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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION



In the Matter of	)	
	)	
GEORGIA POWER COMPANY	)	Docket Nos. 50-424-OLA-3
<u>et al.</u> ,	)	50-425-OLA-3
	)	
(Vogtle Electric Generating	)	Re: License Amendment
Plant, Unit 1 and Unit 2)	)	(transfer to Southern Nuclear)

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INTERVENOR'S RESPONSE TO NRC STAFF  
MOTION FOR A STAY OF THE LICENSING BOARD  
ORDER RELEASING THE OFFICE OF INVESTIGATIONS REPORT

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March 22, 1994

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INTRODUCTION

Comes Now Intervenor, Allen L. Mosbaugh, and moves that the Nuclear Regulatory Commission deny NRC Staff's Motion For A Stay Of The Licensing Board's Order Releasing The Office Of Investigations Report.

FACTS

The Commission's order of March 16, 1994 states that any answer to the Staff's motion for a stay should address the factors contained in 10 C.F.R. §2.788(e). Pursuant to the Commission's order Intervenor addresses those four factors.

DISCUSSION

I. NRC Staff Does Not Have A Likelihood of Success on Merits

For the reasons stated in Intervenor's February 4, 1994 brief concerning the Release of NRC Office of Investigations Report, No. 2-90-020R and the ASLB's subsequent order related to the OI Report, LBP-94-06, 39 NRC\_\_\_\_ (March 3, 1994), NRC Staff is not likely to succeed on the merits.

**A. The Board Did Not Act Contrary to NRC Policy**

NRC Staff asserts that since the Board ordered release of the Report without hearing an in camera presentation as set out in 10 C.F.R. § 2.744(c), it will ultimately prevail on the merits. However § 2.744(c) states "The record or document covered by the application shall be produced for the "in camera" inspection of the presiding officer, exclusively, **if requested by the presiding officer.**" (emphasis added). Therefore, the Board did not act contrary to NRC policy.

**B. NRC Regulations Are in Favor of Releasing the OI Report**

Discovery in ALSB licensing proceedings is very broad. For example, the Commission's Statement of Policy; Investigations, Inspections, and Adjudicatory Proceedings, 49 Fed. Reg. 36032 (September 13, 1984) requires that all parties to NRC licensing hearings (including NRC Staff), even without being formally requested to make a disclosure, "disclose to the boards and other parties all new information they acquire which is considered material and relevant to any issue in controversy." 49 Fed. Reg. at 36032. The exceptions to this rule are very narrow. Id. Additionally, it is well settled that discovery is available to the parties to obtain the fullest possible knowledge of the issues and facts pending before a licensing board. South Carolina Electric & Gas Co., (Virgil C. Summer Nuclear Station, Unit 1), ALAB-642, 13 N.R.C. 881, 889 (1981). The burden is upon the party attempting to withhold a document from discovery to demonstrate that discovery should not be had. Boston Edison Co.,

(Pilgrim Nuclear Generating Station, Unit 2), LBP-75-30, 1 N.R.C. 579, 583 (1975). The NRC Staff has not met this burden and therefore the stay should not be granted.

**II. The NRC Staff Cannot Demonstrate that It will be Irreparably Injured Unless a Stay is Granted**

The NRC Staff asserts that it "would be contrary to the Commission's longstanding policy and practice of not releasing or publicizing the factual basis or the opinions leading to its enforcement decisions until after an enforcement action is taken." NRC Staff Motion for a Stay, p.8. However, the Staff fails to cite any authority to support this statement. Additionally, NRC Staff's argument is wholly speculative. NRC Staff could just as easily assert that public disclosure could enhance its decision making process inasmuch as the release of the OI Report could prompt Intervenor, GPC, or someone else to provide NRC staff with documentation to clarify areas of the OI Report. Public scrutiny is a part of our system. NRC Staff should not be allowed to exempt itself from public scrutiny at its own discretion. As such, harm associated with public scrutiny does not constitute a substantial concrete or cognizable irreparable harm sufficient to justify granting a stay of the order to release the OI Report.

**III. Granting a Stay Will Harm Other Parties**

**A. Intervenor Would Suffer Great Harm if the Release of the OI Report Is Delayed**

The fact that Mr. Mosbaugh was the original allegor does not mean he has had access to most of the material used by OI. GPC

terminated Mr. Mosbaugh in September, 1990. Since that date, Mr. Mosbaugh's access to information has been severely limited. Additionally, Mr. Mosbaugh turned his original tapes over to the OI back in 1990. Except for a small number of extracted conversations, Mr. Mosbaugh has not had possession of his own tape recordings since 1990.

Significantly, Mr. Mosbaugh's counsel in this proceeding has never had access to those original tapes.

Furthermore, the OI has collected thousands of pages of materials, of which Mr. Mosbaugh may or may not have access. Likewise, the OI has conducted scores of interviews and sworn depositions, none of which Mr. Mosbaugh was present for and none of which Mr. Mosbaugh has had access to. Significantly, Georgia Power Company was able to attend most, if not, all of these interviews and depositions and was able to learn which aspects of Mr. Mosbaugh's allegations OI felt were most significant. Accordingly, Intervenor would be greatly harmed if NRC Staff is granted a stay.

**B. The Public Would Be Irreparably Harmed by Further Delay in the Resolution of This Case**

The public interest is subjected to irreparable harm every day that there is a delay in deciding the issues in this case. The release of the OI Report would clear up the issues of whether or not Plant Vogtle is run by those with the character and competence needed to run a nuclear facility. The public interest is being harmed by the questionable present and future safety of Plant Vogtle. Given the public health and safety concerns

implicated, and the level of management implicated in the allegations, the public interest demands an expiatory resolution of this proceeding. The granting of a stay of the order to release the OI Report will not only further prejudice the public interest, but will delay this proceeding. See, e.g., King v. Conde, 121 F.R.D. 180, 195 (E.D.N.Y. 1988) (weighing the "importance to the public interest" as a significant factor supporting disclosure).

#### IV. The Public Interest Lies in the Immediate Release of the OI Report

Finally, Intervenor reasserts that this argument is totally inapplicable to this proceeding and Intervenor questions whether NRC Staff has the statutory or legal standing or authority to raise an objection to releasing a document based on potential harm the release could have on a corporation or individual over which NRC Staff is entrusted to regulate. If this were a legitimate justification to withhold documentation, then nothing this Board did should be public. This reasoning clashes with congress' enactment of the Administrative Procedure Act, and the Atomic Energy Act, both of which mandate public participation.

CONCLUSION

For the above stated reasons Intervenor respectfully requests the Commission to deny the NRC Staff's motion for a stay and order the NRC Staff's to immediately comply with the Board's Order of March 3, 1994.

Respectfully submitted,

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March 22, 1994

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ATOMIC SAFETY AND LICENSING BOARD  
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Re: License Amendment  
(transfer to Southern Nuclear)

CERTIFICATE OF SERVICE

I hereby certify that on March 22, 1994 Intervenor's Response to NRC Staff Motion for a Stay of the Licensing Board Order Releasing the Office of Investigations Report was served by facsimile and first class mail upon the following:

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