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Executive Vice President  
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ELV-05261  
003109

February 24, 1993

The Commissioners  
U. S. Nuclear Regulatory Commission  
Washington, D. C. 20555

Request For Director's Decision Pursuant to 10 CFR 2.206  
(Petitioners Mr. Marvin Hobby and Mr. Allen Mosbaugh)

Lady and Gentlemen:

Over two years ago, on or about September 11, 1990, two former Georgia Power Company employees filed a petition with the Commission which requested investigatory proceedings against Georgia Power. At that time the two petitioners also had active claims against Georgia Power before the Department of Labor alleging unlawful termination under the Energy Reorganization Act. The petition filed with the NRC contained over a score of allegations; approximately one-half alleged intentional or willful violations of NRC requirements by officers and employees of Georgia Power Company. The events underlying the allegations, extending principally from October, 1988 through August, 1990, required no immediate action by the NRC as determined by the Director on October 23, 1990.

Since September 1990, the NRC Staff, treating the petition under 10 CFR 2.206, has expended extensive resources and tremendous effort in conducting inspections and investigations of these allegations. In addition, the Staff formally requested, and received, pertinent information from Georgia Power in April and October, 1991. A host of inspection reports issued to Georgia Power by the NRC Staff, including synopses by the Office of Investigations resulting from its review, address allegations contained in the 2.206 petition. The final NRC Staff determinations as stated in these reports and synopses have concluded that the alleged willful or intentional misconduct did not occur or was not substantiated. In related litigation involving the petitioner's claims of unlawful termination, administrative law judges of the Department of Labor, after hearings, issued recommended decisions which found that each of the petitioners was lawfully terminated from Georgia Power employment. The petitioners have appealed these decisions to the Secretary of Labor.

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Allegations associated with one particular matter involving events in 1990 were referred to the Department of Justice and remain under investigation at this time. Georgia Power has, and will, cooperate with the investigators assigned to that matter. Georgia Power Company's own review, shared in part with the investigators and addressed in the Company's formal 1991 responses, concluded that no intentional or willful misconduct was engaged in by Georgia Power Company employees.

Georgia Power has learned that the NRC Staff has decided to defer a resolution on the 2.206 petition. Specifically, in the context of a license amendment proceeding for the Vogtle Electric Generating Plant, on January 12, 1993 a representative of the NRC Staff indicated to the Licensing Board that Director action on the 2.206 petition was being deferred due to the pendency of the outstanding investigation. Further, the NRC representative stated that deferral will extend at least six months. Georgia Power believes that such a purposeful delay of issuance of a Director's decision which addresses the vast majority of allegations which have been investigated and resolved is not justified. The pendency of an investigation of a discrete set of allegations should not be cause to defer a decision on the larger balance. The Staff's proposed deferral also conflicts with the NRC's past practice of issuing partial Director decisions.


Georgia Power understands and appreciates the NRC's important public safety and welfare mission and the well-justified impetus to review allegations of impropriety submitted to the agency. That review also should be timely. The oftentimes subtle, adverse impact on those accused of misconduct is real. Unreasonable, unwarranted cost and stress should not be visited upon an innocent licensee or upon a licensee's innocent employees. The Staff, I fear, discounts such impact when it defers resolution for the sake of appearance, expediency or considerations separate from the petition itself. Licensees are, after all, members of the public served by the agency. In order to treat them fairly, closure should be reached as soon as investigations are concluded.

On behalf of the Georgia Power Company, I hereby request that the Director issue a partial decision which addresses the petition and advises the petitioners that no proceeding will be instituted. Based upon NRC resolutions to date, the Commission action requested by the petitioners is clearly not warranted, and the ongoing matters may be sufficiently addressed, if required, under the Commission's investigative and enforcement authority. Please understand that I am not requesting resolution of those particular matters which, in the judgment of the Director, actually require further review by the NRC Staff or others.

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What I am requesting is timely and prompt closure of those portions of the petition which have been resolved by the Staff and, based on those resolutions, a determination that a proceeding is not appropriate. That decision is long overdue.

Sincerely,



R. Patrick McDonald

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Thomas E. Murley, Director  
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cc:

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Board Notification 93-

Dated: April 14, 1993

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## BOARD NOTIFICATION

GEORGIA POWER COMPANY, *et al.*  
(Vogtle Electric Generating Plant, Units 1 and 2)  
License Amendment, Transfer to Southern Nuclear  
Docket Nos. 50-424-OLA-3, 50-425-OLA-3

Peter B. Bloch, Chairman  
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Adjudicatory File (2)  
Atomic Safety and Licensing Board  
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