

Georgia Power Company  
100 Piedmont Avenue  
Atlanta, Georgia 30308  
Telephone 404 526-3848

ATTACHMENT 3

Main Address:  
100 Inverness Center Parkway  
Post Office Box 1235  
Birmingham, Alabama 35201  
Telephone 205 368-5540

R. P. McDonald  
Executive Vice President  
Nuclear Operations

9/28/90  
*R. P. McDonald*  
~~CONFIDENTIAL INFORMATION  
LETTER CONTAINS INFORMATION  
EXEMPT FROM DISCLOSURE UNDER  
10 CFR 2.790~~

May 17, 1990

Mr. Stewart D. Ebnetter  
Regional Administrator  
U. S. Nuclear Regulatory Commission  
Region II  
101 Marietta Street, N.W.  
Atlanta, Georgia 30323

Dear Mr. Ebnetter:

This letter responds to your letter to Mr. W. G. Hairston, III dated April 18, 1990, concerning a complaint filed by Mr. Marvin Hobby, who was formerly employed by Georgia Power Company in Atlanta, with the United States Department of Labor's Wage and Hour Division. In addition, the status of Mr. Hobby's complaint is reviewed since several procedural events have transpired since the transmittal of your letter to Georgia Power. As you know, Georgia Power and its counsel, have kept the NRC apprised of developments in this matter. Indeed, I advised you of Mr. Hobby's potential claim on February 1, 1990, prior to the February date on which Mr. Hobby alleges adverse action was taken by elimination of his employment position. Since that time, counsel for Georgia Power has provided additional information to Richard Goddard, Esquire, NRC Regional Counsel, on several occasions.

The Department of Labor Wage and Hour Division did not conduct a fact-finding investigation in this matter. The Area Director's letter, dated March 26, 1990, expressly states that "all conclusions that follow are based upon information supplied by Marvin Hobby." Georgia Power appealed the Department of Labor's findings contained in the letter on March 30, 1990, as provided by law. Enclosure 1 is a photocopy of that appeal. On May 4, 1990, the Department of Labor's Regional Solicitor filed a Motion To Stay the appeal "in order to permit the Administrator to receive and consider additional information provided by respondents or

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Mr. Stewart D. Ebnetter  
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others" after noting the absence of a fact-finding investigation prior to the March 26 Area Director's letter (Enclosure 2). On May 7, 1990, the Honorable Joel R. Williams, the DOL Administrative Law Judge assigned to the proceeding, orally granted the Regional Solicitor's Motion, thereby permitting the Wage and Hour Division to receive and consider information and materials bearing on Mr. Hobby's allegations. Judge Williams has also stated that this matter will proceed to trial on June 12, 1990. The Department of Labor's May 9, 1990 letter to Georgia Power soliciting information is attached as Enclosure 3. You will note that the Division intends to have its determinations completed twenty days after the granting of its Motion (i.e., by May 27, 1990), approximately 10 days after the requested response date in your letter.

The employment action taken with respect to Mr. Hobby was based solely on legitimate considerations of the Company's organizational needs and upon Mr. Hobby's relative abilities to fulfill those needs. Inasmuch as the Division has expressed its interest to reissue a determination after receipt of additional information from Georgia Power, we request your concurrence to defer further addressing the merits of the discrimination allegations until completion of the Division's review and receipt of its determinations. Georgia Power has no investigative reports of this matter. Transcripts of depositions taken in the appeal process and related documentation will be made available, as you desire, for your staff's review. Additionally, copies of further correspondence with the DOL will be provided to you as they occur.

Georgia Power has not taken any formal action to assure that the alleged discrimination does not have a chilling effect in discouraging employees from raising any perceived safety concern for several reasons. First, the nature of the alleged "regulatory concern" of Mr. Hobby and of concerns which bear upon nuclear safety are sufficiently dissimilar that those employees who have knowledge of Mr. Hobby's claims will not be discouraged. Second, Georgia Power remains resolute in maintaining the ability of employees to notify or report concerns without fear of adverse action. As one example, Georgia Power's Corporate Concerns Program provides a means which complements the Vogtle and Hatch Quality Concerns Programs for employees to raise concerns outside their direct line management. Third, while Georgia Power intends to litigate Mr. Hobby's allegation, the Company has no intent to publicize or foster the publication, of its position in this matter. Those employees with knowledge of the proceeding, of Mr. Hobby and his former position, and of the termination of his employment should perceive readily the legitimate nature of Georgia Power's actions.

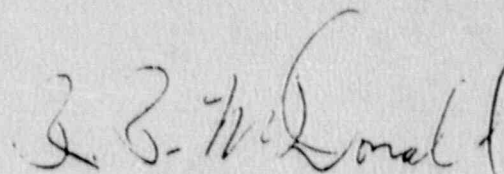


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As explained above, this letter does not fully address the Company's position on the merits of the "regulatory" concerns of Mr. Hobby nor provide you with comprehensive investigative information. We will provide you a more thorough response upon completion of proceedings unless you request otherwise.

This letter is exempt from disclosure in accordance with 10 CFR 2.790(a)(6) because disclosure would constitute a clearly unwarranted invasion of personal privacy of the Department of Labor petitioner and licensee personnel. Moreover, exemption from disclosure will assure that other licensee or contractor employees are not discouraged from raising perceived concerns.

Sincerely,

A handwritten signature in cursive script, appearing to read "J. B. McDonald".

RPM/gc

Enclosures

xc: A. W. Dahlberg

## TROUTMAN, SANDERS, LOCKERMAN &amp; ASHMORE

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

ATTORNEYS AT LAW

CANDLER BUILDING, SUITE 1400

127 PEACHTREE STREET, N.E.

ATLANTA, GEORGIA 30303-1810

404-658-8000

CABLE: MAESTRO

TELECOPIER: 404-221-0469

JESSE P. SCHAUDIES, JR.

WRITER'S DIRECT DIAL NUMBER

404-658-8054

## T E L E G R A M

March 30, 1990

Chief Administrative Law Judge  
United States Department of Labor  
Suite 700  
VanGuard Building  
111-20th Street, N.W.  
Washington, D.C. 20036

**Re: Marvin Hobby v. Georgia Power Company**

Dear Sir:

This telegram is notification of Georgia Power Company's wish to appeal conclusions stated in a letter of March 26, 1990, from Acting District Director, Richard L. Gilbert, regarding allegations made by Marvin B. Hobby. As the letter states, no fact-finding investigation was conducted. No company documents were reviewed by the Compliance Officer. No company witnesses were interviewed by the Compliance Officer. Georgia Power Company has been totally denied an opportunity for input and has been denied all rights of due process through this procedure.

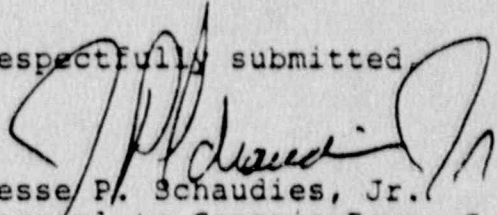
Any suggestion that the Company or its counsel failed to arrange for conciliation or an investigation is totally unfounded and inaccurate. The charge was filed on or about February 6, 1990, but the Company did not receive a copy until March 12, 1990. No meetings were held the week of March 12, 1990, because the Company was discussing with the District Director its concerns about perceived bias by the Compliance Officer. During the week of March 19, 1990, no meetings were conducted because the Compliance Officer was unavailable and attending Department of Labor training sessions. The District Director's letter was dated the following Monday, March 26, 1990.

Thus, while specifically reserving all jurisdictional objections that may arise because of the improper conduct on the

Chief Administrative Law Judge  
March 30, 1990  
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part of the investigator, Georgia Power Company hereby exercises its right to request appeal and a trial de novo.

Respectfully submitted,



Jesse P. Schaudies, Jr.  
Counsel to Georgia Power Company

JPSJr./sm

cc: Mr. Marvin Hobby (via mail)  
925 Melody Lane  
Roswell, Georgia 30075

Mr. Richard L. Gilbert (via mail)  
Acting District Director  
United States Department of Labor  
Room 668  
1375 Peachtree Street  
Atlanta, Georgia 30367



May 4, 1990

Ms. Beverly Queen  
Chief Docket Clerk  
Office of Administrative Law Judges  
U. S. Department of Labor  
1111 20th Street, N.W., Suite 700  
Washington, DC 20036

In the Matter of: Marvin B. Hobby v. Georgia Power Company  
Case No. 90-ERA-30  
SOL Case No. 90-10455

Dear Ms. Queen:

Enclosed are the originals and copies of a Motion to Stay Proceedings for 20 Days and a proposed Order.

Please file the original of the Motion and present the Order to the Court for consideration. If and when the Order is signed and entered, return to us a conformed copy of each document to show the date of filing.

As evidenced by the Certificate of Service, a copy of the aforesaid has been served on all parties.

Very truly yours,

Bobbye D. Spears  
Regional Solicitor

By:  
Ken S. Welsch  
Counsel

Enclosures

cc: Mr. Marvin B. Hobby  
9625 Melody Lane  
Roswell, GA 30075

Mr. Michael E. Kohn  
Kohn, Kohn & Colapinto, P.C.  
517 Florida Avenue, N.W.  
Washington, DC 20001

✓ Mr. Jesse P. Schaudies, Jr.  
Troutman, Sanders, Lockerman  
& Ashmore  
Candler Building, Suite 1400  
127 Peachtree Street, N.E.  
Atlanta, GA 30303-1810

UNITED STATES DEPARTMENT OF LABOR  
OFFICE OF ADMINISTRATIVE LAW JUDGES

\*\*\*\*\*  
In the Matter of:  
MARVIN B. HOBBY,  
Complainant,  
v.  
GEORGIA POWER COMPANY,  
Respondent.  
\*\*\*\*\*

CASE NO.  
90-ERA-30

MOTION TO STAY  
PROCEEDINGS FOR 20 DAYS

Pursuant to 29 C.F.R. §18.6, Rules of Practice and Procedure for Administrative Hearings, the Administrator, Wage and Hour Division, U. S. Department of Labor, moves for a stay of the proceedings in this matter for a period of not more than 20 days from the date of an Order approving such stay. As grounds for this Motion, the Administrator shows:

1. The Administrator is charged with the responsibility to investigate complaints filed pursuant to §210 of the Energy Reorganization Act of 1974 [42 U.S.C. 5801, et seq., 5851], hereinafter the Act.

2. Pursuant to a complaint filed by complainant under the Act, the Administrator investigated this matter. By letter dated March 26, 1990, Richard D. Gilbert, Acting District Director, Wage and Hour Division, issued the results of the Administrator's



compliance action and noted that: "At this point, no fact-finding investigation has been conducted. Attempts to make arrangements with Georgia Power Company's attorney to conduct one have failed. Therefore, all conclusions that follow are based upon information supplied by Marvin Hobby."

3. In order to permit the Administrator to receive and consider additional information provided by respondent or others, the Administrator seeks a short stay of these proceedings.

4. Upon the granting of such stay, the Administrator will afford interested persons the opportunity to present additional information. Within 20 days, the Administrator will notify the parties and this tribunal whether additional information has been received and, if appropriate, will amend or modify his March 26, 1990 findings notification letter accordingly.

WHEREFORE, the Administrator requests that his Motion to Stay Proceedings for 20 Days be granted.

ADDRESS:

Office of the Solicitor  
U. S. Department of Labor  
1371 Peachtree Street, N.E.  
Room 339  
Atlanta, GA 30367


Telephone:

(404) 347-4811  
(FTS) 347-4811

ROBERT P. DAVIS  
Solicitor of Labor

BOBBYE D. SPEARS  
Regional Solicitor

KEN S. WELSCH  
Counsel

By:   
NANCY J. SPIES  
Attorney

Attorneys for the  
Administrator, United States  
Department of Labor.

SOL Case No. 90-10455



UNITED STATES DEPARTMENT OF LABOR  
OFFICE OF ADMINISTRATIVE LAW JUDGES

\*\*\*\*\*

In the Matter of:

MARVIN B. HOBBY,

Complainant,

v.

GEORGIA POWER COMPANY,

Respondent.

CASE NO.

90-ERA-30

\*\*\*\*\*

ORDER

Upon motion of the Administrator for good cause shown, this matter is stayed for a period of not more than 20 days to permit the Administrator to receive additional information in this matter and to notify the parties and this tribunal accordingly.

This \_\_\_\_\_ day of \_\_\_\_\_, 1990.

\_\_\_\_\_  
ADMINISTRATIVE LAW JUDGE

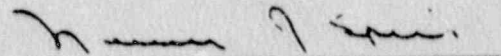
CERTIFICATE OF SERVICE

I certify that the foregoing Motion to Stay Proceedings for 20 Days and proposed Order were served this 4th day of May, 1990, by mailing true copies thereof, by first class mail to:

Mr. Marvin B. Hobby  
9625 Melody Lane  
Roswell, GA 30075

Mr. Michael E. Kohn  
Kohn, Kohn & Colapinto, P.C.  
517 Florida Avenue, N.W.  
Washington, DC 20001

Mr. Jesse P. Schaudies, Jr.  
Troutman, Sanders, Lockerman  
& Ashmore  
Candler Building, Suite 1400  
127 Peachtree Street, N.E.  
Atlanta, GA 30303-1810

  
\_\_\_\_\_  
NANCY J. SPIES  
Attorney

SOL Case No. 90-10455



U.S. Department of Labor

Employment Standards Administration  
Wage and Hour Division  
1375 Peachtree Street, N.E.  
Atlanta, Georgia 30367

ENCLOSURE 3



CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

May 9, 1990

Mr. Richard Dahlberg, President  
Georgia Power Company  
333 Piedmont Avenue, N. E.  
Atlanta, Georgia 30303

RE: Marvin B. Hobby vs. Georgia Power Company

Dear Mr. Dahlberg:

It is requested that you furnish to this office by 5 p.m., May 18, 1990, any information or materials you wish us to consider concerning the above subject. Any information not received by that time and date will not be considered. This date is necessary in order for the U. S. Department of Labor, Wage and Hour Division to have all determinations completed in this regard by May 27, 1990.

Please be advised that any information or materials you provide will not be kept confidential and may be divulged upon proper request. Any information or material you request to be kept confidential will be returned to you and not considered.

You may make your submissions to:

Daniel W. Bremer, District Director  
U. S. Department of Labor, ESA  
Wage and Hour Division  
1375 Peachtree Street, N. E., Room 668  
Atlanta, Georgia 30367

Sincerely,

DANIEL W. BREMER  
District Director

cc: Mr. Michael E. Kohn  
Kohn, Kohn and Colapinto, P.C.  
517 Florida Avenue, N. W.  
Washington, D. C. 20001

cc: Mr. Jesse P. Schaudies, Jr.  
Troutman, Sanders, Lockerman  
and Ashmore  
Candler Building, Suite 1400  
127 Peachtree Street, N. E.  
Atlanta, Georgia 30303-1810