release of the report, and
16 that we feel that the justification made by NRC Staff for
17 the reason not to release the report is legally insufficient
18 and --

19 JUDGE BLOCH: So you weren't persuaded.

20 MR. KOHN: No, I was not persuaded.

21 I can elaborate further on our reasons why we
22 think it is not sufficient. This certainly is completely
23 prejudicial to the intervenor. We cannot proceed and
24 logically figure out where we are going in this
25 proceeding --

1 JUDGE BLOCH: Mr. Kohn, do you basically support
2 the proposed schedule that GPC has submitted, or is there
3 something that you would like to say about that?

4 MR. KOHN: When we see the OI report we are going
5 to see exactly how much time we are going to need to put
6 together our case. We do not have the resources GPC does,
7 to go through transcripts and voluminous documents. And to
8 that he effect, the report will be a significant road map to
9 us as to where the documents are, what is important. And it
10 would certainly point to us what documents -- I suspect that
11 all of the significant documents in this proceeding will be
12 somewhere referenced or contained in attachments to the
13 report, and will probably be a road map for stipulations as
14 to the documents as well.

15 JUDGE BLOCH: So you want the report now, and I
16 guess I don't see the report in the schedule at all, is that
17 right?

18 MR. BLAKE: No, we have not requested it. We
19 haven't joined in any argument to try to get it in
20 particular; no.

21 JUDGE CARPENTER: If I could ask, Mr. Kohn.
22 Considering the broad language of the contention, how much
23 of this case do you see is not covered by this report? How
24 much else is there to work on, is what I'm asking.

25 MR. KOHN: The --

1 JUDGE CARPENTER: We are focusing on the report
2 but let's keep our eye on the whole ball game. How much
3 else is there?

4 JUDGE BLOCH: For example, your other contention
5 about the alienation of control.

6 MR. KOHN: Yes, that contention remains, and that
7 would require depositions and discovery. We have not really
8 engaged in any discovery on that contention to date.

9 There was a preliminary -- there were some
10 statements contained in the Department of Labor record, but
11 the Department of Labor record, under the laws of that
12 proceeding, does not require the Complainant to demonstrate
13 that his allegation is accurate or true, but that he raised
14 the allegation. And therefore we never gave fact for
15 determination or investigation in that proceeding to set
16 forth facts that determine that the allegation was true.
17 And so, we would have to basically start from ground zero
18 and build our way up.

19 JUDGE BLOCH: Since you haven't mentioned that, I
20 assume that what you're suggesting is that you want to try
21 it contingently, that you would rather see what happens in
22 the OI report before you decide whether you're going to try
23 that at all.

24 MR. KOHN: Yes.

25 JUDGE CARPENTER: It can't go concurrently. You

1 want one to go in front of the other.

2 JUDGE BLOCH: I take it Georgia Power would rather
3 get everything out of the way as soon as it can, rather than
4 waiting to see what happens on the other.

5 MR. BLAKE: Well, in addition to wanting to get
6 everything out of the way as soon as we can, we'd like to do
7 something while we wait for other things, which we might all
8 agree with and do some point later. We'd like to take
9 advantage of the time now. That's our basic position.

10 JUDGE BLOCH: And, you might want to say something
11 about why you haven't requested the OI report. Would you
12 prefer that it not be released before the Staff's decided?

13 MR. BLAKE: No. No, we haven't taken a position
14 one way or the other. But we have some -- some -- simply,
15 we thought we'd have harder sledding with the Staff trying
16 to get their OI report before they took their enforcement
17 action. That seems to be the heart of the documentation
18 that the Staff will have to rely on for enforcement action.
19 So we haven't tried. We've tried other documents where we
20 thought our position was stronger, and their argument
21 weaker, in order to try to get other things that we could
22 work on in the interim.

23 JUDGE BLOCH: Judge Carpenter suggests that part
24 of the Staff's argument about the OI report has to do with
25 public reaction. And my chemist friend suggested that we

1 could release it under protective order, in which case we
2 wouldn't have to worry about public reaction. Would that
3 fit your needs? If you got the OI report under protective
4 order, both parties.

5 MR. BLAKE: That would, certainly, more than fit
6 ours. We think there is a lot do even without it.

7 JUDGE BLOCH: So you don't need it fast.

8 MR. BLAKE: No.

9 JUDGE BLOCH: And you'd also not like to step on
10 his toes unnecessarily.

11 MR. BLAKE: Well, we some other that we think
12 we --

13 MR. LAMBERSKI: If I might add to that, Judge
14 Bloch. We think that we have virtually gotten all the facts
15 that OI has relied on to prepare its report at this point
16 too. And frankly, at this time, we are wanting to discuss
17 the facts with the other parties, at least in some
18 preliminary way. Like, for example, trying to reach
19 agreement upon what has been said, or is said on Mr.
20 Mosbaugh's tapes using the NRC's transcripts as a starting
21 point, and listening to the original tapes at the same time
22 perhaps --

23 JUDGE BLOCH: I heard Staff's arguments about
24 agreeing about the contents of tapes, and it truck me that
25 it would actually be more likely to be a trustworthy

1 agreement on the tapes, that if they agreed what they said
2 and what was hard to hear, before they knew what their
3 position was.

4 MR. BLAKE: Yes.

5 JUDGE BLOCH: So I was interested in the
6 possibility that that could go forward.

7 MR. BLAKE: We have requested one other important
8 set of documents, which the Staff as has relied on, and
9 haven't yet requested it. But its in our schedule and
10 that's the February 18th release of their interviews of
11 their own people -- reports, I guess, they have of their own
12 people, and transcripts of the GPC people, that underlay the
13 report. Again, that was factual data.

14 JUDGE BLOCH: Interviews of NRC's people and they
15 have transcripts of Georgia Power.

16 MR. BLAKE: Yes. Apparently they just did notes
17 of the interviews of NRC people, but appears to have
18 transcripts of GPC. That's what the Staff just gave us a
19 list of. You saw it in the response to the motion to
20 compel.

21 So we'd want those because that is underlying
22 factual information, the kind that Michael was talking
23 about. And that, we would want as well. We don't care as
24 much about what their opinions are in the OI report, we are
25 going to come up with our own opinions.

1 JUDGE BLOCH: Would you take the OI report under
2 protective order.

3 MR. KOHN: I'll take the OI report any way I can.
4 But, if it's given under protective order, we would request
5 the right to go to the Commission. And we believe that
6 first, NRC Staff is arguing that it would somehow affect the
7 Commission's deliberative process by publicly releasing the
8 OI report.

9 First, this is democracy, robust and open
10 discussion is part of our process of government. Second, I
11 don't understand how NRC Staff can argue what will and will
12 not affect the Commission. The Commission has not come and
13 said that they would object to these here in court. I don't
14 think they're in a position to argue on behalf of the
15 Commissioners. Second, the NRC report is a factual
16 document, the contents of which will not change, nor the
17 conclusions. And the NRC Commission will be reviewing that
18 document, whether they -- and public release of that
19 information is not going to change the content of that
20 document, nor should it affect NRC Staff's communication
21 with the Commission.

22 Second, I --

23 JUDGE CARPENTER: Mr. Kohn, I'd just like to pause
24 right there. I agree with what you just said. I had some
25 trouble with the logic, but one of the ways I got this gray

1 hair was being quoted out of context in newspapers. And
2 Staff doesn't emphasize that. But to put out a document,
3 which no conclusion has been reached and have the press
4 pulling pieces of it out and waving it in the breeze,
5 think it does anybody any good. And I think that's
6 just a matter of common experience and common sense,
7 wouldn't you agree?

8 MR. KOHN: Well, being quoted out of context,
9 which has happened to probably most of the people at the
10 table here, is not something that any of us would relish,
11 but it's -- I don't think, a legal argument to prohibit them
12 use of a document. If that was a sound enough argument, I
13 suspect that no government -- no controversial government
14 document would be released.

15 JUDGE BLOCH: There would never be a state of the
16 union address. Because it could also be quoted out of
17 context.

18 MR. KOHN: And I think if you look through
19 everything, the investigation is over. Staff is not
20 contesting that there is further investigation to be done.
21 The argument Staff raised is one, it has not been able to
22 take a position, that has -- does not affect our,
23 intervenor's need for the document, nor our ability to take
24 a position. And it also states, that the Commission has
25 previously indicated that it is looking to see what develops

1 before this Atomic Safety Licensing Board. And we have
2 every reason to believe that the Commission could just as
3 easily postpone taking enforcement action until this ASLB is
4 concluded. And therefore this further delay is completely
5 unwarranted on that respect. I also note that --

6 JUDGE BLOCH: Stop there. I wonder if the
7 Staff -- whether they would comment on whether that's still
8 a possible outcome of what's going on in the Staff. That
9 they might actually wind up having delayed the proceeding
10 and then deciding that they would like to wait to see what
11 we do before they decide whether they'll have an enforcement
12 action. I just comment now, but I would point out I would
13 like a response to that.

14 MR. KOHN: Another aspect that's very troubling to
15 intervenor is a perception of bias on the part of NRC
16 Staff. It states that it does not want the OI report
17 released, in fact because of considerations of reputation of
18 persons and corporations alleged to be involved in wrong
19 doing. There are other individuals who have been accused of
20 wrong doing, including Mr. Mosbaugh. There has been public
21 statements made by Georgia Power Company, and filings made
22 with the NRC, indicating that Mr. Mosbaugh was somehow
23 implicated and responsible for submitting misinformation to
24 NRC.

25 In fact, before the content of the tapes were made

1 when we filed the 2.206 response, Georgia Power made
2 statements therein, we believe, false, malicious and
3 constituting material, false statements. I don't see NRC
4 Staff saying that it would be -- it was an improper bias to
5 release their 2.206 findings, until the Commission
6 considered them. They could be released publicly. I don't
7 see -- I find it contradictory where Staff will release
8 certain findings, but not other findings, and --

9 MR. BARTH: May I ask a clarifying question, Mr.
10 Kohn? You say that Georgia Power made statements negative
11 about Mr. Mosbaugh; were those to the NRC or to the press?

12 MR. KOHN: They were to the NRC and they were to
13 the press.

14 MR. BARTH: Were they our investigators, is that
15 part of the OI report?

16 MR. KOHN: I don't -- I don't know.

17 MR. BARTH: Because if it is, how do you know it;
18 and if it's not, how do you know it's public?

19 MR. KOHN: The false statements were made in
20 response of the 2.206 petition, that, I believe, should be
21 part of the OI report. And furthermore -- the fact is not
22 who's right, who's wrong, who made public statements, who
23 hasn't made public statements. The simple point I'm raising
24 is that if NRC Staff takes a position that a legitimate
25 ground for not releasing a report is a bias on the part of a

1 corporation or other persons, that is outside the scope and
2 jurisdiction of the NRC. The NRC is not a public relations
3 firm, and I don't think it can make determinations based on
4 potential harm to reputation of a particular individual or
5 individuals.

6 JUDGE BLOCH: More important than that, if I
7 understand correctly, Georgia Power isn't interested in
8 asserting that themselves. They said they would be willing
9 to have that report released.

10 Am I wrong?

11 MR. BLAKE: No, that's correct.

12 JUDGE BLOCH: So I'm not sure why the Staff would
13 be protecting Georgia Power from that.

14 MR. BARTH: I don't -- let me respond because this
15 is getting serious. I don't think the Staff is protecting
16 Georgia Power, Your Honor. These allegations raise very
17 serious questions whether or not Georgia Power and Southern
18 Nuclear can continue to operate under Atomic Energy Act, and
19 whether its very personnel of these corporations may
20 continue to perform functions subject to the Atomic Energy
21 Act, and the Agency's regulatory jurisdiction. We are, very
22 firmly as Dr. Carpenter suggested, opposed to any release of
23 the report precipitously, in which selected portions might
24 be taken out of context to damage these people's
25 reputations.

1 You and I are lawyers, I certainly would not want
2 some precipitous investigation to slander you or myself in
3 our professional capacities until we have had full
4 opportunities to reply this. These are serious matters.

5 JUDGE BLOCH: What is it that makes it precipitous
6 as opposed to just releases? What is the difference between
7 a release and a precipitous release?

8 MR. BARTH: The investigative report by the Office
9 of Investigations is an office report, it's not a Staff
10 position.

11 JUDGE BLOCH: It's finished though, isn't it?

12 MR. BARTH: It is a document finished by the
13 Office of Investigations.

14 JUDGE BLOCH: And sooner or later it will be
15 released, is that right?

16 MR. BARTH: Sooner or later it will be released,
17 but it may not reflect Staff position.

18 JUDGE BLOCH: That's correct. And now, is it
19 somehow going to damage the reputation of the NRC to have
20 the press able to digest the document that you haven't
21 decided about finally? Is that the problem?

22 MR. BARTH: It may well be couched in such terms,
23 that it is one-sided.

24 JUDGE BLOCH: That could be. It could even be
25 wrong.

1 MR. BARTH: That is also correct. Without the
2 contrary view being put forward, I would not want the public
3 to say here is an NRC document which that says that John Doe
4 is a villain. When, in fact, Mr. Taylor, who is the
5 Executive Director of Operations, and Mr. Lieberman who is
6 in charge of Office of Enforcement and general counsel, have
7 come to a conclusion that perhaps that is not quite as it
8 was stated, but the other side was never given.

9 JUDGE BLOCH: But to this case -- first of all, it
10 could be saying that he's not say villain. I haven't seen
11 it, and you're not disclosing its release or its contents.
12 Or it could be saying the other side is a villain. But
13 ordinarily we might be worried about unfairly slandering
14 someone, but we've just heard a public representation that
15 they just -- the company at least, I guess we can't speak
16 for all the individuals, can we?

17 MR. BLAKE: No. Although I think I can speak for
18 individuals who are officers in the Company.

19 JUDGE BLOCH: Basically the officers and the
20 company aren't concerned about being slandered. So the only
21 thing you're doing is protecting the NRC from having to hear
22 from the public about something they haven't decided yet, is
23 that right? Is that the only thing we are doing, protecting
24 the NRC from public pressure about an undecided matter?

25 MR. BARTH: Not quite, Your Honor. As a lawyer I

1 feel I have an obligation not to turn loose a piece of paper
2 which could be improperly used.

3 JUDGE BLOCH: Any paper can be improperly used, no
4 matter how carefully you've considered it.

5 MR. BARTH: That is only one part of the
6 consideration. And the other part of the consideration has
7 not been finished. The Staff's evaluation of the
8 investigation report has not been concluded, Your Honor.

9 JUDGE BLOCH: So you would be more comfortable --

10 MR. BARTH: That's part and parcel of the entire
11 matter.

12 JUDGE BLOCH: So you want the two documents to be
13 released at the same time. But I'm trying to think of what
14 is the evil of releasing them sequentially, having released
15 the OI report, which is itself, a finished document. And
16 then later releasing the Staff findings, especially in a
17 situation where the people whose representations might be
18 damaged have no objection?

19 MR. BARTH: I think that the Staff wants to give
20 its full consideration of this without the glare of the
21 publicity of having selected portions of the OI report taken
22 out of context and read in the newspapers the next day.

23 JUDGE BLOCH: Can I ask whether you ever
24 considered the possibility that the people who might be hurt
25 have no objection.

1 MR. LAMBERSKI: Your Honor, let me say --

2 MR. BARTH: Your Honor, I have an obligation over
3 and above what Georgia Power may care about. I have an
4 obligation not to let my Agency to be used as a vehicle to
5 damage corporations or persons' reputations, regardless of
6 whether these people may stand in front of you and say I
7 waive my rights.

8 JUDGE BLOCH: We have a governmental obligation to
9 protect people who waived the right to be protected.

10 MS. YOUNG: I'm not sure that this is quite what
11 the Staff is trying to represent to you. I think we are
12 more concerned with the predecisional nature of the
13 information in the OI report. And giving the Staff adequate
14 time due to the seriousness of the allegations raised, to
15 consider and weigh all the evidence collected by OI and the
16 other information that we might refer to; be it through
17 discovery documents or otherwise, have adequate time to
18 consider what position you want to take in this proceeding
19 and also what enforcement action is appropriate. And I
20 think there are a lot of cases that argue that a lot of
21 government decision-making should be done every step of the
22 way in the fish bowl. And having documents released
23 prematurely, causes us different problems and causes a
24 diversion of resources that might detract from our efforts
25 to take and fulfill our regulatory responsibilities. That's

1 the primary concern.

2 JUDGE BLOCH: I have been trying to empathize with
3 that position, the difficulty is, that if I place myself in
4 the shoes of the Commission, I can't understand how I would
5 be affected in either direction by anything the press might
6 say once the report is released.

7 MS. YOUNG: It's just -- well, I guess it's not so
8 much concern about the press. Traditionally the Agency has
9 taken enforcement action and then released the document, and
10 relied on them for the enforcement action. And there is
11 concern on the part of the Staff to try to retain that
12 process. We are not trying to do anything vastly different
13 in this proceeding, unless -- you know, there are
14 considerations which warranted this, so I'm traditionally --

15 JUDGE BLOCH: What I'm trying to do is to question
16 it closely enough to see if the tradition is necessary for
17 any legitimate purpose of the Agency.

18 MS. YOUNG: And I think part of what the
19 considerations in that statement of policy for
20 investigations talked about, you know, usually the need to
21 protect information ends once the enforcement action was
22 taken.

23 JUDGE BLOCH: Almost all the information that's in
24 that report is already available, so that's also --

25 MS. YOUNG: Staff won't even tell you that. You

1 can't assume anything without seeing the report.

2 JUDGE BLOCH: Well the licensee made that
3 statement to me. What's the basis for your believing that
4 you have almost all the information already?

5 MR. BLAKE: Well, we too have been living with
6 this case now for a number of years. And we believe that
7 once we have the NRC's interview records, the notes from
8 their interviews with their own people and the transcripts
9 of the interviews with ours, coupled with Mr. Mosbaugh's
10 tapes, transcripts of those tapes, which we already have,
11 the host of documents, which by and large we provided to
12 them, so we could give those to Mr. Kohn. We think that's
13 all there is. You talk to the people, you have documents,
14 there is really nothing else that we are aware of that we
15 think we have.

16 I do want, however, to point out one thing. Mr.
17 Lamberski has reminded me that some of the individuals here
18 are represented by their own counsel, and so because there
19 have been overtones here, that you're aware of, of the past
20 criminal overtones and what not, I don't want to speak out
21 of turn in terms of being able to speak for every
22 individual. I clearly speak for the Company; I think can
23 clearly speak for some individuals, but I want, at least,
24 the board to be aware that I may be overextending myself
25 when I say that.

1 JUDGE BLOCH: Independent on waiver we can't count
2 on that right now.

3 MR. BLAKE: That's right, I just can't. I'm not
4 in a position of objecting to this document. We haven't
5 sought it.

6 JUDGE BLOCH: Can I ask in terms of public
7 pressure what the Staff feels about the possibilities in
8 this case, where maybe not all of the information is already
9 available, but most of it -- of releasing, under protective
10 order, all of those portions that deal with information
11 that's already available to the parties, and deleting only
12 the information that they don't have already?

13 MS. YOUNG: So you're saying go through the OI
14 report and sanitize it? Or are you saying only release the
15 OI exhibits?

16 JUDGE BLOCH: No. Release all of it, except
17 whatever small portions might be based on information that
18 is somehow secret and confidential because it's necessary to
19 preserve the prosecutorial integrity of the NRC. That
20 somehow you're worried if they have that stuff they'll have
21 an unfair advantage, or they'll be able to -- usually we are
22 worried about things like putting pressure on witnesses
23 or -- I mean.

24 MS. YOUNG: Changing of recollection.

25 JUDGE BLOCH: This is an unfair advantage that a

1 Defendant at a prosecution is going to have, and I'm having
2 difficulty seeing that that really is what's at issue here.

3 JUDGE CARPENTER: But Staff doesn't argue that.

4 MR. BARTH: Your Honor?

5 MS. YOUNG: We haven't said they'll change the
6 facts because the information is released.

7 JUDGE BLOCH: That's usually what we are worried
8 about with prosecution. It's not the question of people
9 knowing something, and therefore I don't think --

10 JUDGE BLOCH: I mean that's a fairly new argument
11 to me. That people will know something and misunderstand
12 it. It usually has to do with the integrity of the
13 prosecution process, and somehow having it undermined.

14 MS. YOUNG: And I think that's why we were
15 focusing more on the predecisional nature, that's the
16 compromising a -- an enforcement effort.

17 JUDGE BLOCH: But the predecisional exemption is a
18 little different.

19 MS. YOUNG: Yeah.

20 JUDGE BLOCH: In fact, that one is waivable by the
21 Agency.

22 MS. YOUNG: Right.

23 JUDGE BLOCH: And public interest. And while I
24 was at the Department of Energy, I considered whether or not
25 there ought to be waivers. And what we basically decided

1 was that the predecisional thing has to do with the
2 embarrassment of Agency officials. And if anyone is in a
3 high position in an Agency, like the director of OI, you
4 could say he really shouldn't suffer embarrassment from
5 something he's worked on two years already. There is no
6 embarrassment that I'd worry about. And if I were the head
7 of the Freedom of Information Act program, I would want to
8 release that voluntarily and waive predecisional documents,
9 privileges.

10 MR. BARTH: I do not think we are concerned with
11 the Agency or any of its directors being embarrassed, Your
12 Honor. I think we are concerned that this OI report is a
13 predecisional, interlocutory document, which is going to be
14 part of the decision by the executive director for
15 operations, as to whether or not to take enforcement
16 action. And he wishes to give this his careful
17 consideration, and he is. And in so doing, the report is
18 being reviewed and its various documents that support it are
19 being reviewed.

20 JUDGE BLOCH: And the release under protective
21 order also would interfere with that in some way?

22 MR. BARTH: If the judiciary committee can't
23 release anything, we can't either. Release it and it will
24 be out in the next --

25 JUDGE BLOCH: I don't think you answered my

1 question. I asked you whether release under protective
2 order would interfere with the decisional process, because
3 that's what you were just arguing.

4 MR. BARTH: I don't think it can be released under
5 protective order in my mind, if you're asking for a frank
6 discussion. If it is released to the public --

7 JUDGE BLOCH: Well, you know, we've never treated
8 it that way in this Agency, and there would be a lot of
9 press contrary to that.

10 MR. BARTH: I sat, Your Honor, in California -- in
11 San Francisco, for security of Diablo Canyon in
12 closed-session with similarly, and later went outside to
13 find people talking to the press who testified 10 minutes
14 earlier, and nothing was ever done about it.

15 JUDGE BLOCH: Well I'm sure there are breaches of
16 protective orders, but I frankly would be able to trust
17 these parties to protect the information if we had an
18 order.

19 MR. BARTH: And if the information were not
20 disclosed, we could trust them even further.

21 JUDGE BLOCH: That's not trust, Mr. Barth.

22 MR. BARTH: That's absolute trust.

23 JUDGE BLOCH: You are already trusting a lot of
24 people, every person on the Staff knows this is being
25 trusted already.

1 MR. BARTH: That's worrisome.

2 JUDGE BLOCH: So, aside from this issue of the
3 report itself, is there any way in which the Staff can
4 accommodate to the needs of the parties to progress with
5 this case during the delay for prosecution?

6 MR. BARTH: I think so, Your Honor. Mr. Reis made
7 several suggestions, and that is also a suggestion of the
8 last document I signed, and that -- I think -- that the
9 power company and Mr. Kohn could well go ahead with this
10 case, or as I suggested, agree to a list of documents which
11 they feel should be introduced in spite of the fact they
12 don't know our position.

13 JUDGE BLOCH: I'm sorry, what would you do once
14 they introduced what their case would be? What would you do
15 in response to that? I mean they can introduce that, but I
16 don't see that that --

17 MR. BARTH: We could present our case after
18 they've concluded theirs.

19 JUDGE BLOCH: In other words, you would permit the
20 hearing to start?

21 MR. BARTH: We've taken a position that we would;
22 yes, Your Honor.

23 May I backtrack for a slight moment to the
24 beginning of this conversation?

25 JUDGE BLOCH: Well, let me ask you a little

1 different question. How about the suggestion that the
2 licensee has made? If you're willing to respond in the
3 hearing context, they've suggested that they'd like to file
4 some stipulations as to what portions of the recordings have
5 said, and you'd respond to whether or not you agree.

6 I already stated that I think it might even be
7 better for the Staff to respond to that before it knows its
8 ultimate conclusion, because then we would be dealing with
9 the real evidence, rather than how we would like to have it
10 come out.

11 MR. BARTH: The tapes present a very difficult
12 matter, Your Honor. They are not clear, they're not
13 distinct. There are places where our transcripts may show a
14 word inaudible. Our people listen -- three people listen
15 and we have three different versions what was said, none of
16 them being audible.

17 JUDGE BLOCH: That's why we need stipulations.

18 MR. BARTH: How can you stipulate that? The
19 reporter said it was inaudible, two people said XYZ, and a
20 third person said Y, and the power company said AB; what
21 stipulation is that? Stipulation of disagreement.

22 JUDGE BLOCH: That's what the stipulation would
23 be. The power company would say we find that it was
24 inaudible, or you'll find that it says Z, and you'll check
25 if you agree with them. If you disagree, you'll negotiate a

1 different stipulation, and if you agree with them, you'll
2 agree.

3 MS. YOUNG: I can tell you part of the problem of
4 the Staff right now is resources. It's taken an enormous
5 amount of resources to ensue the enforcement route to bring
6 that to conclusion, which we are trying to be able to do
7 quickly. And to be able to fairly participate in such
8 stipulations, unless they identify in advance what areas
9 they agree on, would be a burdensome --

10 JUDGE BLOCH: The areas that you're concerned
11 about are not the total number of people in the Staff, it's
12 the people that know about the tapes.

13 MS. YOUNG: No. The people right now who are
14 pursuing that aspect of -- the NRC Staff that is pursuing
15 the enforcement action are, right now, the most knowledgable
16 individuals about things like these tapes, about things like
17 documents. And if you're also going to impose on them the
18 burden assisting --

19 JUDGE BLOCH: My understanding is that the people
20 who were doing that, who were in OI who did all that work
21 right now aren't working on this prosecution, am I right;
22 that they finished their work?

23 MS. YOUNG: We're not talking about OI.

24 JUDGE BLOCH: What about the investigators in OI
25 who are familiar with these tapes of -- can't they look at

1 it and --

2 MS. YOUNG: Then you would get the OI version,
3 which may not be the position that Staff takes in the
4 hearing.

5 JUDGE BLOCH: I understand what the position is.

6 MS. YOUNG: They're subcomponents of a larger
7 industry.

8 JUDGE BLOCH: If it's a policy issue, I understand
9 that. But the question is, is the tape audible, does it say
10 blue or does it say green?

11 MS. YOUNG: And you may get an individual who
12 works for OI who says green, and an Agent who works for NRR
13 or another office at OI that says blue.

14 MR. BARTH: And someone else may say nothing.

15 MS. YOUNG: And a manager is going to have to make
16 the decision.

17 MR. BLAKE: My problem with the discussion is we
18 are going to have to do this at some point in time and I'd like
19 very much to start the process.

20 JUDGE MURPHY: Start --

21 MR. BLAKE: But that's my only position. We are
22 going to have to do it at some point, why put it on the
23 critical path down the stream.

24 JUDGE CARPENTER: May I ask a question to get some
25 perspective to get a question? I can't imagine each line of

1 the transcript of these tapes is of equal significance in
2 discovering what was going on. Is somebody prioritizing
3 these things and working on the things that are key?

4 JUDGE BLOCH: I assume the licensee is only going
5 to file portions of the tape that they want stipulations on.

6 JUDGE CARPENTER: Right.

7 MS. YOUNG: In terms of prioritizing information,
8 as far as the Staff is concerned, there may be portions of
9 tapes that may be more important to our portion in the
10 proceeding or the enforcement action. But there are a lot
11 of portions that are totally irrelevant. Again, you're
12 talking about resources to be involved in every single page
13 of every single tape and -- and they may have it in --

14 JUDGE CARPENTER: In the proceeding, if you're
15 working for proceeding you might stipulate that page 6847 is
16 a "no, never mind" even though some of it you couldn't hear,
17 and go on.

18 JUDGE BLOCH: It sounds to me the way to make this
19 more specific than theoretical, would be to ask you to file
20 the request for stipulations and then ask for a response,
21 and see if the Staff might look at it and say, hey, that's
22 much more manageable than we thought it was going to be.

23 JUDGE CARPENTER: I would be overwhelmed by what
24 you're talking about. You could spend endless amounts of
25 time fiddling around with impractical things.

1 MR. BLAKE: We have no interest in that either,
2 obviously, so it's --

3 MS. YOUNG: But reasonable minds can differ. It's
4 possible that Georgia Power may find that their tapes and
5 various portions of the tapes are very important. Mr. Kohn
6 may find portions for his client, and the Staff may come up
7 with a distinct --

8 MR. LAMBERSKI: Your Honor, I think every party
9 will agree that the two tapes that Mr. Mosbaugh made on
10 April 19th of 1990 are the critical tapes in connection with
11 this diesel generator allegation, and Georgia Power would
12 like nothing better than to begin discussions on what's
13 being said by whom on each and every portion of those
14 tapes.

15 JUDGE BLOCH: How would you feel -- how would the
16 Staff feel about having stipulations filed with respect to
17 those two tapes? And obviously you may think there are
18 portions of other tapes that are relevant, but we just
19 handle that in a subsequent step. Do that later.

20 MR. BARTH: Could we take your earlier suggestion,
21 Your Honor, as being the -- perhaps the better one, that
22 they might proffer a stipulation for us to review.

23 JUDGE BLOCH: Well, you're not going to have to
24 respond to it until after they proffer it.

25 MR. BARTH: I understand that. But if we put it

1 forward as a stipulation to be agreed or not to be agreed,
2 and found them different, then you put it forward as a
3 proffer.

4 JUDGE BLOCH: It does make some sense to make it
5 specific like that. Then we'll have the real controversy.

6 MS. YOUNG: And 57 and 58 are manageable, I think.

7 MR. LAMBERSKI: Are manageable.

8 MS. YOUNG: Most of the tapes are two hours in
9 length each. Four hours of tapes, almost.

10 JUDGE MURPHY: 57 and 58 are the numbers of the
11 tapes?

12 MS. YOUNG: Yes. The numbers that OI assigned the
13 tapes as they were handed over.

14 JUDGE BLOCH: If it's a small enough number of
15 things that you're actually not sure about, the board can
16 listen itself and decide what it says. If it's only four
17 hours of tapes we are talking about, this is very manageable
18 for mediation, or for the board deciding in the instance
19 where you can't be sure.

20 MR. BLAKE: We would, indeed, have that as a
21 possibility in mind, that the board as a whole, or you, Mr.
22 Chairman, would be available to us on those things. And
23 there are a couple that are important. And if you can't
24 make it, then you can't make it. But it's, at least,
25 another possibility.

1 JUDGE BLOCH: So we'll wait to have those filed.
2 Do you have an idea when you might file that? On January
3 31?

4 MR. LAMBERSKI: Or very soon thereafter, Your
5 Honor.

6 JUDGE BLOCH: Okay.

7 JUDGE CARPENTER: Mr. Blake, on your thought. My
8 chemist reaction would be to ask the individual who is
9 speaking when the inaudible tape was made, to look me
10 straight in the eye, and think as hard as he can about what
11 the hell he said. If he can't remember, where are we?

12 JUDGE BLOCH: No, but that's later.

13 JUDGE CARPENTER: But that's my point. That's my
14 point, is it goes -- you put it in my lap, that's where it
15 goes, as far as I'm concerned.

16 JUDGE BLOCH: The stipulation may say that this
17 section is disputed.

18 JUDGE CARPENTER: I sat in this room -- ancient
19 case, had the same problem. And that's why I'm concerned
20 about this moving on, you know. It's getting to be just
21 like a leak rate case. These people are going to say oh,
22 that was six years ago. And that's why we're very much -- I
23 personally don't want to do that again. I tried to probe
24 and the guy was honest, as far as I could tell. And where
25 you come out with -- is no conclusion.

1 MS. YOUNG: I don't think you're going to have
2 problems with recollections, even though it's been three and
3 a half, four years.

4 JUDGE CARPENTER: Who knows. Who knows? Who
5 knows? Given the tape -- the audible part, the intelligible
6 part before and after, perhaps he can recall the context of
7 what he was saying, and maybe not. But I'm concerned. The
8 longer it goes on --

9 JUDGE BLOCH: The passage of time is a problem.

10 JUDGE CARPENTER: Passage of time is brutal.

11 JUDGE BLOCH: Especially because we aren't --
12 really -- at this point the Staff seems to have given up
13 completely, giving even a target date for the completion of
14 this process.

15 MS. YOUNG: Our client did.

16 JUDGE BLOCH: What's that? Your what?

17 MS. YOUNG: Our clients did.

18 JUDGE BLOCH: Well that's what I -- but you
19 represent them.

20 MS. YOUNG: Staff attorneys, we would love to have
21 a date.

22 JUDGE BLOCH: You represent them, I understand.

23 MS. YOUNG: We would love to have a date.

24 JUDGE BLOCH: That's like we were able to come
25 with a date to land on the moon.

1 MS. YOUNG: Right.

2 JUDGE BLOCH: But the Staff can't come up with a
3 date for finishing the transcript -- I mean --
4 investigation.

5 MS. YOUNG: Well, I can tell you, they are working
6 daily on it.

7 JUDGE BLOCH: Well I know that. But that's the
8 question of what the commitment is, as to when you finish
9 it. And how you manage to finish it at some point.

10 MR. BLAKE: I'd like to return, just for a moment,
11 to see if I can propose, at least for the time being, a
12 compromise that could get us going on the OI report.

13 I believe, Georgia Power believes, that coupled
14 with all the documentation that we already have, Mosbaugh
15 tapes, transcripts of those, documentation which we provided
16 to the Staff and Mr. Mosbaugh's counsel as well -- once we
17 get the NRC's interview records, that we will have all the
18 information -- factual, underlying information for their
19 report, which we'll all see when we see the OI report,
20 whatever that date is. And what you'll see beyond that in
21 the OI report, are the investigator's thoughts and opinions
22 and surmises and premises and what they did with it. Which
23 Mr. Kohn will do with the facts what he's going to, and of
24 course we will as well.

25 So, I think once we have those underlying

1 additional NRC interview records, we will have collectively
2 all the factual information that NRC -- I could be wrong.

3 JUDGE BLOCH: Collectively, but that won't solve
4 Mr. Kohn's problem, because he doesn't have most of what you
5 have.

6 MR. BLAKE: Oh no, no. He has had access to all
7 the documentation that we provided to the Staff, and he has
8 access Mr. Mosbaugh's tapes and he has access to the
9 transcripts and he'll have access to these when they come
10 out, the NRC interview records. I think he has.

11 MR. KOHN: Let me state. Access to thousands and
12 thousands of pages of documents in Atlanta, Georgia is not
13 ready access. Access to tapes and things of this nature
14 that -- I'm one person, my ability to go through it, I don't
15 have a Staff like licensee. If the NRC is saying they're
16 having resource problems, you can believe I have resource
17 problems. The OI investigative report will provide
18 intervenor with a road map of what -- and the direction we
19 want to follow as to what transcripts are relevant.

20 I have not listened to any of the transcripts
21 other than the six tapes, whatever -- that were previously
22 turned over. If you're looking at a stipulation as to where
23 to begin, I would like to, as far as tape transcripts, I
24 would like that to see whether any of the parties would
25 start with the portions that the transcripts on the six

1 tapes that were turned over. And we obviously believe that
2 those portions are significantly relevant to the proceeding.

3 JUDGE BLOCH: Are those the tapes you were talking
4 about also? You said two dates.

5 MR. LAMBERSKI: No. Your Honor, the portions that
6 Michael is referring to are the excerpts that either he or
7 Mr. Mosbaugh selected from the original tapes and compiled
8 onto a set of six different tapes, and provided to the
9 Senate subcommittee.

10 JUDGE BLOCH: But the tapes you're talking
11 about --

12 MR. LAMBERSKI: Are the originals.

13 JUDGE BLOCH: The originals from just two days?

14 MR. LAMBERSKI: From two days.

15 MS. YOUNG: One day.

16 MR. BLAKE: Two tapes on one day.

17 MR. LAMBERSKI: I'm sorry. Two tapes from one
18 day.

19 JUDGE BLOCH: Do all the six tapes come from those
20 two tapes?

21 MR. KOHN: No.

22 MR. LAMBERSKI: No, they don't. And they don't
23 contain all of the conversations on that date.

24 MR. KOHN: I don't mean to say that we limit it to
25 the --

1 MS. YOUNG: But neither do the tapes, correct?

2 MR. LAMBERSKI: Tapes contain all the
3 conversations that were taped by Mr. Mosbaugh.

4 MS. YOUNG: But they don't contain all the
5 conversations, which is the --

6 MR. LAMBERSKI: That's true.

7 JUDGE CARPENTER: How do you propose to start the
8 stipulation process? He just made a proposal, as I heard
9 it. You start with those tapes. Now you say well, but if
10 you look at the whole tape from which those tapes were
11 drawn, individual tapes, you find some other things that you
12 think need to be stipulated to. And then you're in a
13 discussion. Am I off base or not?

14 MR. LAMBERSKI: Let me pose a procedure that I
15 think Michael will agree to, because we discussed it over
16 the telephone once before.

17 We would take, for that day April 19, 1990, the
18 two transcripts that the NRC's prepared from the two tapes,
19 tapes 57 and 58. We would take the NRC's transcript and we
20 would mark it up by hand to show additions, deletions,
21 changes, as we understand the conversations appear on the
22 tapes, and we would proffer that to Mr. Kohn and to Mr.
23 Barth to examine and comment on.

24 JUDGE BLOCH: At the same time, if you wanted to,
25 you could proffer the other conversations on the six tapes

1 with your transcript and you could ask for that to be
2 stipulated to also.

3 MR. LAMBERSKI: I think we are talking about,
4 essentially, the same conversations, Your Honor, if I'm not
5 mistaken.

6 JUDGE BLOCH: But he was saying that some of the
7 conversations were from other days.

8 MR. KOHN: Correct.

9 MR. LAMBERSKI: True. If Mr. Kohn wanted to
10 introduce additional transcripts from different tapes, we
11 could certainly entertain those.

12 MR. KOHN: I think the other thing we would
13 probably like to do is --

14 JUDGE MURPHY: Excuse me. Would you agree to what
15 Mr. Lamberski has proposed?

16 MR. KOHN: Yes. I can say that Mr. Lamberski and
17 I had a conversation about that. And I think it was my
18 suggesting of one way to proceed.

19 JUDGE MURPHY: Would the Staff agree to that?

20 MR. BARTH: We will agree to review his offer of
21 stipulation, Your Honor.

22 JUDGE MURPHY: Review it and comment on it, where
23 you don't agree with it?

24 MR. BARTH: I'm reluctant to agree to the comment,
25 because there may be divergent views.

1 JUDGE BLOCH: You want to see the motions for
2 stipulations and then you'll respond to the motion.

3 MR. BARTH: Thank you, Your Honor for --

4 MS. YOUNG: As best we are able to.

5 MR. BARTH: Thank you, co-counsel.

6 JUDGE BLOCH: Now, I just want to be clear I
7 know. It's about the tapes that Mr. Lamberski has just
8 mentioned. And will there be anything also done on other
9 conversations by Mr. Kohn?

10 MR. KOHN: Probably the content of the six tapes.
11 And realizing that they contain portions of some of the
12 other tapes, I guess what we would be looking at is
13 introducing the portion of the tape, and if Georgia Power
14 Company believes that there are other portions of that tape,
15 or other tapes that need to be taken into consideration with
16 the portion where we are seeking admission, that they
17 identify those and we try to reach stipulations as to the
18 content of those tapes, and why it's important.

19 MR. LAMBERSKI: The only comment I would make
20 about that, Your Honor, is I'm a little bit concerned about
21 using anything other than the NRC's transcripts of the
22 original intervenor tapes.

23 JUDGE BLOCH: Okay. So there are transcripts of
24 those tapes? And you would prefer that he start with those
25 and mark them up to show his --

1 MR. LAMBERSKI: Right. Just as he has proposed
2 that we do.

3 JUDGE BLOCH: And that's all right with you too?

4 MR. KOHN: If I get a copy of the transcripts,
5 fine.

6 JUDGE BLOCH: What is the difficulty of you're
7 getting copies?

8 MR. KOHN: I assume that they're somewhere in
9 Maryland somewhere?

10 MS. YOUNG: You're asking the wrong people. We
11 know that OI has the transcripts, whether it's the
12 transcripts of the original tapes.

13 JUDGE BLOCH: They are available to the public, so
14 the only question is obtaining access to them, is that
15 right?

16 MR. LAMBERSKI: We obtained them, Your Honor, from
17 Region 2, where Mr. Robinson is based.

18 JUDGE BLOCH: And do you have any objection to
19 their being made available to Mr. Kohn also?

20 MR. LAMBERSKI: Absolutely not. They were made
21 available to him when they were made available to us. He
22 did not seek them at the time.

23 JUDGE BLOCH: So they were available in Region 2.
24 I guess then you don't have those transcripts yet. So what
25 I'd like, after you see them, I'd like you to make a filing

1 with us as to when you can file request for stipulation.

2 MR. BARTH: I understand.

3 JUDGE BLOCH: Are there any other matters on the
4 proposed schedule that we could --

5 MR. BARTH: Could we have a moment, Your Honor,
6 while I --

7 JUDGE BLOCH: Sure.

8 JUDGE BLOCH: Mr. Barth.

9 MR. BARTH: I'd be pleased to ask our Atlanta
10 office to make available to Mr. Kohn, the tapes --
11 transcripts that were made available to Georgia Power, to
12 put the same transcript in both of their hands.

13 JUDGE BLOCH: Excellent.

14 JUDGE CARPENTER: Thank you.

15 MR. KOHN: Excuse me, I --

16 MR. BARTH: We will send you the transcripts that
17 were released by our Office of Investigation, Atlanta, to
18 the Georgia Power Company.

19 MR. KOHN: Thank you.

20 MR. BARTH: That will present the same transcripts
21 to you that they have.

22 JUDGE BLOCH: I'm concerned that you're suggesting
23 there might be more than one set of transcripts?

24 MR. BARTH: Well, I'm certain that there well may
25 be. Some people have edited them, and some people heard

1 things wrong on them. And there are notes on some copies
2 that are not on other copies that may be around.

3 You smile, Your Honor, but that's the problem.
4 That is the problem.

5 JUDGE BLOCH: Okay so the --

6 MR. BARTH: You keep looking at the Staff and say
7 heavy, but it's a problem. It really is.

8 JUDGE BLOCH: So let's get the same version.
9 We'll start with the same version.

10 MR. BARTH: We'll start on base one work our way
11 up.

12 JUDGE BLOCH: And we'll refer to it not as the NRC
13 transcript, but an NRC transcript.

14 MR. LAMBERSKI: Charles, are you certain you know
15 which transcripts were given to us?

16 MS. YOUNG: Larry knows.

17 MR. BARTH: I'll find out.

18 JUDGE BLOCH: It might be more efficient to have
19 Georgia Power make them available to Mr. Kohn. In fact the
20 Staff may need them too.

21 MS. YOUNG: Only Larry knows.

22 MR. LAMBERSKI: We'll be doing that as we propose
23 changes to them, so -- whatever Your Honor sees fit.

24 JUDGE BLOCH: Well, in one way or another, Mr.
25 Kohn is going to wind up with the same set of transcripts

1 that Georgia Power has.

2 MR. BARTH: But we're talking about tape 57 and
3 58, is that correct?

4 MR. BLAKE: No.

5 MR. LAMBERSKI: No.

6 JUDGE BLOCH: And also the six tapes.

7 MS. YOUNG: Who had transcripts of the six tapes?

8 MR. BARTH: We don't have transcripts of the six
9 tapes.

10 MR. LAMBERSKI: There are not transcripts of the
11 six tapes prepared by the NRC.

12 MR. BARTH: This best of Mosbaugh has not been
13 transcribed by us yet, Your Honor.

14 MS. YOUNG: Those are the tapes turned over to
15 Congress, right.

16 MR. KOHN: Correct.

17 JUDGE BLOCH: So, are there transcripts of those.

18 MR. KOHN: Congress made some transcripts.

19 JUDGE CARPENTER: I can't believe my ears. No
20 wonder it doesn't go anywhere, you people are awful.

21 JUDGE BLOCH: Did you hear what I just said?

22 COURT REPORTER: No.

23 JUDGE BLOCH: I didn't think you did. I suggested
24 to Mr. Kohn that he could file the congressional transcripts
25 of the six tapes, and would propose changes on those.

1 MR. KOHN: For clarity, I don't know if all six
2 were done. But whatever was done by them.

3 JUDGE BLOCH: Okay. Now the next question --

4 MR. LAMBERSKI: Excuse me, Your Honor. Michael,
5 you have copies of these transcripts?

6 MR. KOHN: Yes.

7 MS. YOUNG: I thought appended to one of your
8 discovery responses -- in August maybe you had portions of
9 the six tapes attached to that response?

10 MR. KOHN: Yes. The transcripts that went to --
11 that Congress prepared, I think, we then submitted to
12 everybody.

13 MS. YOUNG: There is a few pages, I'm not sure if
14 it was complete set of transcripts.

15 MR. KOHN: I can't recall any more.

16 MR. LAMBERSKI: The trouble with this, Your Honor,
17 is that there are transcripts of different tapes that have
18 been made, that some of which are the original tapes -- the
19 NRC's transcripts are transcripts of the original Mosbaugh
20 tapes. These congressional transcripts are transcripts of
21 the excerpts that were selected by Mr. Kohn from the
22 originals. So there is going to be some overlap, and it may
23 cause confusion.

24 JUDGE CARPENTER: Are they indexed on the tape so
25 you can know what tape each item came from?

1 JUDGE BLOCH. I was going to suggest that -- I'm
2 sorry. They're not indexed on the tapes?

3 MR. LEWIS: The six tapes identify the sources of
4 the excerpts. It's my recollection that the six tapes --

5 MR. LAMBERSKI: I wouldn't swear to that.

6 MR. KOHN: I think they do, but certainly not by
7 NRC numbers.

8 MR. LEWIS: Not by NRC number, but by date of
9 conversation.

10 JUDGE BLOCH: What I would suggest, is that if you
11 know there is an overlap, and some of the passages on the
12 six tapes are in the other tapes that are being discussed.
13 You can indicate that and not request stipulations again,
14 which would be redundant. Just ask for stipulations on the
15 things that are not in those other days that are already
16 being handled, the other day.

17 MR. BLAKE: It doesn't really matter. Either way,
18 you're going to get corrections from us the best way we know
19 how to correct it. Whether we start with A or X.

20 JUDGE BLOCH: And I'll suspect you'll even be
21 referring to other passages than he gives you.

22 MR. BLAKE: At some point we will be.

23 JUDGE BLOCH: Now the next question, I guess, has
24 do with the notes of Staff interviews and whether there is
25 any --

1 MR. BARTH: Can we go back for a moment to the
2 very beginning of this conversation when you asked for
3 comments?

4 JUDGE BLOCH: Yes.

5 MR. BARTH: I think that Mr. Kohn wanted the
6 investigation report because that would be a road map as to
7 what was done, and he didn't know how to proceed otherwise.

8 When he filed his petition to intervene under
9 2.714, he's got to allege wrong doing, facts to support it,
10 and what documents he's going to use to do it. He knows his
11 case, he does not need the investigation report, Your Honor,
12 to go ahead with his case right here and now today. That is
13 a simple fact. The tapes are Mosbaugh's tapes, his client's
14 tapes. The interviews are his client's interviews. He does
15 not need, as a factual matter, this report to show him where
16 to go, he already knows.

17 JUDGE BLOCH: Mr. Barth, I don't understand that
18 at all. He's saying that he had enough to bring a petition,
19 which was admitted in this proceeding. But that the job of
20 further analysis required a lot of manpower. He doesn't
21 have it, but the NRC has applied it. And if he starts where
22 they've been, he's going to be much more efficient in
23 preparing his case, that's obviously true.

24 MR. BARTH: Where we have been is his client's
25 testimony, his client's tapes. That is the basis of his

1 case and his allegations. He already has that, he knows it
2 better than anybody else in this room.

3 JUDGE BLOCH: Maybe you want to continue. I think
4 I made the point as best I could.

5 MR. BARTH: Well continue then, Your Honor.

6 JUDGE BLOCH: No, you continue. You want to say
7 some other things, I thought.

8 MR. BARTH: Just a minor thing. He pointed out
9 that 2.744 required an affidavit by the executive director
10 for operations; 2.744 B does not, in order to withhold. And
11 Ms. Young and myself, speak for the executive director in
12 this proceeding at the moment. And the executive director
13 does not wish to give up these tapes at the present time, or
14 the investigation report prior to reaching a conclusion on
15 the matter of whether or not an endorsement action will be
16 taken.

17 JUDGE BLOCH: Okay. And is there any response at
18 all to the request I made earlier as to how you could
19 accommodate the needs of the parties to get going here?

20 MR. BARTH: Yes, we have. We have suggested --
21 and we all know, putting all this aside -- in practical
22 matters, Your Honor, there are a lot of things that are
23 going come to come into this case. The LERs, Licensee Event
24 Reports, they can all be stipulated in now; there are two of
25 those. The letter by the director in Atlanta, the

1 confirmatory action letter, the response to the confirmatory
2 action letter. There are many documents, which regardless
3 of what the Staff's position in the long run will be, we
4 know will be relevant to this proceeding. And we have
5 suggested that the licensee and Mr. Mosbaugh get together,
6 decide what documents they want in for their cases, and I
7 assume Mr. Mosbaugh knows his case, he's got to under our
8 regulations. And these people decide what documents they
9 want in and we'll take a close look at that. A lot of them
10 they may agree to that we agree to, to stipulate to, which
11 will not be relevant in the long run.

12 JUDGE BLOCH: So stipulations as to the
13 authenticity of documents for the record? Authenticity
14 and --

15 MR. BARTH: Yes, Your Honor. I think we would
16 reserve relevance for Your Honor's ruling eventually in a
17 proceeding.

18 JUDGE BLOCH: Well you can stipulate to relevance.

19 MR. BARTH: That may be a stipulation, but it is
20 for Your Honor to decide, not I. You're the Judge.

21 JUDGE BLOCH: I'm willing to have parties
22 stipulate as to whether something is admissible in evidence.

23 MR. BARTH: I'd like that from any judge.

24 MS. YOUNG: I think we would agree.

25 MR. BARTH: I think that a lot of that can be

1 done, but the paper -- a lot of paper trail can be done.
2 And most of this is in the public document room already,
3 tons and tons of it.

4 JUDGE BLOCH: What about the interviews with Staff
5 witnesses?

6 MR. BARTH: That, we are going continue to
7 withhold at the present time.

8 MS. YOUNG: But we'll take it under consideration
9 whether the facts pertaining to the OI report should be
10 released prior to the taking of the course of action.

11 JUDGE BLOCH: Whether you take into consideration
12 against what?

13 MS. YOUNG: Whether underlying facts. In other
14 words, the OI report has OI's conclusions concerning facts
15 and materials gathered by OI. So we'll take under
16 consideration whether any of the materials, raw data
17 gathered by OI can be released prior to the Staff taking
18 it -- or making any proposal for enforcement action.

19 JUDGE BLOCH: And as to what time would you might
20 be able to decide about the raw facts attached to the
21 investigation?

22 MS. YOUNG: We need to talk to our clients.

23 MR. BARTH: These are basically, I believe, the
24 documents Mr. Blake is referring to, which identified in Mr.
25 Robinson's response to interrogatory number 9, which they

1 propounded to the Staff.

2 MS. YOUNG: And let me also say we intend to
3 supplement that old interrogatory, because there were
4 additional interviews.

5 MR. BARTH: You had a question, Mr. Murphy?

6 JUDGE MURPHY: I thought it was interrogatory 10.

7 MS. YOUNG: He gets confused.

8 MR. BARTH: Please. Thank you.

9 JUDGE BLOCH: So could we know within a week as to
10 whether Staff will be releasing those?

11 MS. YOUNG: We can get back to you in a week.

12 JUDGE BLOCH: Yes.

13 MS. YOUNG: To see if anybody made a decision to
14 do that?

15 JUDGE BLOCH: Yes. Have a filing as to whether
16 you can release those documents within a week.

17 JUDGE MURPHY: You'll release them by the time the
18 licensee has requested?

19 MS. YOUNG: Could you repeat that again?

20 MR. BLAKE: I think his answer was we had proposed
21 February 18th, which was a date on an earlier Staff schedule
22 that we thought would not be a problem for you. And Judge
23 Murphy was asking whether or not you could try to make your
24 decision in order to accommodate that, and therefore try to
25 stick with the schedule.

1 JUDGE BLOCH: They're asking for them by the
2 18th. The sooner you know the better to let us know. Are
3 there any other matters that can be agreed to on the
4 schedule? What about the preliminary identification of
5 witnesses and exhibits, is that possible?

6 MR. BARTH: Let me answer first, because I can
7 answer more shortly, Your Honor. For the Staff, the answer
8 is no, until we arrive at a position as to what the Staff
9 will take.

10 JUDGE BLOCH: It will be hard to identify
11 witnesses for two possible positions, I guess. And do we
12 have particular depositions in mind? Is it depositions of
13 Georgia Power people mostly? What depositions do we have in
14 mind?

15 MR. BLAKE: We have in mind --

16 JUDGE BLOCH: Does Georgia Power have it in mind?

17 MR. BLAKE: We don't know about NRC -- the
18 possibility of deposing any NRC people. Our best indicator
19 of that will be that once we've seen interviews that OI has
20 done, I think, shortly thereafter that we'd be able to tell
21 the board -- identify to the board we intend by way of NRC
22 depositions, if any.

23 We do, however, contend to depose Mr. Kohn's
24 client.

25 MR. LAMBERSKI: And perhaps witnesses that Mr.

1 Kohn will identify.

2 MR. KOHN: And I would just like to indicate that
3 for intervenor to not go -- it is just difficult for us to
4 go forward and identify the witnesses on identifying
5 documents on this track of this proceeding until we get the
6 OI report. And I have not heard anything from intervenor's
7 perspective to indicate why the reports should not be
8 immediately released. I think under NRC regulations it
9 requires to be released. Under law it's required to be
10 released. Public embarrassment of NRC officials, or public
11 pressure on NRC officials to me is not --

12 JUDGE BLOCH: I'm thinking of requesting briefing
13 on the issue of release of that report. Because I would
14 like to know, I would like to have complete legal citations
15 before I would order the release of such report. And I
16 would like Staff to have the opportunity to fully brief that
17 question also.

18 MR. KOHN: Your Honor, I would request an
19 expedited briefing schedule on the matter.

20 MR. BARTH: While we are here, could you just side
21 provisions of the regulation which requires this release
22 which you have three times asserted to be so, sir?

23 MR. KOHN: I think you can go to the Statement of
24 General Policy of the NRC, 10 CFR part 2, Appendix A, Roman
25 numeral 4 D; also look to 10 CFR 2.790 A -- 10 CFR 2.744.

1 JUDGE BLOCH: Let me also ask if Georgia Power
2 believes it should be given that document as a matter of
3 right.

4 MR. BLAKE: The OI document?

5 JUDGE BLOCH: Yes.

6 MR. LAMBERSKI: The OI report.

7 JUDGE BLOCH: The OI report, at this point in the
8 investigation.

9 MR. BLAKE: I don't know the answer. I haven't
10 thought about it. We simply have not pushed nor have we
11 thought through whether or not we are entitled to it, at
12 this point.

13 JUDGE BLOCH: So we might -- I might get a brief
14 from you that says either that it should be released or that
15 it shouldn't be.

16 MR. BLAKE: That's correct.

17 MR. BARTH: There is no appendix to 10 CFR part 2,
18 Your Honor.

19 JUDGE BLOCH: I'd rather have a brief that says it
20 should be released or it shouldn't be.

21 MR. KOHN: Well in the 19 --

22 MS. YOUNG: He didn't hear you.

23 MR. BARTH: Thank you.

24 MR. BLAKE: I wonder if I could return to two
25 items. One to ask Mr. Kohn what has happened in this

1 proceeding to change his position from last April when he
2 were prepared to go forward with depositions, to now when
3 he's not.

4 MR. KOHN: I would be glad to explain that.

5 MR. BLAKE: Maybe I should ask my next question.

6 JUDGE BLOCH: That's a why question without
7 knowing the answer.

8 MR. KOHN: Last April, as we were talking about
9 our initial conference call when we had our discussion as to
10 how we would like to proceed. As I indicated, we had
11 thought that there had been an OI investigation, and learned
12 that there had not been. And that the issue of wrong doing
13 had been forwarded for criminal prosecution to the District
14 Attorney. First -- so, we were ready to go, there was no OI
15 investigative report, and we didn't understand whether NRC
16 had ever put together an investigative report. We were
17 troubled that one was not put together.

18 At this juncture I am almost shocked by Staff's
19 position and juxtaposition to its earlier position that they
20 felt there was enough information to present the material
21 for criminal prosecution, and now they don't know if there
22 is enough information to make a recommendation to the
23 Commission for criminal prosecution -- or for any other
24 prosecution -- or to take action. I think that speaks
25 volumes as to the need to issue this report at this time.

1 We have been seeking to get this information from the NRC
2 for four years. And we have not done anything to make this
3 proceeding dilatory, and look forward to the day it's
4 concluded. And I think that NRC's change of position on the
5 basis of the fact that an OI report has been prepared, is
6 not justification for release of a report.

7 JUDGE BLOCH: Do you want to respond, briefly?

8 MR. BARTH: Yes, Your Honor.

9 Jimmy Jones was interviewed last night for the
10 Super Bowl, and he said that he'd understand the Buffalo
11 Coach's worry because he's lost four in a row. He's lost
12 three in a row. It has not been four years when Mr. Kohn
13 sought this information. The investigation report was
14 completed within the last year. The incident occurred on
15 March 20, 1990, and this has not been going on for four
16 years. So we have a time span that's not quite accurate.

17 We have not changed our position. On January 12,
18 1993, Mr. Reis told the board that we could not take a
19 position until we assess the OI report, and the information
20 that is contained, and that is still our position. We have
21 no position until -- we have not done it. We are working on
22 it, as Ms. Young has assured you. Our position today is the
23 same one that Mr. Reis stated before the board in Georgia
24 for the prehearing conference. There is no change in
25 position.

1 JUDGE BLOCH: Okay.

2 MR. BARTH: Plus, I would like to emphasize, as
3 strong as I can, that this OI report, which is very recent,
4 is a predecisional document which we consider to be
5 protected.

6 MR. BLAKE: I understand Mr. Kohn's response. He
7 didn't realize there was an OI report, and so he was
8 prepared to get on with the proceeding in last April. But
9 now that he knows there is an OI report on this LER it seems
10 that he'd like to see it in order to use, more effectively,
11 his time and resources.

12 That doesn't explain to me, however, the question
13 that the board had raised at the outset, and which we still
14 have, why is it that we can't go forward on illegal
15 transfer.

16 JUDGE CARPENTER: Right. We keep getting diverted
17 from that.

18 MR. BLAKE: I'm still aware of it.

19 JUDGE BLOCH: I'd like though, before we ask Mr.
20 Kohn about that, what's the Staff's position on whether we
21 can or cannot go forward on illegal transfer. It would seem
22 that you wouldn't even necessarily be dealing with the same
23 individuals who were involved in the investigation on the
24 criminal side. You may have other people who have expertise
25 on the criminal -- on the transfer of authority question.

1 MR. BARTH: I think that when the Commission
2 vacated the director's decision on the 2206, there was
3 invitation -- or at least the Staff is revisiting the matter
4 of illegal transfer.

5 MR. BLAKE: I'm prepared to respond to that. I've
6 gone back and looked at the April response that the Staff
7 had taken on this, which was they were prepared to go
8 forward on illegal transfer. And I anticipated that Mr.
9 Barth might be troubled by the Commission's subsequent
10 determination on 2.206, and with regard to the partial
11 initial decision.

12 JUDGE BLOCH: He said something else, which was --

13 MR. BLAKE: But it's not -- I've read that
14 decision myself today, and I would say not only does it not
15 stop the Staff from going forward in this amendment
16 proceeding on that topic; I think it might even be argued to
17 promote it in fact in order to get on. We have a heck of
18 chicken and egg problem. Not only do we have -- we already
19 went to discuss with them the 2.206 -- the amendment with
20 enforcement?

21 JUDGE BLOCH: Did you also say that there is a new
22 investigation of that matter in the Staff?

23 MR. BARTH: No, Your Honor.

24 MR. BLAKE: No.

25 MR. BARTH: No. But let me re-explain myself. In

1 our taking a look at what has transpired, we are
2 re-analyzing the situation of the allegation of illegal
3 transfer, within the context of enforcement, again.

4 JUDGE BLOCH: Well then you've got a new
5 enforcement consideration.

6 MR. BARTH: We don't have an investigation.

7 JUDGE BLOCH: This is enforcement related. You've
8 never stated that before -- this before, so be sure it's
9 true. You have an enforcement related concern with respect
10 to the transfer of authority over the operations of Vogtle.

11 MS. YOUNG: I think somewhere between the two of
12 you something got lost in translation. But I think what the
13 Staff is trying to explain is that there are obviously
14 individuals who are identified or their character, veracity,
15 integrity is put into question by virtue of the allegation
16 investigated by OI. If those individuals are also actively
17 involved in the transactions that appear to be improper with
18 respect to illegal transfer, then the Staff, using
19 information gathered by OI, and using its determinations
20 regarding the veracity of those individuals, may come to
21 different conclusions concerning issues that were decided in
22 2.206 decision.

23 I can tell you today that process has not been
24 started, because the first leg is not completed.

25 JUDGE BLOCH: But isn't Mr. Blake correct, saying

1 that the purpose of vacating the director's decision was to
2 give that matter to this board, in which case the Staff
3 should cooperate, pursuant to the Commission's decision.

4 MS. YOUNG: And the Staff will cooperate. They're
5 in position to do so.

6 JUDGE BLOCH: We could proceed with discovery on
7 that, right? The Commission asked us to go ahead with that.

8 MS. YOUNG: Should discovery on illegal transfer
9 proceed?

10 JUDGE BLOCH: Yes. Stipulations and anything
11 else. That part of the case -- if I understand correctly --
12 the Commission wants to us proceed with, which is the point
13 Mr. Blake just made. I would expect that the Staff has no
14 problem with that, but I was hearing that there is a problem
15 with that.

16 MS. YOUNG: There is only a problem to the extent
17 that individuals implicated by the OI investigation may
18 also -- there might be an identity of those individuals of
19 the people who are involved in the alleged --

20 JUDGE BLOCH: There are two separate matters,
21 which may affect the same person. Why would the fact that
22 this A matter hanging against individual A, stop from us
23 investigating something entirely different?

24 MS. YOUNG: It doesn't stop us. It stops Staff's
25 ability to present a position on that other aspect of the

1 proceeding.

2 JUDGE BLOCH: No, that doesn't follow at all.
3 That because someone is guilty of A, that you can't take a
4 position on what he's done about B. I don't follow that at
5 all.

6 MS. YOUNG: It's not automatic, I agree with you.

7 JUDGE BLOCH: It's not related. It's not at all
8 related. Because someone stole a chicken doesn't mean that
9 he shot a cop.

10 MS. YOUNG: If someone lied regarding issue A, is
11 it possible he also lied regarding issue B.

12 JUDGE BLOCH: There could be credibility issues
13 across the two of them; that's possible.

14 MS. YOUNG: Right. That's the concern. Because
15 allegation is that certain individuals -- or the companies
16 themselves, lack the character, integrity and competence.

17 MR. LAMBERSKI: Your Honor, generally the types of
18 stipulations that Georgia Power would propose on it's
19 illegal license transfer issue have nothing to do with
20 credibility. It has to do with documents received by the
21 Staff, when particular people were elected to officers of
22 the Company and what have you.

23 MR. BARTH: Your Honor, may I make a suggestion,
24 which you, yourself, previously made in regard to tapes 57
25 and 58? Why doesn't the Power Company prepare a stipulation

1 as to what they want Mr. Kohn and the Staff to agree to,
2 submit it, and we'll both consider it. If they consider
3 that we are being super-duper obdurate for no reason at all,
4 they'll come to you and ask you to make us answer.

5 JUDGE BLOCH: My general conclusion is -- and the
6 board hasn't discussed it so I can't be sure. But my
7 feeling, at this time is, that we should go full-steam ahead
8 on discovery on this issue. Because the fact that there is
9 another issue is not sufficient reason for delaying this
10 issue.

11 Now, if Mr. Kohn doesn't have the resources for
12 this issue he has a problem. And he might decide to drop
13 it. But we cannot wait around until one issue is decided,
14 and then decide whether or not we are going to go ahead on
15 another part of the case. This is Mr. Kohn's issue. And if
16 he wants to try it, he should try it now.

17 MR. KOHN: We are not dropping the issue, and we
18 will vigorously proceed on that issue.

19 JUDGE BLOCH: Okay.

20 MR. KOHN: We have the resources to proceed on
21 that issue. And I would like do indicate that a final
22 decision on that issue is tied to the other issue. Because
23 the people involved -- it's going to be a credibility
24 determination. The people at the Department of labor
25 proceeding denied what Mr. Hobby had said; and it's

1 someone's word against someone's word. Credibility
2 determinations are going to have to be made. And if --

3 JUDGE BLOCH: I can see that you might not be able
4 to complete that part of the case until the other part is
5 also completed, but we can do everything possible on the
6 independent issues at this time.

7 MR. KOHN: I think we can complete most of the
8 discovery, or maybe even all of it and --

9 JUDGE BLOCH: I don't see a schedule for that part
10 of the case. Am I right about that?

11 MR. BLAKE: No. But we are proposed to go forward
12 with stipulations on that part.

13 JUDGE BLOCH: That's all you need is stipulations.

14 MR. BLAKE: That's our start.

15 JUDGE BLOCH: I think we need an overall schedule
16 so that we'll get all the tests of all the parties completed
17 on that part of the case. I may be that Mr. Kohn and
18 Georgia Power and Staff will agree to what that schedule
19 will be.

20 MR. BLAKE: I may have misspoken or mislead you.
21 In terms of stipulations, we are prepared to go forward on
22 that now and go right through and it would track the same
23 schedule that we've laid out here.

24 JUDGE BLOCH: That's just stipulations. I'd also
25 like to conclude discovery on that portion of the case

1 completely.

2 MR. LEWIS: Our proposed deposition in there, Your
3 Honor, was also intended, also to cover illegal transfer
4 issue, and we hoped the schedule allowed one round of
5 depositions covering all the issues. That was our hope.

6 JUDGE BLOCH: So, why can't -- we can interpret
7 the schedule to include completion of all depositions by
8 April 15th. Mr. Kohn, can you do that, on that issue.

9 MR. KOHN: We run into one problem. March 15th
10 through April 3rd I will be out of the country.

11 JUDGE BLOCH: So what would you propose as the
12 completion of depositions on that part of the case? There
13 is no reason you have to wait until March 14th.

14 MR. KOHN: No.

15 JUDGE BLOCH: Those could start immediately.

16 MR. BARTH: Your Honor, I would like to that throw
17 out the thought to you that it's really undue pressure upon
18 the power company and Mr. Kohn to ask them to finish
19 depositions when they don't know what the Staff position is
20 yet, on this.

21 JUDGE BLOCH: They haven't argued that. Why are
22 you protecting them so?

23 MR. BARTH: Because I don't want this case to be
24 tried in dribbles and dribbles and time and time again. I
25 would like it if you suggested that we get here and do the

1 best we can to do this in an orthodox, rational matter. I'm
2 trying to throw this out as this might assist the system,
3 rather than trying -- end up with no more depositions, they
4 ask for depositions.

5 JUDGE BLOCH: No. We want the Staff to complete
6 its depositions in that time period too. Is that not
7 possible for the Staff; on that issue.

8 MR. BARTH: We cannot until we arrive at a
9 position on the illegal transfer, Your Honor. You cannot do
10 this.

11 JUDGE CARPENTER: Mr. Barth, you have a position
12 on it.

13 MR. BARTH: They took 2.206 as a position, which
14 was vacated by the Commission.

15 JUDGE BLOCH: So you don't have a position -- how
16 long will it take to get a position? I've never heard of a
17 party of not being able to get a position in litigation.

18 MR. BARTH: This is the second time for us. We do
19 not have one on the credibility either. So this is the
20 second time.

21 JUDGE BLOCH: But on the other one, you at least
22 have an enforcement investigation ongoing. And this one the
23 only obligation you have is to expedite this proceeding and
24 be a party.

25 MR. BARTH: As Ms. Young pointed out to you, these

1 personnel are interrelated between Southern Nuclear
2 Operating Company, Inc, which has proposed to take over
3 licensee, and Georgia Power Company personnel.

4 JUDGE BLOCH: Well, I don't think that the Staff's
5 difficulty in coming to a position is any reason to delay
6 this deposition discovery. If you can get your position in
7 line in time to conduct depositions, you can do that. If
8 you can't get it in line, you're like any other party, you
9 won't get depositions. We are going to have a deposition
10 schedule in this case. And the Staff can comply with it.
11 Like any other party it can do it. And if it doesn't, it
12 won't have a position on this issue. The licensee will
13 fight it out with Mr. Kohn. You don't have to have a
14 position on that; if you can't do it in time to be fair and
15 efficient for this proceeding.

16 MR. PARTH: We'll take your words under
17 advisement, Your Honor.

18 JUDGE CARPENTER: Your Honor, may I satisfy my
19 curiosity? I don't quite understand -- perhaps being a
20 neophyte, how Staff can have a position that it's
21 comfortable with, and not avail itself of sworn testimony
22 and cross-examination and solid evidence, and then have a
23 position. How can Staff have a position before the
24 hearing? Staff knows what it knows, I presume that will be
25 the subject of the deposition. But a conclusion at this

1 point in time absent a coming body of evidence? I don't
2 understand your clients.

3 MR. BARTH: I don't understand the question, Your
4 Honor.

5 JUDGE BLOCH: What Judge Carpenter is saying --

6 JUDGE CARPENTER: You're saying that this OI
7 investigation -- and I haven't seen a report yet -- it may
8 be in camera some day -- but I thought the boundaries were
9 reasonably well defined, in terms of things having to do
10 with the diesel generators, LER and so on. So there sits an
11 activity now, of reviewing that report, and that's the basis
12 of fact, that's the basis of knowledge. And it suddenly
13 expanded in a whole new area. And we are to wait until
14 somebody takes a position. That's what I'm saying, Mr.
15 Barth.

16 MR. BARTH: At the time the 2.20 --

17 JUDGE CARPENTER: Absent testimony, absent
18 cross-examination?

19 MR. BARTH: At the time the 2.206 was issued, Your
20 Honor, we did not have the investigation report. The 2.206,
21 which encompassed the illegal transfer, which we found did
22 not exist, which was vacated by the Commission; we did not
23 have the investigation report.

24 JUDGE BLOCH: What I understand from Judge
25 Carpenter is, if the Staff doesn't know what's right about

1 the alienation of authority to operate the plant, one way it
2 could make up its mind about that is to conduct
3 depositions. And based on the depositions that it conducts,
4 collect further information and do analysis, and then have a
5 position. If it doesn't know, the best thing it could do
6 would be to gather more information through the discovery
7 process.

8 JUDGE CARPENTER: And I would think that that
9 position would come before us and then the Commission;
10 rather than otherwise, that's what I don't understand.

11 MS. YOUNG: Part of what you're struggling with --
12 and we probably need a short adjournment to discuss.

13 JUDGE BLOCH: Let's have an eight minute recess.
14 It's 4:02, we'll start again at 4:10.

15 MS. YOUNG: But I did want to finish one thing.

16 JUDGE BLOCH: On the record. Just a second.

17 MS. YOUNG: Traditionally, when a Staff takes a
18 position in a proceeding it has considered a licensee's
19 application, it has issued a safety evaluation, it's done
20 environmental impact statement or assessment, and arrived at
21 what position it's going to take in a proceeding, prior to
22 depositions and many of those things being conducted. When
23 there is an amendment proceeding, because normally things
24 are done under the Sholly Legislation and the Staff's
25 position is already in stone.

1 This is one of those areas where we have not come
2 to a final determination with respect to both of the two
3 prongs of this proceeding. Yes, we did issue a 2.206, but
4 it predated an OI report, and it predated our responsibility
5 in the enforcement arena as to whether Georgia Power and
6 SONOPCO should continue to hold licenses.

7 JUDGE BLOCH: Where there is an enforcement
8 problem, I understand the difficulty the Staff is having.
9 Whether there is no enforcement problem, it seems to me they
10 should be like any other party and do their depositions and
11 come to their conclusions before hearing.

12 MS. YOUNG: Let us confer.

13 JUDGE BLOCH: It's now 4:03, let's wait until 4:15

14 [Recess.]

15 JUDGE BLOCH: Did the Staff learn anything during
16 the recess?

17 MR. BARTH: We learned, Your Honor, to
18 re-articulate our consistent position more adroitly. We
19 have no objection to discovery going on the issue of the
20 illegal takeover, as we have had no objection to discovery
21 going on between Mr. Kohn and the power company on the other
22 issues.

23 As Mr. Reis has suggested, discovery may go on
24 between those parties, even to the point of presenting their
25 case. And we have no objection in this regard.

1 JUDGE BLOCH: What I'm hearing is that the Staff
2 won't, itself, be doing any discovery on that portion of the
3 case.

4 MR. BARTH: We don't know, but not know.

5 MS. YOUNG: We can't tell you that.

6 MR. BARTH: We have not made up our minds. We do
7 not -- we have none scheduled now in our own minds.

8 JUDGE BLOCH: Okay, but we will set a deadline for
9 depositions in the case.

10 MR. BARTH: I understand what you're saying, Your
11 Honor.

12 JUDGE BLOCH: All right.

13 Yes?

14 MR. KOHN: The only thing I would mention is that
15 we have no problem setting forth the discovery and going
16 forward with it. The only possible hesitation we would have
17 would be that if a determination was reached on the Mosbaugh
18 allegations, it might ultimately moot the need to go forward
19 with the other matter.

20 JUDGE BLOCH: Then we would have a motion at that
21 time. If you think it's moot you can withdraw the motion --
22 the contention at that time.

23 MR. KOHN: I didn't mean to say the contention
24 would moot, I mean that a determination could be made by the
25 board that the licensee does not have the character

1 competence -- or that SONOPCO does not -- and that the
2 proceedings would essentially come to the same result had
3 the decision been reached on the other allegation. What I'm
4 saying, there is a potential for that to happen. It does
5 not mean -- and to save on resources we would just, we would
6 not object to doing the Mosbaugh case of discovery first.
7 We would probably prefer that. But we will not overtly
8 object to going forward with the Hobby matter, if that's
9 where --

10 JUDGE BLOCH: Since licensee wants that, and
11 that's consistent with efficient and fair proceeding, that's
12 what we are going to do.

13 MR. KOHN: All right.

14 JUDGE BLOCH: Now, word has an -- yes?

15 MR. KOHN: I didn't mean to say -- we were
16 prepared to go forward with discovery. We do believe the
17 NRC's position is correct that the credibility
18 determinations are going to rest on determinations made with
19 respect to those individuals as it comes out from the
20 Mosbaugh tapes and proceedings. We believe that --

21 JUDGE BLOCH: What you may be saying is that you
22 can't win this side of the case unless you win the other
23 one; in which case I'm not sure why you're expending
24 resources on it.

25 MR. KOHN: No, I -- the credibility determinations

1 I think that are -- may ultimately play the most important
2 role in illegal transfer.

3 JUDGE BLOCH: You may want to think about it. If
4 they're credible in the Mosbaugh side of the case, you're
5 going to have a lot of trouble in the transfer part, because
6 it's the same credibility. And if you're successful in the
7 other part, you may not need this part. So just, we are
8 not-- you're free to pursue this part of the case since
9 brought it. But if you really are concerned about
10 resources, you seem to have raised a practical issue as
11 whether you really need this part of the case.

12 MR. KOHN: We'll proceed, because there are some
13 matters in here that I think would be beyond discovery of
14 the other proceeding that are very important for this board
15 to hear.

16 JUDGE BLOCH: Okay. So the board, has several
17 times discussed, the Staff's offer for in camera
18 presentation. And we are kind of curious as to whether it
19 really applies any more. Whether it's relevant at all to
20 the disclosure to whether or not the Staff has disclosed
21 additional documents. Do you have any notion as to
22 whether -- do you have any notion about that?

23 MS. YOUNG: And your question is whether --

24 JUDGE BLOCH: Is there any need, in relationship
25 to any of the things we are talking about, for the Staff to

1 request an in camera presentation?

2 MS. YOUNG: If, at the end of next week, the Staff
3 decides to release the OI exhibits, there will probably be
4 no need.

5 JUDGE BLOCH: If you decide to release it, you
6 won't have a presentation on that.

7 MS. YOUNG: If we decide to release the report
8 under protective order we probably wouldn't need the
9 presentation.

10 JUDGE BLOCH: Should we have one before this board
11 decides whether or not to release the OI report?

12 MR. BARTH: Your Honor, I think --

13 JUDGE CARPENTER: That's what she just said.

14 JUDGE BLOCH: Not the attachments, the report
15 itself.

16 MR. BARTH: Your Honor, I think that you're
17 required to let Mr. Hayes and his people make a presentation
18 to you before you order its release.

19 JUDGE BLOCH: Okay. And the Staff still wants to
20 do that?

21 MR. BARTH: The answer is yes.

22 JUDGE BLOCH: And I would like to know if the
23 other parties have any objections, if we get to that stage,
24 where we are about to release -- or we are considering
25 seriously releasing the OI report. Whether the Staff or Mr.

1 Kohn have any objection to an in camera presentation by the
2 Staff.

3 MR. KOHN: No.

4 JUDGE BLOCH: Mr. Blake is not sure.

5 MR. BLAKE: Well, I haven't really consulted about
6 this with the client, Judge. And so I'm somewhat reluctant
7 to give you a position. I have a natural hesitancy about
8 materials being put in front of the tribunal, which we may
9 never see, it may never get exposed to -- it may never
10 become a part of the case. That's somewhat troubling to me.

11 JUDGE BLOCH: That's why I asked. I feel
12 comfortable with it, but I thought you might have an
13 interest in that.

14 So I suggest that that issue be part of the brief
15 which we'll schedule for next Friday, which is, I think the
16 4th; that's Friday February 4th. By close of business that
17 day I would like briefs from the parties, simultaneous
18 briefs, on the question of whether or not we should order
19 the release of the OI report, and whether or not, we should
20 permit an in camera examination -- presentation rather -- by
21 the office of investigation on this question. Next Friday
22 also will be the day that the Staff will tell us whether it
23 will release the attachments of the OI report.

24 MR. BARTH: That's a bit broader, Your Honor, than
25 we had previously heard.

1 JUDGE BLOCH: That's what I heard. You mean how
2 is it broader?

3 MS. YOUNG: The OI exhibits.

4 JUDGE BLOCH: The OI exhibits.

5 MR. BARTH: I think that Mr. Blake had sought the
6 26 exhibits identified by Mr. Robinson in response to
7 interrogatory 10.

8 MR. BLAKE: It's true.

9 MR. BARTH: The OI report may have a great, great
10 deal more with it.

11 MR. BLAKE: If, for example, there are some more
12 internal or predecisional types of things, which they
13 attached, I show no interest in it. I was really trying to
14 obtain base, factual documentation.

15 JUDGE BLOCH: Well, what struck me was, as we were
16 discussing it, that I'm not sure that the same
17 considerations about protecting the prosecution apply to
18 strictly factual material that's attached, whatever it might
19 be. And that's why I was hoping the Staff would consider
20 releasing all the attached, strictly factual material. I
21 understand some of them may be policy affidavits by people
22 who are included, that's not what we are talking about. But
23 strictly factual material.

24 So I guess there is no need to have a briefing by
25 anyone on whether the Staff should release that factual

1 material, because it may come voluntarily. In fact, if it's
2 not released, we may have to schedule briefing on that.

3 MR. BLAKE: I take it --

4 MR. BARTH: Your Honor, I have just have to tell
5 you we will have to think it over very carefully. We
6 understand Mr. Blake's request for 26 documents identified
7 in response to interrogatory 10. Beyond that, we will have
8 to give this another think ourselves.

9 JUDGE BLOCH: Because now we are talking about
10 factual information that doesn't involve conclusions that
11 could be taken out of context; this is just facts.

12 MS. YOUNG: And at one point during the
13 conversation the targeted date that was February 18th, is
14 that no longer the case?

15 MR. BLAKE: No. That was the provision of them,
16 with the determination before that of whether or not we were
17 going to get them, which I would assume --

18 JUDGE BLOCH: Do you needs until the 18th on
19 that?

20 MS. YOUNG: What I think Mr. Blake had explained
21 that he had picked that date, since it was an earlier
22 affidavit, trying to explain that we were --

23 JUDGE BLOCH: He did, and if you need it, you can
24 have it. I just don't understand why it would take more
25 than a week to decide whether or not to release factual

1 information.

2 MS. YOUNG: If there were only two people involved
3 in the decision it may not take more than 10 minutes.
4 Unfortunately --

5 JUDGE BLOCH: Why don't we allow until the 18th on
6 that.

7 MS. YOUNG: Okay.

8 JUDGE BLOCH: And ask the Staff to expedite it
9 more than that, and show us its great concern for expedition
10 in this case.

11 MR. BLAKE: I have to confess too, I don't really
12 know when I used the terminology or have been sucked into
13 using the terminology of exhibits or attachments, I don't
14 know what I'm talking about. I'm after these interviews or
15 transcripts of interviews, whether they're attachments or
16 exhibits, or they're not.

17 JUDGE BLOCH: Do you want the other factual
18 information?

19 MR. KOHN: Yes. Everything that relates to the OI
20 report.

21 MS. YOUNG: We'll address the release of both.

22 JUDGE BLOCH: Are there any other comments on the
23 schedule proposed by GPC?

24 MR. KOHN: I think the last point we left off was
25 the discussion regarding commencement of deposition, and I

1 would --

2 JUDGE BLOCH: Commencement of depositions can be
3 immediate, because we are only talking about the other phase
4 of the case. And I -- do you need a slight extension beyond
5 April 15th, is that what you were suggesting, because of the
6 other schedule?

7 MR. KOHN: Yes. I have a hearing that will
8 probably take two weeks, beginning February 14. And if it
9 would be requested, deposition schedule to begin April 15 to
10 continue to the end of the month.

11 JUDGE BLOCH: But we are not going to change the
12 beginning date, that's now.

13 MR. KOHN: Okay.

14 JUDGE BLOCH: End of April is what you want, April
15 29th? 29th must be the last day of the month or you
16 wouldn't have used it in the schedule.

17 MR. LEWIS: Last working day.

18 JUDGE BLOCH: April 29th is the last working day
19 in April, so that's the end of the depositions, April 29th.
20 That would probably put back -- by about a week, the
21 additions to stipulations. So we'll call that May 6th.

22 MR. KOHN: I generally object to the time frame of
23 all of this. I do not have the resources to necessarily
24 personally digest -- assuming I put 100 percent of my
25 resources to the proceeding, the concept of completing the

1 depositions, waiting for them to come back and have
2 transcripts in hand, digesting the content of the
3 depositions and putting together the other documents is
4 probably a -- certainly more than not --

5 JUDGE BLOCH: So what date do you propose?

6 MR. KOHN: I would propose 30 days after
7 conclusion of the deposition.

8 JUDGE BLOCH: So the last day in May is what you
9 propose?

10 MR. KOHN: Yes.

11 JUDGE BLOCH: Make it May 31. In terms of ADR
12 proposals, I'm not sure you really want to wait until the
13 discovery is completed for ADR proposals, but you might.

14 MR. BLAKE: We've ADR'd today, and we'll have
15 other proposals.

16 JUDGE BLOCH: That's true. Whatever you want. We
17 don't need a date on ADR proposals, they can come any time.

18 Negotiations of additional -- so we don't need
19 that either, May 2 through 6, that's any time. May 9
20 through 13, I think it's possible we need another status
21 conference before that, and my board suggested to me, I
22 think, the end of February was the time that we were
23 thinking about. When would the parties suggest as another
24 time for fruitful status conference?

25 MR. BLAKE: I would say suggest that today has

1 really been an effective get-together. And while we set a
2 date, I sure would like to feel free to utilize the insights
3 of the board in the same way that we have today. And any of
4 the parties want to as we go, if that would be possible.

5 JUDGE BLOCH: That would be possible.

6 MR. BLAKE: So I'm fair -- I'll set on a date but
7 also have you available to the extent that we can.

8 MR. BARTH: Your Honor, Ms. Young suggested it
9 would probably be fruitful after we finish -- after
10 depositions are finished, it would put people in possession
11 of facts, they can assess where they're going then, because
12 they should have, pretty much, the facts. The stipulations
13 should have been done by then, so, at least the power
14 company and Mr. Mosbaugh will be in possession of whatever
15 facts they need, and it might be more fruitful as a
16 discussion upon the conclusion of the deposition.

17 JUDGE BLOCH: So May?

18 MR. BARTH: I think you have on this schedule, not
19 yours, April 15.

20 MS. YOUNG: They changed that to the 29th.

21 MR. BARTH: April 29.

22 MS. YOUNG: Yes, May.

23 MR. BARTH: So from our point of view May might
24 be -- first of May might be a more fruitful time for a
25 status conference.

1 JUDGE BLOCH: Why don't we schedule it as May 3rd,
2 but I liked the suggestion that Mr. Blake made that we can
3 flexible and if it would be helpful at any time, we'll do it
4 earlier.

5 MR. BARTH: We certainly agree.

6 MR. BLAKE: Are you going to issue an order, Judge
7 Bloch, that sort of captures this?

8 JUDGE BLOCH: I probably should, it will make it
9 easier.

10 MR. BARTH: Order or summary?

11 MR. BLAKE: I just --

12 JUDGE BLOCH: I'll assemble an order from the
13 transcript.

14 JUDGE CARPENTER: Right.

15 JUDGE BLOCH: And I guess the date for motions for
16 summary disposition we might as well put off setting at this
17 point, until we have another status conference. Just as the
18 settlement conference can be put off until the next status
19 conference on May 3rd.

20 So when would the parties suggest we have a target
21 for the licensing board to conclude the adjudication of this
22 entire case?

23 MR. BARTH: Sine Die known.

24 JUDGE BLOCH: I think that's really not
25 acceptable. The Commission really wants us to manage this

1 case. That's really not acceptable to do that, and that's
2 one of the problems that we have, because of the Staff's
3 inability to manage right now. That's how I look on an
4 inability to promise dates, is an inability to manage.

5 So, I'm going to say for now, given the
6 uncertainties, sometime in September of 1994, as a target
7 for final adjudication, if necessary.

8 MR. BLAKE: I was going to suggest the prospect of
9 five or six months after the OI report comes out, however we
10 carve it up and it comes out to be -- sounds like pretty
11 much the same.

12 JUDGE BLOCH: One thing I'd like the parties to
13 consider, because it worked really well in the Comanche Peak
14 proceeding, something Mr. Roisman suggested. He filed --
15 prior to the hearing, he filed all his proposed findings
16 with documentation to the record and then it really focused
17 the hearing. It also makes it possible to have far more
18 stipulations in advance of the hearing if the parties are
19 willing to do that. I'm not demanding that at this time at
20 all, but I just -- whatever we can do to expedite the trial
21 of this case we would want to do.

22 MR. KOHN: One thing I would suggest would be the
23 legal standards that will be implied, to whom the burden of
24 proof will be on, and maybe the parties could start briefing
25 those issues, which would better -- if everyone comes to the

1 same conclusion --

2 JUDGE BLOCH: Well actually there won't be any
3 problem, because this is an amendment proceeding, it's not
4 an enforcement proceeding, and the licensee has the burden
5 on all the issues, by preponderance, so that's not
6 difficult.

7 MR. KOHN: That's my understanding.

8 JUDGE BLOCH: The other thing that was done in the
9 Comanche Peak proceeding that could save time is that it was
10 stipulated in advance that the depositions were evidentiary
11 and could be submitted without cross on the stand, except
12 where the parties agreed that that was not true, that there
13 was a special credibility problem with a particular
14 individual. Because there were some witnesses whose
15 testimony were submitted as deposition transcripts, with an
16 agreement that there would be nothing further. One way that
17 can be done is for the board to be reviewing the transcripts
18 and for the board to have the responsibility of deciding
19 whether or not credibility is an issue, so that a particular
20 person has to be questioned. That's just a way of
21 shortening a hearing. You have all the depositions
22 submitted as final evidence, and then the board can decide
23 if they have to hear some of the testimony. Which, in a
24 case like this where there is a lot of credibility, will
25 probably involve a good deal. But there might some of the

1 witnesses for which that's not necessary.

2 MR. BARTH: Your Honor, if you're looking for
3 suggestions, the local rules of the Federal District Courts
4 in most jurisdictions require that depositions may be
5 stipulated evidence in part. That is, Mr. Kohn would take a
6 deposition, decide he wants pages 4 and 5 in, and that would
7 be submitted as stipulation, which would get rid of 40 pages
8 of routine garbage, that kind of thing. So where he and the
9 power company and the NRC consider to be germane issues
10 would come in that way.

11 JUDGE BLOCH: That could be done that way, which
12 is a little more --

13 MR. BARTH: Rather than stipulate a whole
14 deposition in, which might have all kinds of garbage in it.

15 MS. YOUNG: But not necessarily relevant.

16 JUDGE BLOCH: Oh, it's not -- but the relevance is
17 not stipulated to, just the admissibility. So therefore you
18 would then have to decide which parts to introduce into the
19 record.

20 MR. BARTH: But it's not admissible unless its
21 relevant.

22 JUDGE BLOCH: What would be stipulated to is that
23 there would be no necessary cross-examination, unless the
24 board requests it. There would still have to be the
25 submission of portions of the transcript as relevant -- and

1 determination on relevance made before they're in evidence.
2 But what's waived -- if you want to do it -- is the
3 necessity of having every witness cross-examined before
4 their testimony is accepted. And you can either do that --
5 you could do that by allowing the board to decide who they
6 need to see in order to decide credibility issues, and on
7 what issues they're going to be questioned.

8 MR. BARTH: The depositions may cover more
9 credibility than they cover facts too, Your Honor.

10 JUDGE BLOCH: I understand. I'm just suggesting
11 it. There may be other creative suggestions you can come up
12 with, I just think we can invent things that we consider to
13 be fair that will save time in this proceeding, and that
14 will still be fair and just.

15 Is there anything else that must be said before we
16 conclude this conference? There being no comments.

17 MR. KOHN: If I just --

18 JUDGE BLOCH: Mr. Kohn.

19 MR. KOHN: If I might just maybe get an
20 understanding of -- does the board believe the parties will
21 jointly come across deposition schedule, maybe it's
22 something we should talk about now as to what dates we would
23 be available and when we can commence, rather than wasting
24 time filing formal notices and things of that nature.

25 JUDGE BLOCH: Let's go off the record for this.

1 If we reach an agreement we will put it back on the record.

2 [Discussion off the record.]

3 [Whereupon, at 4:39 p.m., the taking of the
4 conference was concluded.]

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REPORTER'S CERTIFICATE

This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission in the matter of:

NAME OF PROCEEDING: Georgia Power Company

DOCKET NUMBER: 50-424-OLA-3

PLACE OF PROCEEDING: Bethesda, MD

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission taken by me and thereafter reduced to typewriting by me or under the direction of the court reporting company, and that the transcript is a true and accurate record of the foregoing proceedings.

Amelia Hutter

Official Reporter
Ann Riley & Associates, Ltd.