

ORIGINAL

OFFICIAL TRANSCRIPT OF PROCEEDINGS

Agency: Nuclear Regulatory Commission

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

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

LOCATION: Bethesda, Maryland

DATE: Friday, April 22, 1994

PAGES: 240 - 291

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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 Station Units 1 and 2) :
11 -----X

12
13 Fifth Floor Hearing Room
14 4350 East-West Highway
15 Bethesda, Maryland 20814
16 Friday, April 22, 1994
17

18 The above-entitled telephone conference call
19 commenced at 2:25 p.m.

20 BEFORE:

21 PETER B. BLOCH, Chairman
22 JAMES H. CARPENTER
23 Administrative Judges
24
25

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1 APPEARANCES:

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7 Office of General Counsel

8 United States Nuclear Regulatory Commission

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11 On behalf of Georgia Power Company:

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1 APPEARANCES [continued]:

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3 On behalf of Intervenor:

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P R O C E E D I N G S

1
2 JUDGE BLOCH: This is Judge Bloch, and I am
3 chairman of the Vogtle case involving Georgia Power. It is
4 a license amendment case. With me on the Licensing Board
5 today is Judge Carpenter for this telephone conversation.
6 In the period before the phone call was connected, all the
7 parties have identified themselves for the record.

8 The purpose of this call is to obtain a status on
9 the case. And I know that the licensee also is interested
10 in having a discussion of whether it is appropriate to have
11 further depositions as requested by Mr. Kohn for
12 Mr. Mosbaugh.

13 We will looking to two questions: one is whether
14 we can complete the first round of discovery by the end of
15 this month or as soon thereafter as possible, and then we
16 will be looking for a way of setting up the next conference
17 call on May 3 so that it will be as productive as possible.

18 Is there a party that would prefer to start at
19 this time concerning whether or not the -- I suppose the
20 party that should start is Mr. Kohn. You I understand, Mr.
21 Kohn, are requesting approximately 10 additional
22 depositions. I know that licensee is challenging that. It
23 seems to me appropriate at this point for you to explain the
24 schedule that you would like to proceed on at this time and
25 explain the reasons for it so that we can be persuaded.

1 MR. KOHN: Thank you, Your Honor.

2 First, I would like to say I did speak with John
3 Lamberski yesterday, and requested that the conference will
4 happen on Monday, if at all possible, and told him that I
5 would not be coming into my office, in all likelihood of
6 arriving in Washington until about this time, and I did not
7 arrive until a quarter after 1:00. So I have not really had
8 the opportunity to read most of the things that have come
9 in, since I have been at another hearing for the last week.
10 I apologize for that, but it was a preexisting obligation.

11 JUDGE BLOCH: The only problem about that is you
12 had two preexisting obligations, and I'm not sure that we
13 were notified as early as we might have been when you knew
14 about the conflict. Do you want to explain something about
15 that?

16 MR. KOHN: Yes, Your Honor. The original
17 understanding was that the hearing would be lasting three
18 days, and it went on to the fourth day. There was all the
19 potential of going on to the fifth day, but there was not
20 much I could do about that. It was just that, you know,
21 when you are in a hearing, sometimes they just last longer.

22 JUDGE BLOCH: Okay. But at the close of the
23 fourth day was the time that you knew. When did you wait to
24 tell us?

25 MR. KOHN: As soon as it was determined, the day

1 that we were certain it would not go forward, I asked my
2 secretary to call. I found out that evening, and I called
3 and had my secretary call that day. I guess that was
4 Wednesday.

5 JUDGE BLOCH: Okay. I believe we got the call on
6 Thursday morning, and it puzzled me that we got it that
7 late. Did you end late on Wednesday?

8 MR. KOHN: Yes.

9 JUDGE BLOCH: Okay. Please continue.

10 MR. KOHN: Well, so I apologize for that delay.

11 JUDGE BLOCH: Are you really unprepared to give
12 adequate argument at this time? Is that what I'm hearing?

13 MR. KOHN: Well, no, I'm just saying I had
14 requested it and -- am I unprepared? To a degree, yes, and
15 I am somewhat -- and I can also tell you, with respect to
16 some other matters which are troubling, that --

17 JUDGE BLOCH: I'm having trouble hearing,
18 Mr. Kohn.

19 MR. KOHN: Excuse me?

20 JUDGE BLOCH: I cannot hear you. We have just
21 lost your voice.

22 MR. KOHN: Hello?

23 JUDGE BLOCH: Yes. You're very low now.

24 MR. KOHN: I am almost screaming at the top of my
25 lungs.

1 JUDGE BLOCH: All right. I guess we're going to
2 have to check with the phone company to see what can be
3 done.

4 MR. LAMBERSKI: Go ahead now, Judge. It sounded
5 like somebody picked up the phone and put it down.

6 MR. KOHN: Hello, hello?

7 JUDGE BLOCH: Mike Kohn?

8 MR. KOHN: Yes.

9 JUDGE BLOCH: All right. We can proceed. Thank
10 you. I don't know what happened, but it's working now.

11 MR. KOHN: Oh, that's good. All right. Discovery
12 is the type of thing where you cannot set out at day one and
13 say, "I know I'm going to have to talk to X, Y, and Z, and
14 then I'm going to have my entire case." Discovery is an
15 ongoing process where you see what's out there, you see what
16 you get, you see what the witnesses are saying, and then you
17 figure out where you have to go from there.

18 We went to the first round and now we're looking
19 at a second round. Based on what's happening, there is also
20 a need for some written discovery to be filed as well. In
21 the interim, that is what I see as necessary for the
22 intervenor to complete the discovery process with respect to
23 the license transfer.

24 JUDGE BLOCH: Could you explain a little bit more
25 about what happened since our last telephone call that was

1 new information for you that caused you to think that this
2 many depositions were necessary?

3 MR. KOHN: Well, I had information from
4 individuals as to what was occurring with respect to certain
5 events. The witnesses who I deposed either did not have
6 knowledge of the events or did not remember them or
7 indicated otherwise.

8 Therefore, I would like to conduct some interviews
9 of the other people who I believe were parties to some of
10 these events to see what other additional information I can
11 gain with respect to a lot of, a variety of, issues. That
12 is basically the situation.

13 Also, after conducting the depositions and having
14 the witnesses indicate certain events, there is some written
15 discovery that I am contemplating a need to file as well
16 with respect to organic changes within the various
17 institution. That is where we stand.

18 I think that the intervenor has gone forward and
19 has done a substantial amount of discovery since we have
20 talked last. I don't remember the number of depositions,
21 but there were a substantial amount of depositions
22 conducted.

23 JUDGE BLOCH: Okay. When are you planning to file
24 these new written interrogatories?

25 MR. KOHN: Well, I would like to file them before,

1 actually, we begin the next round. I would be prepared to
2 file them on Wednesday.

3 JUDGE BLOCH: You want to begin the next round
4 Thursday?

5 MR. KOHN: Well, to be perfectly frank, Your
6 Honor, I would also like an opportunity to go read the
7 transcripts that have been made available, pursuant to the
8 orders of the --

9 [Interruption to the proceedings.]

10 JUDGE BLAKE: Sorry about the delay. You were
11 talking about the fact that you still also were going to do
12 some written discovery. You thought you might be able to
13 file that next Wednesday. The question after that is: When
14 do you want to start the additional depositions? You said
15 something about needing to read the released transcripts,
16 but you didn't give me an estimate of when you think you
17 will be able to start the additional depositions.

18 MR. KOHN: What I would like to do is I would
19 propose that the final depositions that I would look at for
20 these -- well, let me rephrase things. What I would like to
21 do is file the written discovery, then have an opportunity
22 to review the information that has been released.

23 I find it important, as I stated earlier, as it
24 relates to our intervenor's review of the case as to what
25 contentions we would like to go forward with, and, as

1 indicated earlier, we ultimately view the one contention
2 position, that has always been a possibility. Therefore,
3 reviewing these transcripts at this time would be very
4 helpful to intervenor to start reassessing some matters.

5 JUDGE BLOCH: Okay. You might tell me what it is
6 that has been released, because I haven't seen any word on
7 that.

8 MR. KOHN: As I understand it, all of the
9 interviews conducted by NRC staff for OI. I would like an
10 opportunity to look at that and digest that.

11 JUDGE BLOCH: You said all interviews by the
12 staff, and then you said something, RLI?

13 MR. KOHN: Excuse me, I didn't understand you,
14 Your Honor.

15 JUDGE BLOCH: You said something that I didn't
16 catch. It sounded to me like RLI?

17 MR. KOHN: Oh, I think the interviews conducted by
18 Office of Investigation.

19 JUDGE BLOCH: OI?

20 MR. KOHN: Yes.

21 MR. BLAKE: Those are all on the other issue,
22 aren't they, the ones that we're talking about on schedule?

23 MR. KOHN: Yes. But as I indicated, this is not a
24 one issue case. The other matter that has potentiality, the
25 need to do duplicative depositions, there are a lot of

1 people who would be deposed with respect to, specifically
2 with respect to, the diesel generator issue. Clearly, I
3 think I am more than in my rights to ask those people
4 information they may also have about the illegal license
5 transfer.

6 I, first, wouldn't even see how it would make
7 sense for me to go forward and conduct every single
8 conceivable deposition on one issue and then go forward and
9 conduct the same parties again on another issue. It is not
10 cost productive and not time productive for intervenor.

11 JUDGE BLOCH: So you really want to work on the
12 remaining schedule of depositions for the case, instead of
13 separately on finishing the first part?

14 MR. KOHN: Excuse me, Your Honor, I didn't --

15 JUDGE BLOCH: It sounds like what you are
16 suggesting is that it would be more fruitful for you to
17 schedule all of the remaining depositions, including
18 portions of which would be on the first issue?

19 MR. KOHN: I would like to do a lot of -- there
20 are a lot of depositions that have to go forward, Your
21 Honor. I mean, everyone probably -- well, potentially
22 everyone who has been interviewed by OI is someone we would
23 be interested interviewing as well.

24 JUDGE BLOCH: I don't think you heard me. What I
25 hear you suggesting in terms of the status of this case,

1 which is what is concerning me right now, is that you would
2 like to have a combined schedule to complete the whole case.
3 Am I right or wrong?

4 MR. KOHN: You are correct, Your Honor.

5 JUDGE BLOCH: Okay.

6 MR. BARTH: Your Honor, this is Charles Barth. I
7 am highly confused. I understood that the additional 10
8 people he wanted to depose were on the alleged change of
9 ownership issue?

10 JUDGE BLOCH: Yes, he said that. Now what he has
11 said is that since those people also may be deposed on the
12 other issue, he would rather combine the two issues. Do you
13 have a comment on that?

14 MR. KOHN: Your Honor, I just want to clarify
15 something. Not all the people of the 10 would be deposed on
16 the diesel issue. I thought I would clarify that. There
17 will be people on the diesel issue who would also be deposed
18 who I anticipate asking questions on the license transfer
19 who are not listed in the 10, but with that clarification.

20 JUDGE BLOCH: Okay. Now, Mr. Lamberski, would you
21 like to comment?

22 MR. LAMBERSKI: Yes, Your Honor. First of all,
23 let me say that there are a number of issues that we would
24 like to address during the status conference, only one of
25 which is this matter concerning the depositions, but let's

1 get through this one first.

2 I am concerned that this entire matter of the
3 schedule and how this proceeding was to go forward was
4 settled long ago. Now at the last minute, before the time
5 is to run out on this issue, Mr. Kohn is trying to have the
6 Board change gears and institute a new schedule to
7 accommodate his personal needs.

8 Back in January of this year, we had a status
9 conference. There was a fair amount of discussion, if I
10 recall, about just how we were going to proceed with the two
11 issues. I thought Your Honor made it very clear at that
12 time that we would go forward, and indeed Georgia power
13 supported that notion, with the illegal license transfer
14 issue, full speed.

15 We discussed depositions and when depositions
16 should be completed on that issue, and it was agreed that
17 they would be completed by April 29. If I'm remembering
18 right, at first the Board picked a slightly earlier date,
19 and to accommodate Mr. Kohn the April 29 date was chosen.
20 We had another status conference on March 1.

21 JUDGE BLOCH: Well, Mr. Lamberski, there was one
22 exception, as I recall, and that had to do with issues
23 arising out of the deposition of Mr. Hairston. Is that your
24 recollection also?

25 MR. LAMBERSKI: No, I don't believe so, Your

1 Honor. You maybe referring to a Mr. Dolberg.

2 JUDGE BLOCH: I'm sorry, Mr. Dolberg, that's
3 correct.

4 MR. LAMBERSKI: But that only came later in April,
5 after his initial deposition took place, Your Honor. I'm
6 talking way back.

7 JUDGE BLOCH: Okay. I understand.

8 MR. BLAKE: This was a February 1 order I think,
9 John, that's what you're referring to that sets out the
10 April 29 date for depositions, with the Board's memorandum
11 and order of February 1.

12 MR. LAMBERSKI: Right.

13 MR. BLAKE: Go ahead.

14 MR. LAMBERSKI: If I may continue, Your Honor. I
15 think this history is helpful to understanding the dilemma
16 we are in. We had another status conference on March 1, and
17 we talked about the alleged illegal license transfer
18 depositions again, and agreed that they were going to occur
19 during the week of April 4. There was some discussion of
20 Mr. Kohn filing additional stipulations on April 15, after
21 all the depositions had been completed.

22 Well, on March 8 we got a list from Mr. Kohn of
23 the people who he wanted to depose, and it was a list of 10
24 people. We understood that list to be complete with respect
25 to the illegal license transfer issue. There was no

1 discussion of this being the first round and there might be
2 other people that he wanted to depose.

3 The depositions were conducted during the weeks of
4 April 4 and April 11. Just prior to the beginning of the
5 depositions, Mr. Kohn asked us to add two people to that
6 list, and we accommodated him. In the middle of the
7 depositions, on very short notice, he canceled two of the
8 depositions, and he declined to depose a third person who
9 had been scheduled.

10 JUDGE BLOCH: Are those people now on the list?

11 MR. LAMBERSKI: Excuse me?

12 JUDGE BLOCH: Are the three who were dropped
13 scheduled for the additional list?

14 MR. LAMBERSKI: No, Your Honor, they are not.

15 JUDGE BLOCH: Okay.

16 MR. LAMBERSKI: Then that brings us to the April
17 11 status conference, at which time Georgia Power learned of
18 the additional depositions that Mr. Kohn wanted to take. He
19 stated that they were necessary to "fill in the gaps in
20 people's recollections."

21 We asked him at that time to provide a list of
22 deponents immediately so that we could meet the April 29
23 deadline in scheduling these folks. At that time he said
24 that he needed to go through the transcripts to determine
25 who he needed to depose. Now we have learned only recently

1 that Mr. Kohn has instructed the court reporters not to
2 prepare any transcripts of any of those depositions.

3 MR. BARTH: What? I'm sorry, Charles Barth. That
4 astonished me.

5 JUDGE BLOCH: I'm sorry. Is that true, Mr. Kohn?

6 MR. KOHN: At this time, Your Honor, I mean, there
7 is -- we are not -- I'm doing discovery for me to learn what
8 is happening. If the other parties want to learn what's
9 happening, they can learn what is happening. No one is
10 hindering them. If I need them, at some point I will be
11 ordering them.

12 JUDGE BLOCH: That's not the issue. The issue is
13 that you are asking for delays, where having the transcripts
14 would allow you to do something more rapidly. I don't
15 understand how you could be asking for delays in following
16 up on interviews where you didn't have transcripts prepared.

17 MR. KOHN: Your Honor, because there are some
18 additional issues that have to be addressed the intervenor
19 has not been offered time to consider. It's mainly this,
20 the day, the Friday or so before, I think it was the Friday
21 before, the interviews were to begin, Mr. Lamberski
22 threatened me over the phone and in a very hostile manner
23 told me "Blood would be spilled," indicating that it would
24 be my blood that would be spilled.

25 JUDGE BLOCH: Okay. Wait a second. I want you

1 to, if you're making a charge this serious --

2 MR. KOHN: Yes, I am, Your Honor.

3 JUDGE BLOCH: -- I want you to be very careful you
4 state all of the facts accurately.

5 MR. KOHN: Yes, Your Honor, I will.

6 JUDGE BLOCH: So I have to know what he was
7 responding to, exactly what was happening.

8 MR. KOHN: Your Honor, what occurred was the Board
9 Notification was sent out by NRC staff concerning
10 allegations that directly implicated Troutman Sanders that
11 Mr. Mosbaugh filed while I was out of the country. At that
12 point, on a Friday, Mr. Lamberski called and told me, I
13 mean, "Blood would be spilled." He made it clear to me that
14 it was my blood that would be spilled. Oh, following that,
15 during the --

16 JUDGE BLOCH: Now, wait a second. From the
17 context in which that was said, what did you conclude?

18 MR. KOHN: Had we proceeded to look into the
19 allegations against Troutman Sanders, adverse actions would
20 happen to me. That is what he said.

21 JUDGE BLOCH: Now, in the context there is nothing
22 in it -- did you believe from the context that this was a
23 physical threat?

24 MR. KOHN: Yes, Your Honor. I can further state
25 that my concern was heightened when on the way back from one

1 of the depositions we were conducting in Atlanta, there was
2 a car parked on the side of the road. As I stepped out, the
3 car almost ran me over. The car was parked in front of the
4 Troutman Sanders Law Offices, and maybe that was heightened.
5 After that time, Mr. Lamberski --

6 JUDGE BLOCH: Did you get a license plate on that
7 car?

8 MR. KOHN: That was impossible. It was a red
9 sports car with black trim.

10 JUDGE BLOCH: After the threatening conversation,
11 did you make a contemporary note of that conversation?

12 MR. KOHN: Contemporaneously?

13 JUDGE BLOCH: A contemporaneous note.

14 MR. KOHN: I contemporaneously told all my
15 partners, my clients, and --

16 JUDGE BLOCH: No, I didn't ask you that. Did you
17 make a contemporaneous note?

18 MR. KOHN: No, I did not, Your Honor.

19 JUDGE BLOCH: Okay.

20 MR. KOHN: Following that, to be perfectly frank,
21 I was very -- I am still upset over the situation. With
22 respect to a car almost running me over --

23 JUDGE BLOCH: What was the date of that
24 conversation?

25 MR. KOHN: Oh, by the way, there was a note made,

1 I believe. I did raise it during the course of the
2 deposition, the accusation was made at that time.

3 JUDGE BLOCH: What was the date of the
4 conversation?

5 MR. KOHN: It was on a Friday, it would have to be
6 the Friday, I believe, before we left for the deposition.

7 JUDGE BLOCH: Do you know the date, Mr. Lamberski?

8 MR. LAMBERSKI: Off the top of my head I don't,
9 Your Honor.

10 JUDGE BLOCH: Okay.

11 MR. LAMBERSKI: But I would like an opportunity to
12 respond to these.

13 JUDGE BLOCH: I think you could credit me with
14 that much.

15 MR. LAMBERSKI: Thank you.

16 MR. KOHN: The actions have adversely affected me,
17 Your Honor, to be perfectly frank. I am uncomfortable.
18 This the first time that I seriously feel threatened, and I
19 have been doing this line of work for a long time. Whatever
20 the situation is, maybe it is because of the seriousness of
21 the nature of the allegation, it is the first time that I do
22 feel threatened. There is nothing I can do about that.
23 Perhaps, it was the inadvertent effect of a car almost
24 running me over. The way that incident occurred was as I
25 was waiting for the light to turn green --

1 JUDGE BLOCH: Well, it doesn't matter because we
2 don't really know whether it had to do with other people or
3 whether it was coincidence.

4 MR. KOHN: Exactly.

5 JUDGE BLOCH: I understand you feel threatened.
6 You're telling me this is the first time you've ever felt
7 threatened since you've been practicing law. So you've
8 never made a charge like this before?

9 MR. KOHN: No, Your Honor.

10 JUDGE BLOCH: I can hear in your voice that you
11 feel threatened and that you are upset, but we are still
12 going to have to proceed to decide what a reasonable way is
13 to schedule this case. I will have to permit Mr. Lamberski
14 a chance to answer. Have you finished with as many of the
15 details as you can? Because one thing that concerns me is
16 that this was said, and I don't hear a lot about the
17 background of what was said before this response. Was there
18 any immediate trigger in your conversation with
19 Mr. Lamberski?

20 MR. KOHN: Mr. Lamberski placed the call or I was
21 immediately returning a call that he placed. First, what
22 happened was he mentioned the fact that Board notification
23 was sent out, and immediately went into using the words
24 "Blood would be spilled." First, he said my client did not
25 have a right to file those charges with the NRC, and then

1 immediately went into saying "Blood would be spilled," and
2 then by the end of the conversation said he was upset by
3 having read this.

4 JUDGE BLOCH: Well, I can understand that too.

5 MR. KOHN: Understand that too. But the effect it
6 has had on me is what is troubling.

7 JUDGE BLOCH: Okay. I would like to have
8 Mr. Lamberski have a chance to comment. Is that okay at
9 this point, or do you have something else to conclude that
10 is important?

11 MR. KOHN: No, that is fine, Your Honor.

12 JUDGE BLOCH: Mr. Lamberski?

13 MR. LAMBERSKI: Thank you, Your Honor. I have
14 been trying to compose myself throughout this discussion.
15 The incident which Mr. Kohn is referring to was discussed
16 between Mr. Kohn and I, and Charles Barth was present. It
17 was at the tail end -- and correct me, Charles, if I'm wrong
18 -- I believe it was at the tail end of Mr. Grady Baker's
19 deposition.

20 JUDGE BLOCH: Okay. Whose deposition? Mister?

21 MR. LAMBERSKI: Grady Baker's deposition.

22 JUDGE BLOCH: Okay. Was this an on-the-record
23 conversation?

24 MR. LAMBERSKI: It was, it was on the record. So
25 if Mr. Kohn chooses to have that deposition transcribed, we

1 will see a discussion of the incident. This is an after-
2 the-fact discussion of the incident. The incident, the
3 telephone call --

4 JUDGE BLOCH: Hold on a second.

5 Mr. Kohn, was it transcribed, that conversation?

6 MR. KOHN: Not the conversation I had with
7 Mr. Lamberski.

8 JUDGE BLOCH: No, I know, during the deposition.
9 That conversation about it?

10 MR. KOHN: Yes.

11 JUDGE BLOCH: That was transcribed?

12 MR. KOHN: Was the conversation about it
13 transcribed?

14 MR. LAMBERSKI: Well, it hasn't been transcribed
15 yet, it was taken down by the court reporter.

16 JUDGE BLOCH: Okay. Who is responsible for
17 ordering that that be transcribed?

18 MR. KOHN: I have to order that, Your Honor.

19 JUDGE BLOCH: Would it be helpful to my
20 understanding the nature of this conflict?

21 MR. LAMBERSKI: For factual background, I'm sure
22 it would be helpful.

23 JUDGE BLOCH: Okay. I would like to request that
24 you file that portion of the transcript, so I can understand
25 better what is happening here.

1 Mr. Lamberski, please continue.

2 MR. LAMBERSKI: Okay, Your Honor. The phone call
3 to which Mr. Kohn is referring was one that took place
4 sometime after Board Notification 9407 was filed on
5 March 24, 1994. You may recall that what was filed were
6 additional allegations made by Mr. Mosbaugh that relate to
7 the diesel generator issue and some of the discovery
8 disputes that took place back in August of 1993 concerning
9 that issue. When I read this, these allegations, I was
10 upset at the personal attack on myself and did not call Mr.
11 Kohn to discuss this issue with him, okay, first of all.

12 Mr. Kohn and I were talking, I believe, about
13 scheduling matters, or something else. I'm not sure what it
14 was. I happened to be reading through the allegations at
15 the time and told Mr. Kohn that I was upset by the personal
16 attack on myself, that I thought it was inappropriate,
17 inasmuch as it concerned a discovery dispute between the
18 parties that had been argued before the Board back in August
19 of 1993. I said it had no business being included among
20 allegations filed by Mr. Mosbaugh with OI.

21 I told Mr. Kohn pointblank that I thought it was
22 instigated by Mr. Kohn, to which he did not deny it. I
23 never told Mr. Kohn that "Blood would be spilled." I told
24 him that I thought his conduct was unprofessional. In fact,
25 I told him up that point I thought we had been getting along

1 famously, and I hoped that we could continue to do so in the
2 future without being ugly.

3 JUDGE BLOCH: I assume, I want to assume, what do
4 you think about the incident with the car?

5 MR. LAMBERSKI: I don't own a red sports car,
6 Your Honor, and I have no idea what Mr. Kohn is referring
7 to. Neither I nor anyone in this firm, to my knowledge, has
8 hired anyone to follow Mr. Kohn or to make any threats
9 against Mr. Kohn or Mr. Mosbaugh, for that matter. I have
10 no idea what he may be imagining.

11 JUDGE BLOCH: Okay. I would like the record to
12 reflect that I also noticed substantial emotion in
13 Mr. Lamberski's voice, just as I did before in Mr. Kohn's
14 voice. This is obviously something that is quite upsetting
15 to attorneys for both sides.

16 Mr. Kohn, Mr. Lamberski has directly denied using
17 the words that you remember. I take it that you must still
18 remember them, huh?

19 MR. KOHN: Yes, I do, Your Honor, and those are
20 the words, "Blood would be spilled." I would like to
21 indicate that my recollection of the conversation is that we
22 began discussing scheduling matters. When we had concluded
23 the scheduling matters, Mr. Lamberski then raised the issue
24 of the Board Notification, and indicated that he felt that
25 Mr. Mosbaugh had no right to file that with the NRC. He

1 then immediately went into, began, a sentence that included
2 the words "Blood would be spilled."

3 Following that, he then asked me -- or then
4 accused me of being involved in preparing the notification
5 to the Board. In the way it was conjuncted, lead me to
6 believe that the "Blood would be spilled" was referring to
7 me personally. From that point on, I, first of all, state
8 that I did not draft nor aid Mr. Mosbaugh in drafting those
9 allegations which he filed with the Office of Investigations
10 while I was out of the country. Any thought to the contrary
11 is just simply inaccurate.

12 JUDGE BLOCH: Well, I understand your saying that.
13 But, Mr. Lamberski, if there had been help drafting the
14 allegations, would there have been some improper conduct on
15 Mr. Kohn's part? Do you really think that what he did was
16 improper, or are you just so upset that you told him that
17 you thought it was improper at the time?

18 MR. LAMBERSKI: No, I didn't think that he
19 violated any rules of practice of the Commission in drafting
20 that, if he did. I didn't say that, okay. What I said was
21 I thought it was inappropriate, in particular
22 unprofessional, that he was instigating this kind of behind-
23 the-scenes, "Here, let's attack Georgia Power's counsel and
24 try to knock them out of this case somehow so we don't have
25 to deal with them."

1 In fact, Mr. Kohn, I believe it was the same day
2 that this came up on the record of Grady Baker's deposition,
3 he was very upset about the fact that the staff had chosen
4 to release allegations attached to the Board Notification.
5 That is kind of what kicked off that whole discussion on the
6 record of Grady Baker's deposition.

7 Your Honor, I took this to be an underhanded
8 tactic that I didn't think was very professional. It was
9 upsetting to me personally because it was a personal attack
10 on myself. Frankly, I don't think Mr. Mosbaugh had the
11 knowledge that was expressed in those allegations. My
12 impression was it came directly from Mr. Kohn.

13 JUDGE BLOCH: Okay. Well, Mr. Kohn is saying that
14 he had nothing to do with it. I have no reason to
15 disbelieve him about that. I also believe that at the time
16 you thought it came from Mr. Kohn.

17 I guess the real question before us now is whether
18 there are any remedies that are going to be asked for about
19 this, and how we can put it behind us, if we can, to go
20 forward with this case.

21 I would like to assure all the parties that when I
22 see an allegation like that, and it was a Board
23 Notification, that I look at it quickly. I have no notion
24 of whether it is true or false, so I have not taken it
25 seriously. All I know is that there is an allegation that

1 will probably be investigated by the NRC, but I do not in
2 any way assume that it is true or false. I have not been
3 affected in the way I would relate to any of the counsel in
4 this case because an allegation has been filed.

5 Now, what we need to get on to, Mr. Kohn, is: Do
6 you think there are any remedies necessary in this case
7 because of your allegations?

8 MR. KOHN: Yes, Your Honor. I believe that it is
9 just completely inappropriate for an opposing counsel to
10 threaten another attorney on any matter for any reason.

11 JUDGE BLOCH: Okay. Now, I believe that. On the
12 other hand, we are going to have great difficulty getting
13 any predominance of the evidence because there are two
14 people involved, and each of you have told differing
15 versions of what happened.

16 MR. KOHN: Well, the only thing I can add to that
17 is I believe when I first raised the issue with Mr. Barth
18 and Mr. Lamberski, Mr. Lamberski did not deny it at that
19 time. That is my recollection.

20 MR. LAMBERSKI: Well, that's not true, Michael,
21 and it will be on the record.

22 JUDGE BLOCH: I also really would like to request
23 that anytime anything happens that can affect the scheduled
24 of this case, that the party that's affected in that way
25 should tell the Board immediately, because that's the time

1 that the remedies are most likely to mean something. I also
2 think it, conceivably, could help to clear the air if we are
3 told immediately.

4 I guess what I am hearing is that Mr. Lamberski is
5 saying that he never had any intention of hurting you
6 physically. I guess I would need substantial evidence to
7 overcome my belief that when someone says that they mean it.
8 I am puzzled that you have such a specific recollection of
9 language that was used, and that Mr. Lamberski specifically
10 denies using that language.

11 Mr. Lamberski, if it is possible you were so upset
12 you actually don't remember the words you used?

13 MR. LAMBERSKI: No, I'm quite sure I never used
14 those words, Your Honor. I did not threaten him in any way
15 that could be construed as a physical threat.

16 JUDGE BLOCH: Well, what kind of threat did you
17 threaten him with.

18 MR. LAMBERSKI: Well, let me rephrase that, Your
19 Honor. I did not threaten Michael Kohn.

20 MR. KOHN: Well, Your Honor, I am more than
21 willing to sit down and take a lie detector test or do
22 whatever I have to. That event has fundamentally upset me
23 to a degree I have a hard time explaining. When I go out to
24 dinner, having to go out the back door of hotel rooms is not
25 my idea of a way to conduct depositions or go down there.

1 That was what -- I was having to go to that level.

2 I was having to talk about it to every one I could
3 think of, because I was so afraid that physical harm would
4 become me. I've never had that happen before. Mr.
5 Lamberski can deny it all he wants, and I will go to the
6 grave telling you that those words were said to me. If Mr.
7 Lamberski would like to take a lie detector test along with
8 me, I am willing to do that.

9 JUDGE BLOCH: My understanding is that lie
10 detector tests are not worth that, Michael. This was my
11 understanding of the science behind it. If you wanted to
12 prove differently to me, I would be willing to listen. But
13 my understanding is that after taking the lie detector test
14 we really wouldn't know what to make of them. They are a
15 lot like reading tea leaves.

16 MR. KOHN: I don't know that much about the
17 science either, Your Honor.

18 JUDGE BLOCH: There is a way, I mean, a good
19 forensic person who is conducting it might be able to make
20 inferences the way a good lawyer or judge could. But my
21 understanding is that it is not more than that, and we could
22 be proving otherwise.

23 I guess the real question is, Michael, what can
24 happen now that would somehow reassure you, so that we could
25 stop the consequence of this threat on your participation.

1 Is there any way at all that you can think of that you could
2 be reassured so that you could proceed with some sense of
3 security?

4 I would also invite the other parties -- if they
5 have any ideas about how that could happen.

6 MR. BARTH: Your Honor, this is Charles Barth. I
7 think for the time being that the staff will simply not
8 intrude into this affair. I recall the occasion, I recall
9 the discussion on the record after one of the depositions.
10 I took no part in it then, and I think we at the moment want
11 to take no part in it now.

12 JUDGE BLOCH: Okay. I'm asking, is there
13 anything, Mr. Lamberski, that you could think of that would
14 somehow reassure Mr. Kohn, so he could at least stop this
15 fear of being in danger?

16 MR. LAMBERSKI: Well, I'm not a psychologist,
17 Your Honor, and outside of giving him my personal assurance
18 that nothing I said to him was intended as a threat in any
19 way, physical or otherwise. Nothing that happens in this
20 case would ever cause me to threaten or take physical action
21 against anybody. I don't know what else to say, Your Honor.
22 I am absolutely flabbergasted.

23 JUDGE BLOCH: What do you think, Mr. Kohn? What
24 can happen now? I mean, he has attempted to reassure you;
25 although, he hasn't owned the words that you thought you

1 heard. My sense is that he was very upset when you spoke to
2 him, whether he used the words or not. He doesn't strike me
3 as a brutal man. He may have been out of temper, and he
4 conceivably used the words you thought you heard. My
5 judgment is, and I don't know him any better than you do,
6 but I would not be physically afraid of him at this point.
7 I understand you are.

8 MR. KOHN: Your Honor, I mean, I'm aware of -- I
9 don't know how to say it. But let me say I would like an
10 opportunity to try to gain my composure and try to evaluate
11 the situation, you know. I mean, talking about it is very
12 helpful only for the fact that I don't think there has been
13 a day that has gone by where I haven't thought about it. To
14 the extent I can start getting around that situation, I
15 think it would be helpful.

16 MR. LAMBERSKI: Can I make a suggestion,
17 Your Honor?

18 JUDGE BLOCH: Yes, Mr. Lamberski.

19 MR. LAMBERSKI: To the extent that Michael has
20 fears, perceived or otherwise, about what I might say to him
21 in the future, I would agree that when we have oral
22 discussions over the telephone that we each have a witness
23 present. If there is any dispute about what one person
24 might say to the other, that we will have witnesses there to
25 recount the discussion.

1 JUDGE BLOCH: Would that be helpful, Michael or
2 not?

3 MR. KOHN: Well, I mean, one, in conducting the
4 depositions, I will be the only person from intervenor
5 there.

6 MR. LAMBERSKI: Depositions are transcribed by a
7 court reporter. That shouldn't be a problem, Michael.
8 Besides that, the NRC staff will be there.

9 MR. KOHN: Well, as I indicated, Your Honor, I
10 have not really had an opportunity to sit down and think
11 about how to fashion a remedy or look at it. One of the
12 reasons I wanted it to fall on Friday rather than today was
13 so I could really take some time to think about whether
14 there is a need to consider this further or not, and see
15 what intervenor's position would be. I have not had that
16 opportunity.

17 I would be more than willing to discuss, have a
18 concrete resolution on Monday. But it is hard for me to sit
19 down and -- I have not spoken to my client during this last
20 entire week. I have spoken with my law partner, my brother,
21 as he was with me during the hearings that we just finished,
22 and he and I haven't figured out what remedy we would like
23 to seek even, or what we would like to consider at this
24 point. I would request a weekend to contemplate that.

25 JUDGE BLOCH: Okay. Now, of course, one thing

1 that would help you is, if there was any truth to this, you
2 now have an official government record of the allegation if
3 anything were to happen to you. Certainly, that would be of
4 some protection to you, because it would be a deterrent.

5 I'm going to be talking to Judge Carpenter before
6 I decide finally what to do about this. But would it be
7 helpful to you, Michael, if we were to postpone decisions on
8 status until the scheduled face-to-face conference at the
9 NRC? At that time we would attempt to schedule the entire
10 remainder of the case, and we would want to count on your
11 cooperation in doing that.

12 Would that be a workable way for you to collect
13 yourself? Because my observation is that whether the
14 charges are true or not that you have been emotionally upset
15 during this period, and it would not be fair to have your
16 client penalized for that. I would in talking to
17 Judge Carpenter allow that much leeway for your client.
18 Would that be helpful to you to wait until the May 3
19 conference?

20 MR. KOHN: That would be helpful, Your Honor.

21 MR. BARTH: Your Honor, at the same time -- this
22 is Charles Barth -- you ought to consider the impact upon
23 your last order which was foreclosed discovery at the 29th,
24 and you also foreclosed requests for admissions. As I
25 mentioned in our telephone conversation, when I was in

1 Atlanta, the staff just simply must have the opportunity to
2 review the transcripts of the depositions before we can
3 close out discovery and come to a positions. I was just
4 astonished to find that the transcripts have not even been
5 made.

6 JUDGE BLOCH: All right. So is it possible that
7 we could get some kind of assurance on the making of the
8 transcripts, Mr. Kohn?

9 MR. KOHN: Your Honor, it is a matter of whether -
10 - the problem is there is a substantial cost in having the
11 transcripts made. From Intervenors perspective, we don't
12 need them until very late, probably just a month before the
13 hearing because the chances of me being able to put quality
14 time into digesting those transcripts before that portion of
15 the hearing is unlikely.

16 JUDGE BLOCH: The transcripts aren't just made for
17 your use. The whole discovery process, it seems to me,
18 involves making a record for everybody's use. Is it your
19 belief that you had no commitment to make a transcript that
20 would be available to the other party?

21 MR. KOHN: The transcript is available to the
22 other parties, if they want to order it, Your Honor. It is
23 not that it's not available.

24 JUDGE BLOCH: All right. I take it the delay is
25 only that the other party didn't know you weren't ordering

1 one; is that right? No, let me ask Mr. Lamberski.

2 MR. BARTH: Before you do, Your Honor, may I
3 interject again for a moment?

4 JUDGE KOHN: Yes.

5 MR. BARTH: This is Charles Barth. If you take a
6 look at 2.740(e) it contemplates that transcripts would be
7 made of these depositions, which is the purpose of having a
8 deposition. A deposition without a transcript is a nothing.

9 MR. KOHN: Does it also assess the cost to the
10 party requesting it?

11 MR. BARTH: Yes, Your Honor, and of course we have
12 a statute that says we may provide financial assistance to
13 intervenors. I would like to point out that all of this
14 cost factor was known to everybody before these were
15 scheduled. No one thought that we would have transcripts
16 made of depositions for free. There is no free lunch. I am
17 also reminded that your order also includes the stipulations
18 which were just resubmitted by Mr. Lamberski, and those had
19 to be reviewed again.

20 JUDGE BLOCH: Okay. Now, I have ordered some
21 leniency here because of the upset that has been
22 experienced.

23 MR. BARTH: We understand that, Your Honor. But
24 at the same time, we can't shut off the rights of the staff
25 and the parties.

1 JUDGE BLOCH: You want the transcripts.

2 On that issue, Mr. Kohn, I would like to be able
3 to know by Monday if you have decided that, in fact, it is
4 your obligation under the regulations to make those
5 transcripts.

6 MR. KOHN: Yes. I will review those regulations,
7 Your Honor. I have not looked at them before, but I will be
8 more than happy to study them.

9 JUDGE BLOCH: I have a bias in favor of that
10 proposition, but I also will study them. It would be
11 extraordinary to have depositions which were never
12 transcribed. That would not seem to be serving the
13 proceeding. So I would like to have the other parties'
14 comments on my suggestion. I guess mostly Mr. Lamberski's
15 comments.

16 MR. LAMBERSKI: Well, of course, Your Honor, we
17 were hoping that the Board's order on the deadline for
18 discovery on this issue would be honored, and that you would
19 enforce it. My arguments in that regard were with respect
20 to completing all depositions and other discovery on this
21 issue by the 29th. However, there are possibly some other
22 matters that we should discuss that will be impacted by
23 postponing further discussions of schedule until May 3.

24 JUDGE BLOCH: What would those matters be?

25 MR. LAMBERSKI: We had asked the staff and Mr.

1 Kohn to provide us with a list of witnesses, so we could
2 determine who else, if anyone, that Georgia Power needed to
3 depose on this issue. We got a list from the staff, but we
4 got nothing from Mr. Kohn.

5 JUDGE BLOCH: Do you have a date for the list of
6 witnesses, Mr. Kohn? What is your position on that? Do you
7 have a position?

8 MR. KOHN: Well, I don't have a position because
9 we haven't figured out who all our witnesses are going to
10 be. If the other parties are ready to indicate who their
11 witnesses are, we have not requested them to do so.
12 Mr. Lamberski said he was going to do that, providing I
13 spoke with him. I told him that I will physically not be in
14 my office, and it would be physically impossible for me to
15 put together a list of witnesses.

16 JUDGE BLOCH: Until when, until when?

17 MR. KOHN: Until we complete discovery.

18 JUDGE BLOCH: Now, my understanding is that a
19 request for a list of witnesses is a request that you make
20 as full a disclosure as you now know. It wouldn't be that
21 you couldn't amend it.

22 MR. KOHN: All right. Well, that I can certainly
23 do. I can make as full a disclosure as we know. With the
24 understanding that we can amend it, that will be fine.

25 JUDGE BLOCH: Mr. Lamberski, that's all you can

1 ask, isn't it?

2 MR. LAMBERSKI: Well, apparently, Your Honor.

3 JUDGE BLOCH: Well, I mean, I'm just trying to
4 think of the logic of it. How could you have him have a
5 final list of witnesses before he is finished discovery?

6 MR. LAMBERSKI: Well, I was hoping, Your Honor,
7 that discovery was going to end on April 29, and so my
8 request for witnesses was in order that Georgia Power might
9 meet that deadline.

10 JUDGE BLOCH: Okay. What we will want to have
11 happen at the scheduling conference is we are going to try
12 to schedule the rest of the case expeditiously. That will
13 include finishing the discovery on the first issue as well
14 as possible, and also it will include a date by which you
15 will have a finished witness list for the first issue
16 because that should be available by the time that discovery
17 is finished.

18 Mr. Lamberski, I take it, are you also asking for
19 a preliminary list on the second issue, or is that not as
20 important to you?

21 MR. LAMBERSKI: Sure.

22 JUDGE BLOCH: Okay. There could also be a time
23 for a preliminary list on the second issue?

24 MR. LAMBERSKI: Yes, I would say that's probably a
25 matter that we could discuss in the next status conference,

1 Your Honor.

2 JUDGE BLOCH: Okay. I also would like to request
3 that if possible that there be some informal discussions in
4 which you attempt to get more normality into this
5 relationship. It's going to be difficult to be efficient in
6 this proceeding if it stays this way. I don't know if it's
7 possible to reestablish it, but I would like both attorneys
8 to think of whether that has possibility for them.

9 Now, Mr. Lamberski, you had some other issues that
10 you wanted to mention?

11 MR. LAMBERSKI: Your Honor, I think that was
12 probably the only other thing that I thought was important
13 to mention now.

14 Ernie, unless you have anything else on your list?

15 MR. BLAKE: No, I don't, John. I do want to make
16 at least one observation, Judge Bloch, before we're done.

17 JUDGE BLOCH: Please do. This is a good time.

18 MR. BLAKE: I wasn't aware of this item or even
19 the exchange that had taken place on the Grady Baker
20 deposition day in the case. And it's obvious that I hear in
21 the voices the same thing you do, particularly in Mr. Kohn's
22 voice that he is clearly upset.

23 With whatever sympathy I can muster, however, I
24 simply can't understand how it has played a role that it has
25 come to in why we are hearing about 11 to 12 new deponents

1 today. I don't understand particularly since both the event
2 and the Grady Baker deposition took place before the last
3 status conference, where we all established the 29th as the
4 deadline for discovery, and we are marching off towards
5 that. The additional deponents and what not have all
6 happened since that date, since that was established. What
7 I don't know is whether or not something has occurred which
8 has aggravated the situation in Mr. Kohn's mind.

9 I would really like to ask whether or not I am
10 unaware of any problems of that sort which could have lead
11 to it coming up today somehow in the conversation close to
12 the end of the discovery period and not raised at an earlier
13 and more timely place where, in fact, both people's memories
14 might even have been better? That is my observation,
15 Judge Bloch. Thank you.

16 JUDGE BLOCH: Thank you. Would you like to
17 comment? Mr. Kohn, do you want to comment on that? I am a
18 little surprised it took so long, but obviously you've been
19 upset. Do you want to say something about why you didn't
20 come forward right away?

21 MR. KOHN: Yes, Your Honor. I mentioned it to my
22 law partners as soon as I got off the phone. I tried to
23 shrug is off. You know, I didn't want it to affect me. I
24 was in a certain egocentric way or something, you know,
25 "Well, why am I going to be upset about this," or something.

1 Try as I might, and I could put it off and I can
2 particularly put it off if I busy myself with other work. I
3 couldn't get it out of my mind.

4 At some point, well, it continually started to
5 resonate. I'm talking about the words. It was something
6 about the words that made it resonate. At some point I
7 began feeling more and more threatened. I felt it necessary
8 to discuss it first with Mr. Lamberski and Mr. Barth, and I
9 did that. I was hoping that that would settle things but -
10 -

11 JUDGE BLOCH: I take it, it is really very hard to
12 know right now whether even this additional delay is going
13 to make it possible for you to work effectively in this
14 case? Is that possible?

15 MR. LAMBERSKI: That is possible, Your Honor.

16 JUDGE BLOCH: I think we ought to give it a shot.
17 But I think you ought to consider that, or consider whether
18 there is any way we can work out the relationships with the
19 lawyers, so that you can continue in the case. I think I
20 would rather that people didn't act emotionally, but I think
21 that that is the way that people do act. But I want to
22 recognize that this is a real event here and to allow for
23 it.

24 I will be talking to Judge Carpenter, so he may
25 differ from me about that, and I'll be back to the parties

1 if that's true.

2 Is there anything more that must be handled in
3 this conference?

4 MR. BARTH: Your Honor, I would like to make three
5 comments. This is Charles Barth. On February 3,
6 Mr. Lamberski sent us a list of stipulations he wanted the
7 company, and we replied that we had no objection to the
8 documents being admitted. We were being sticky on these
9 stipulations. He has revised those stipulations with
10 additional documents. We received them yesterday. We will
11 not be able to review them by your original deadline of the
12 27th or the 29th, whichever -- the 29th. It will take us a
13 little time to do that.

14 JUDGE BLOCH: Well, given that you need an
15 extension, how were you so able to censor another party that
16 needed an extension?

17 MR. BARTH: We censored, but we needed an
18 extension?

19 JUDGE BLOCH: What?

20 MR. BARTH: We censored, we needed an extension?
21 I'm lost.

22 JUDGE BLOCH: I thought you were down on Mr. Kohn
23 for not having completed the schedule as it was planned?

24 MR. BARTH: I don't know where you get this from,
25 Your Honor.

1 JUDGE BLOCH: Well, we will look at the
2 transcript. Maybe I made it up.

3 MR. BARTH: I hope so. The second thing is that I
4 would li'e you to again bear in mind that this new witness
5 list comes out of nowhere. None of these people's names
6 were mentioned in the deposition taken in Atlanta and
7 Birmingham, with the exception of Mr. Addison who was the
8 president of one these companies before the fellow who is
9 now president. These are people who have been known in the
10 Department of Labor hearings on these problems for years.
11 There is nothing new on these people, and that should go in.

12 JUDGE BLOCH: Okay.

13 MR. BARTH: We are prepared to argue about taking
14 more depositions.

15 JUDGE BLOCH: All right. I'm hoping that when we
16 wait until May 3, when Mr. Kohn is going to review that list
17 and make sure he needs each of them, because under the
18 circumstances where he was as emotionally involved as he
19 was, I take it that it is very hard to know whether part of
20 the motivation for expanding the list was personal. I hope
21 it wasn't true; but if it was, I think Mr. Kohn can get some
22 perspective on that and just assure himself that he really
23 needs to have these depositions for his client.

24 MR. BARTH: The last thing I would like to
25 emphasize, Your Honor, is that we need copies of the

1 depositions, so that our staff can review them and come to a
2 position on the alleged illegal transfer.

3 JUDGE BLOCH: Okay. Well, Mr. Kohn is going to
4 report to me on Monday about what is schedule will be on
5 that, and I will keep the parties informed about what the
6 report is.

7 MR. BARTH: Again, Your Honor, I hope that you are
8 going to put off your schedule for the 29th on this, because
9 we can't meet that kind of a schedule review if we don't
10 even have the transcripts.

11 JUDGE BLOCH: The final date on the 29th is
12 suspended.

13 MR. BARTH: Excellent. I should quit while I'm
14 ahead. Thank you, Your Honor.

15 JUDGE BLOCH: Yes, but I will also want the staff
16 to be as efficient as it can be on May 3 to finish the whole
17 case.

18 MR. BARTH: If we have the --

19 JUDGE BLOCH: I said as efficient as it can.

20 MR. BARTH: Your Honor, nothing could be better
21 than that. I take your offer. Thank you.

22 JUDGE BLOCH: Any other necessary comments?

23 JUDGE CARPENTER: I have some.

24 JUDGE BLOCH: Yes, Judge Carpenter.

25 JUDGE CARPENTER: This is Judge Carpenter.

1 Mr. Kohn, I would like to share my perspective
2 with you. You made the point that you would like this
3 extended list of people that you would like to depose, and
4 with the notion that it's inefficient to depose an
5 individual on one issue and then at some point in the future
6 have to come back and ask some more questions about a second
7 issue.

8 Well, I wonder whether you will know about the
9 second issue before the funny dimension of the case called
10 the "Commission's Actions" appears. Absent it I'm not sure
11 that your hope for wrapping everything up in one deposition
12 is going to appear. But I want to get a perspective that,
13 yes, in general I would agree with you, we have a very funny
14 case here that one piece of it goes on one case, and the
15 other piece goes on another case.

16 We all agreed the one that could go ahead
17 unfettered we would pursue, and not let it be cluttered up
18 by the second issue. Now you are saying no, that's
19 inefficient. I agree it's inefficient, but I don't see how
20 we can avoid it. Do you understand my concern?

21 MR. KOHN: I think I understand your concern. The
22 inefficiency is being weighted against the time factor? I
23 mean, I think that's what I was understanding, that we are
24 going forward with this part -- or maybe actually I may not
25 completely understand your concern, Your Honor.

1 JUDGE CARPENTER: I'm concerned that we keep the
2 diesel generator issue separate from the alleged illegal
3 transfer issue. You go ahead with the discovery, et cetera,
4 on the transfer issue as we would normally. But the diesel
5 generator thing is fettered. It's got it's own schedule
6 problems. If we run them together, then we get into just
7 what we are talking about today, you know, which deadline,
8 can't meet the deadline because of something relative to the
9 other issue.

10 The Board doesn't want that to happen. We would
11 like to see the one issue that we agreed on that we would go
12 ahead with so we could set firm deadlines, everybody would
13 understand and meet those deadlines without getting
14 cluttered with the diesel generator issue, if I understand
15 what has been going on.

16 JUDGE BLOCH: This is Judge Bloch, and I would
17 just like to ask Mr. Kohn to comment. Because my
18 understanding was that the second half of the case was also
19 going to go forward as rapidly as possible. While some
20 things may have to be cleared up as the Commission disposes
21 something later, that we are going to proceed on the second
22 part of the issue. Am I wrong about that?

23 MR. KOHN: Proceed on the second part, the diesel
24 generator?

25 JUDGE BLOCH: Yes, the diesel generator.

1 MR. KOHN: That we would proceed rapidly?

2 JUDGE BLOCH: Well, efficiently. We probably can
3 wrap most of it up within a month or two.

4 MR. KOHN: We can wrap a good deal of it up with
5 respect to discovery in a month or two, I would agree. But,
6 I mean, I guess intervenor would like to file as many
7 stipulations and requests for admissions as we could,
8 because I think that would ultimately speed up the process.
9 But we can't turn our attention to those type of matters
10 until we are done with a lot of the other types of discovery
11 matters.

12 I mean, in looking at it as an ongoing process,
13 trying to put together the discovery record all the parties
14 need as rapidly as possible. In my view, as long as we are
15 all working expeditiously to accomplish that goal, then I
16 think we are all doing the right thing.

17 For instance, during a break in the other
18 depositions on the illegal license transfer, the parties got
19 together and went over one of the transcripts dealing with
20 the diesel generator to try to iron out some differences
21 there, and Mr. Lamberski indicated that he would produce a
22 transcript of that.

23 My goal is that we use our time as efficiently as
24 possible. If I am to schedule four or five trips when I can
25 do it in two trips, to me is not very efficient for me. I

1 am looking to accommodate everyone's schedule as best I can,
2 and to achieve the final creation of a discovery record that
3 the parties need as expeditiously as possible, because I
4 guarantee my client wants this matter behind him as quickly
5 as possible.

6 JUDGE BLOCH: Okay. So on May 3, you will be able
7 to clarify really the extent of overlap here, the number of
8 witnesses that you need that won't be recalled, the ones
9 that will, the dates you propose for those interviews. We
10 will try to work everything out if possible on May 3.

11 Would Mr. Lamberski like to comment on the
12 comments that Judge Carpenter and I have made?

13 MR. LAMBERSKI: I'm sorry, Your Honor, on the
14 matter of the diesel generators?

15 JUDGE BLOCH: Well, I guess Judge Carpenter's
16 point, as I understood it, and I will probably misstate it
17 was that he wanted to finish this part of the case quickly
18 because he thought it was highly interdependent, but the
19 other part of the case was difficult to schedule because of
20 the importance of Commission action on it. So he really
21 didn't want to be considering the possible interaction of
22 first part depositions and second part depositions.

23 JUDGE CARPENTER: In order to get some of the case
24 to go forward.

25 JUDGE BLOCH: Yes.

1 MR. LAMBERSKI: Well, Your Honor, I think I said
2 earlier that that was my understanding of the way the Board
3 had settled that matter back in January, and we were to go
4 full speed ahead on the illegal license transfer issue.
5 Here we are late April, and, you know, Mr. Kohn has done his
6 so-called "first round" of depositions and all of a sudden
7 comes up with another list of people all of which, I might
8 add, he was aware of before he provided his first list.
9 Some of them were deposed in the Department of Labor case
10 concerning Mr. Hobby. I imagine he is going to ask the same
11 questions now that he did then. You know, I just feel like
12 Georgia Power is not getting a fair shake here, Your Honor.

13 JUDGE BLOCH: Would it be helpful to stipulate
14 that transcripts from the Hobby case can be used in this
15 case?

16 MR. LAMBERSKI: We've been doing that, Your Honor.

17 JUDGE BLOCH: Oh, you have?

18 MR. LAMBERSKI: Yes.

19 JUDGE BLOCH: This is just fresh stuff that would
20 somehow be added?

21 MR. KOHN: Your Honor, I'm not really certain of -
22 - I don't have the list of the new witnesses in front of me
23 but, to my knowledge, I don't think that any -- certainly a
24 great majority of them were never deposed in the Hobby case,
25 maybe all of them, with the exception of Mr. Dolberg, and of

1 course we are doing him for different reasons. I think -- I
2 don't know if any of those were deposed in the Hobby matter.

3 MR. LAMBERSKI: Your Honor, there were three
4 people that were deposed in the Hobby matter that are on his
5 new list: Carrie Adams, Fred Williams, and George Head.

6 MR. KOHN: Yes, those three were.

7 MR. LAMBERSKI: With respect to Mr. Dolberg, there
8 is an outstanding dispute between the parties on whether his
9 deposition will go forward. I assume, Your Honor, that your
10 order in that regard is still in effect?

11 JUDGE BLOCH: I would like to keep that particular
12 provision in effect. I would also like to urge Mr. Kohn to
13 complete as many of the tasks as he can. I am just trusting
14 that he is going to be efficient as he can be under the
15 circumstances, and I am just trusting in good faith that he
16 will be extending himself to the efficient conduct of the
17 case in exchange for the Board's understanding of his
18 situation right now.

19 Is there anything else that must be said?

20 MR. BARTH: Your Honor, Charles Barth. I would
21 like to finish with one small thing. When I was in Atlanta
22 -- and we have it on the record, if we ever get the
23 transcripts -- I informed Mr. Kohn and Mr. Lamberski that
24 the staff would immediately make available to them the
25 exhibits attached to the OI investigation.

1 Troutman Sanders has picked up a copy from our
2 Atlanta office. Mr. Young confirmed this by letter, which
3 is a public record, and as far as I know, Mr. Kohn, who so
4 needed these things to have a road map as to where to go,
5 has not picked up any of these exhibits at the office now.
6 I think that is attached somewhat to your comments for
7 expeditious handling of this matter. With that, I think I
8 shall close.

9 MR. KOHN: Well, I believe that I have attempted
10 to pick them up as soon as I can. I have been out of -- I
11 have not been physically able to do that. I would note that
12 I did ask Mr. Barth if they would produce a copy to my
13 office and he declined to do that. I further asked him if
14 he would accept a FOIA request for them, and he refused to
15 accept that as well. So I think I have attempted to get
16 this documentation to my office as speedily as possible. I
17 do look forward to getting copies as quickly as I can, be
18 that if I may have to go down there and copy them myself.

19 JUDGE BLOCH: Okay. I would like to thank the
20 parties for their participation in today's conference which,
21 in some respects, was difficult and unusual. We are
22 committed to the efficient processing of this case, despite
23 the leniency we've shown in what appears to be extraordinary
24 circumstances. Judge Carpenter and I are going to confer
25 immediately following this call; and if there are any change

1 in the decisions made on the record, they will be
2 transmitted promptly.

3 Thank you again and good day.

4 [Whereupon, at 4:45 p.m., the conference was
5 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 (Vogtle Electric Station, Units 1 & 2)

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.

Cheda Hancock
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