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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)
)	
)	ASLBP No. 93-671-01-OLA-3

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

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March 15, 1994

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

INTRODUCTION

Comes Now Intervenor, Allen L. Mosbaugh, and moves that the Nuclear Regulatory Commission strike NRC Staff's Motion For A Stay Of The Licensing Board Order Releasing The Office Of Investigations Report. Intervenor believes NRC Staff's motion should be immediately stricken as it seeks extra-judicial relief not available to any party to this proceeding.

FACTS

On March 3, 1994 the Licensing Board ordered the Staff to (1) promptly release to Georgia Power and Allen Mosbaugh all of the easy-to-separate factual information that is contained in the Office information that is contained in the Office of Investigation's Report in Case No. 2-90-020R and that is not inextricably intertwined with privileged material and (2) release the remainder of the Office of Investigations Report on April 4, 1994, subject to protective order. LBP-94-06, 39 NRC ____ (March 3, 1994). On March 14, 1994 NRC Staff filed a motion for a stay

of this Order with the Commission.

DISCUSSION

- I. The NRC Staff could have brought their application for a stay before the Atomic Safety and Licensing Appeal Board but failed to do so and, as such, the request for a stay should be stricken.

The Regulations clearly state that "an application to the Commission for a stay of a decision by the ASLB will be denied if a stay, was not, but could have been, sought before the Appeal Board." 10 C.F.R. §2.788(f). The NRC Staff had 10 days from the service of the Board's Order in which to file an application for a stay. 10 C.F.R. §2.788(a). They failed to file an application for a stay with the ASLB within this time period. Hence, the Commission must deny the NRC Staff motion for a stay because NRC Staff could have, but did not, file the motion with the Board.

- II. The NRC Staff did not petition for reconsideration of the March 3, 1994 decision.

A party may only file an application for to stay the effectiveness of a decision pending the filing of an appeal of the decision. 10 C.F.R. §2.788(a). As stated above, a petition for reconsideration of a final decision must be filed within 10 days after the decision. 10 C.F.R. §2.771(a). The NRC Staff did not file an appeal of the March 3, 1994 ASLB Order.¹

Accordingly, NRC Staff is not entitled to a stay of the

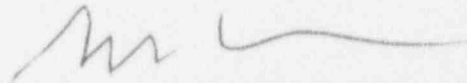
¹ On page 8 of the NRC Staff's motion for a stay the Staff cites to 10 C.F.R. § 2.788(e)(1) and asserts that under this provision NRC Staff is likely to succeed on the merits. Intervenor interprets this section to refer to the likelihood of success on the merits of an appeal. Since NRC Staff has not filed an appeal, its chances of success are nonexistent.

effectiveness of the decision because there is no appeal pending and the time limit to file one has expired.

CONCLUSION

For the above stated reasons Intervenor respectfully requests the Commission to immediately strike the NRC Staff's motion for a stay of the March 3, 1994 Order. However, should the Commission not strike NRC Staff's motion for a stay, Intervenor request the opportunity to file a responsive brief.

Respectfully submitted,



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March 15, 1994

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

BEFORE THE COMMISSION



In the Matter of)

GEORGIA POWER COMPANY)
et al.,)

(Vogle Electric Generating)
Plant, Unit 1 and Unit 2))

Docket Nos. 50-424-OLA-3
50-425-OLA-3

Re: License Amendment
(transfer to Southern Nuclear)

CERTIFICATE OF SERVICE

I hereby certify that on March 15, 1994 Intervenor's Information and Brief concerning Motion for Protective Order was served by first class mail upon the following:

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March 15, 1994

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