

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: Tuesday, May 3, 1994

PAGES: 292 - 363  
381 - 389

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

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In the matter of: :  
GEORGIA POWER COMPANY, et al. : Docket Nos. 50-424-OLA-3  
(Vogtle Electric Generating : 50-425-OLA-3  
Station, Units 1 and 2 :  
- - - - - x

Tuesday, May 3, 1994  
4350 East-West Highway  
5th Floor Hearing Room  
Bethesda, Maryland

A telephone conference call in the above-entitled  
matter commenced at 1:00 p.m., pursuant to notice.

BEFORE:  
JUDGE PETER B. BLOCH, Chairman  
JUDGE THOMAS MURPHY  
JUDGE JAMES H. CARPENTER

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1 ON BEHALF OF THE INTERVENOR KOHN, KOHN AND COLAPINTO:

2 MICHAEL KOHN, ESQUIRE

3 STEPHEN KOHN, ESQUIRE

4 DAVID COLAPINTO, ESQUIRE

5 MARY JANE WILMOTH

6 Kohn, Kohn and Colapinto

7 514 Florida Avenue N.W.

8 Washington D.C. 20001

9 ALSO PRESENT:

10 DARL S. HOOD

11 LOUIS L. WHEELER

12 Office of Nuclear Reactor Regulation

13 LARRY L. ROBINSON, Senior investigator

14 NRC Office of Investigations, Atlanta,

15 BEN B. HAYES, Director

16 NRC Office of Investigations

17 JOYCE MCDOW, Assisting Judge Bloch

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## P R O C E E D I N G S

1  
2 JUDGE BLOCH: Good afternoon. I'm Peter Bloch,  
3 and I'm the chairman of the Licensing Board, presiding today  
4 over the Georgia Power Company, Vogtle Electric Generating  
5 Plant case, a license amendment case. On my left, Judge  
6 Carpenter, and on my right, Judge Murphy.

7 I'd like to mention for a moment that the room is  
8 set up differently than it was for the last conference. At  
9 the last conference, we had an informal scheduling  
10 conference which seemed to be the reflection of the state of  
11 the relationship among the parties.

12 As we thought about today's conference, we decided  
13 it would be more appropriate to recognize that the state of  
14 communication among the parties isn't quite at the same  
15 level as it was last time, and so we have this more formal  
16 set up. I'd like to ask the parties to introduce themselves  
17 for the record, starting at my right?

18 MS. WILMOTH: I'm Mary Jane Wilmoth, from Kohn,  
19 Kohn and Colapinto.

20 MR. MICHAEL KOHN: Michael Kohn, of Kohn, Kohn,  
21 and Colapinto.

22 MR. STEPHEN KOHN: Stephen Kohn, of Kohn, Kohn,  
23 and Colapinto.

24 MR. COLAPINTO: David K. Colapinto, same law firm.

25 MR. BLAKE: Ernest Blake, with Shaw Pittman in

1 Washington. With me David Lewis, from Shaw Pittman; and  
2 John Lamberski, from Troutman Sanders in Atlanta,  
3 representing the Applicant.

4 MR. BARTH: I'm Charles A. Barth, and I'm with the  
5 Office of General Counsel of the Nuclear Regulatory  
6 Commission. To my immediate right is Mr. Joseph Rutberg, a  
7 deputy assistant general counsel, and to his right is Ms.  
8 Mitzi Young, who is also with the office of general counsel.

9 We have in the back, I will point. We have Mr.  
10 Darl Hood, who is with the Office of Nuclear Reactor  
11 Regulation; we have Mr. Lewis L. Wheeler, who is also with  
12 the Office of Nuclear Reactor Regulation.

13 We also have today with us, at the request of the  
14 Board, the director of the Office of Inspections, Mr. Ben B.  
15 Hayes; and we also have a senior investigator from our  
16 Atlanta Regional Office, Mr. Larry L. Robinson.

17 JUDGE BLOCH: Is that correct, the Office of  
18 Inspections?

19 MR. BARTH: Investigations. Thank you for the  
20 correction.

21 JUDGE BLOCH: Thank you. The matters to be  
22 covered today are sufficiently complex that the Board has  
23 issued a written agenda and attached to it a matrix of items  
24 to be filled out during this hearing so that we can get our  
25 schedule agreed to.

1           At this point, I'd like to ask that the agenda and  
2 the blank matrix be bound into our record, as a framework  
3 for what we are to do. I'd like to know if there are any  
4 motions to amend the agenda.

5           We had considered all of the filings of the  
6 parties already, and I'm hopeful that this will not be  
7 something that needs to be amended. You'll note that point  
8 eight is to cover anything else that may have been missed.

9           Okay. There being no motions, let's proceed.

10          I want to start with the motion that is part of  
11 Intervenor's Responses to Licensing Board Scheduling  
12 Memorandum, dated April 27, 1994. It's on paragraph one.  
13 Intervenor has requested 20 days to evaluate and file a  
14 potential action related to the disqualification of the  
15 opposing law firm.

16          On that one, the Board has looked at it and we're  
17 puzzled. I don't think any request is needed. As far as  
18 I'm concerned, if you have a motion to file, you file it.  
19 What action are you requesting from the Board?

20          MR. STEPHEN KOHN: Your Honor, we just wanted to  
21 put the Board on notice that we're considering that action  
22 and it could impact on the scheduling. So we just wanted to  
23 put the Board on notice that was --

24          JUDGE BLOCH: Okay. What we'll do, of course,  
25 if you file a meritorious motion, we'll consider it at that

1 time. But as of now there are no merits before us, so it  
2 can't impact the scheduling.

3 The next point that we'd like to make is that as  
4 we've looked over the decisions of this Board, it's quite  
5 clear that we had decided that discovery on the illegal  
6 transfer issue would be separated from the discovery on  
7 phase two of this case; and it would be completed and the  
8 date of April 29th was published. And we're concerned that  
9 the motions now before us appear to have overlook that we  
10 acted at all in this field.

11 There is a minor concern we also have which is  
12 that we noticed that in the last scheduling conference, we  
13 asked Mr. Kohn to speak to us on a Monday about a matter  
14 that we finally received a filing about just yesterday, and  
15 that was the question of the transcripts of the discovery.  
16 And we had expected to hear from Mr. Kohn on the day that we  
17 asked to hear from him on.

18 And we didn't and we're puzzled why we didn't even  
19 get a call saying, we're not going to speak to you today  
20 because we're not ready. We had no explanation at all. The  
21 Board expects that when it issues orders, that they will be  
22 heard. And that when people have commitments that they'll  
23 be fulfilled.

24 So we're going to proceed on the basis of the law  
25 of the case, which is that the decisions that we have issued



1 about the discovery being separate on a legal transfer will  
2 be followed. And, therefore, we also will allow deviations  
3 from the order that we set forth, but only for cause. So  
4 we'll be wanting to know the extent to which Intervenors  
5 require additional interviews because of things that they  
6 learned after their commitment to finish by the 29th of  
7 April.

8           There is a certain amount of leniency that we have  
9 allowed because of the psychological impact of events that  
10 Mr. Kohn related to us, the way that he reacted to those  
11 events. Whether or not they are justifiable, we don't care.  
12 There is a certain amount of leniency for human factors in  
13 the course of the case, and we've allowed that. But that  
14 doesn't mean that we'll deviate any further from the April  
15 29th deadline, unless we're shown why.

16           We'd also like to disclose, at this point, that we  
17 have scheduled an in camera session at 3:00. If we're not  
18 finished by then, and if we still decide that we'll have the  
19 in camera session, then we'll have to adjourn briefly for  
20 that purpose.

21           The purpose of the scheduled in camera session is  
22 to learn, because we're now getting into earnest scheduling  
23 towards the conclusion of this case, whether there are  
24 investigative matters that might impact on that schedule.

25           MR. BARTH: Your Honor, do you invite comment as

1 you go along on these topics? I'm thinking of your closure  
2 on the 29th docket, which you just finished.

3 JUDGE BLOCH: Have I said something you disagree  
4 with? I mean, agreement isn't really necessary at this  
5 point. If you really had a motion to disturb the ruling  
6 that the Board has made, that would be helpful. I'm not  
7 quite sure why you would chime in to agree with it.

8 MR. BARTH: We don't agree with it. I asked if  
9 you want comments on this as you go along.

10 JUDGE BLOCH: Ah-h, okay. We were aware that the  
11 Staff has a reservation that it needs to study the  
12 transcripts before it can complete its statement. So I  
13 guess we could take that matter up now.

14 This is a question as to which the Staff review is  
15 something that was allowed for in our previous scheduling  
16 order, whether that is something that the Staff should be  
17 doing for this hearing, why the Staff can't keep up with the  
18 schedule that was agreed to in this hearing.

19 MR. BARTH: For one reason, your Honor, we do not  
20 have transcripts of most of the depositions. As you are  
21 aware, that is one of the problems. We have a transcript of  
22 Mr. Dahlberg's deposition, we have a transcript of Mr.  
23 McCoy's deposition, we have a transcript of Mr. Hobby's and  
24 Mr. Mosbaugh's depositions. We do not have transcripts of  
25 the others.

1 JUDGE BLOCH: Okay. So why don't we move right  
2 into number two on the agenda, which is the transcript  
3 issue?

4 MR. BARTH: That sounds fine to me, your Honor.

5 JUDGE BLOCH: You might want to continue, since  
6 you started, Mr. Barth. My understanding of the issue is  
7 that it's been pretty accurately briefed by Intervenors, as  
8 we understand the law, which is that it is up to the  
9 discretion of the Board whether or not to decide to order  
10 that one side would prepare transcripts or not; and that the  
11 principal factors involved are convenience and cost.

12 My understanding is that you could order an  
13 transcript of that deposition, am I correct about that?

14 MR. BARTH: I believe this is correct, your Honor.

15 JUDGE BLOCH: So the principal issue involved here  
16 is not the availability of the document, but how much it'll  
17 cost the Agency?

18 MR. BARTH: I think it goes beyond that, your  
19 Honor. I think it goes back to the responsibilities of the  
20 Intervenor in scheduling these depositions, calling these  
21 people before a reporter and not providing any kind of  
22 notice that this would not be used, was not intended to be  
23 used. He deposed these people prior to the last  
24 depositions. This was not new for him, this was a rehash of  
25 what he did before the Department of Labor.

1 JUDGE BLOCH: So then you knew he might do it  
2 again?

3 MR. BARTH: I suspected as this went on. This was  
4 Department of Labor stuff. The other counsel are more  
5 familiar with it, but this was a rehash, yes. Basically,  
6 what he deposed these people on, the Department of Labor  
7 proceeding.

8 JUDGE BLOCH: The only thing I could find in the  
9 regulations was in 2.740(e), which says, "When the testimony  
10 is fully transcribed," et cetera. I didn't see any explicit  
11 requirement in the regulations that the testimony be  
12 transcribed by the person who requested the deposition. Am  
13 I correct about that?

14 MR. BARTH: You will not find that kind of  
15 language in the regulations, your Honor.

16 JUDGE BLOCH: All right. And so from what source  
17 of law do you infer the obligation to transcribe it?

18 MR. BARTH: I think that if he schedules a  
19 deposition, in all honesty and fairness this is for the  
20 purpose of discovery not simply for the purpose of having a  
21 chit chat with Mr. Dahlberg, who is president of the  
22 Southern Company, which he has had before.

23 He has had the same talk before with him. There  
24 should be some kind of purpose to do something which would  
25 further his case, rather than fish around and hope that he

1 could make a case somehow from what was said.

2 JUDGE BLOCH: I don't quite understand. What I  
3 understand is that it was transcribed --

4 MR. BARTH: It was taken down. This was being  
5 taken down, yes, your Honor.

6 JUDGE BLOCH: It was transcribed by a reporter and  
7 it is available to any of the parties. And apparently Mr.  
8 Kohn took notes, because he knows some of the things that  
9 happened there, and he says that if he needs it, he'll  
10 transcribe it later. Now, why would we impose the cost of a  
11 full record of that transcript on him? What purpose would  
12 that serve for the Board? Since, if you want the transcript  
13 of that formal hearing, you can buy it.

14 MR. BARTH: That is correct, your Honor.

15 JUDGE BLOCH: So why should we impose the cost on  
16 him of his buying it, if he doesn't think he needs it?

17 MR. BARTH: He instigated the discovery --

18 JUDGE BLOCH: That is true.

19 MR. BARTH: -- for his case, not for ours.

20 JUDGE BLOCH: That's true. So, if he needs it, he  
21 has his notes and he may have a later transcript. He  
22 doesn't want a transcript now. Why should we make him have  
23 it? That's the way he wanted to use it.

24 MR. BARTH: He has an obligation, if he is going  
25 to do this, your Honor, to inform the parties in advance



1 that this is --

2 JUDGE BLOCH: All right. So where does that come  
3 from? Where in the regulations could I find that  
4 obligation?

5 MR. BARTH: I don't think you'll find it in the  
6 regulations, I think you'll find it in the law cases.

7 JUDGE BLOCH: Okay.

8 MR. BARTH: The citation is out of Tennessee. It  
9 is Green versus Williams, which is a 90 Federal Rules  
10 Decision, page 440, Eastern District of Tennessee, 1981.  
11 And that case stands for the proposition --

12 JUDGE BLOCH: I think the rest of the cite would  
13 be helpful. Usually there is a page?

14 MR. BARTH: 440.

15 JUDGE BLOCH: Oh, 440. I didn't hear that.

16 MR. BARTH: I'm sorry, your Honor. I'm accused of  
17 mumbling. I'll try not to.

18 JUDGE BLOCH: And the year of that decision is?

19 JUDGE BLOCH: June 10, 1981.

20 JUDGE BLOCH: Okay. And what does it stand for?

21 MR. BARTH: That stands for the proposition that  
22 if the deposition, if you want to call it that, is not going  
23 to be transcribed, that notice will be given to the parties  
24 of this so that they may make their own arrangements for  
25 their own transcriptions.

1 JUDGE BLOCH: Okay. And what was the basis for  
2 that ruling? Was there a court rule? Was there a rule of  
3 that district?

4 MR. BARTH: It was not a local court rule in the  
5 Federal District Court, no.

6 JUDGE BLOCH: Okay. And was prior precedent  
7 cited? Did the court just make that rule up? I mean, how  
8 did that come about?

9 JUDGE BLOCH: That happens sometimes in matters of  
10 first impression. The court did not cite prior authority  
11 for its holding.

12 JUDGE BLOCH: So in this instance, how were you  
13 hurt by not having advance warning that it wasn't going to  
14 be transcribed?

15 MR. BARTH: When you set the deadline of the 29th,  
16 we informed you that we really needed to have our people  
17 take a look at the transcripts to see if anything was  
18 flushed up by Mr. Kohn in his case, since he knew his case  
19 better than we know it.

20 JUDGE BLOCH: Does Mr. Kohn usually provide  
21 transcripts to you?

22 MR. BARTH: Let me finish the first question. And  
23 we relied upon the normal practice of the Agency to have  
24 these depositions transcribed on paper. This is the first  
25 time, this has never happened, and I've been here at the

1 Agency since 1972.

2 JUDGE BLOCH: I want to know mechanically how this  
3 works. So Mr. Kohn orders a transcript?

4 MR. BARTH: Yes, Sir.

5 JUDGE BLOCH: How do you get yours?

6 MR. BARTH: We call the company and tell them that  
7 when the transcript has been prepared for Mr. Kohn, send us  
8 a copy and send the Government a bill. The bill is a lesser  
9 one for a --

10 JUDGE BLOCH: That's correct. I understand that.  
11 Did you call up and find out if you were going to be able to  
12 get a transcript?

13 MR. BARTH: I did yesterday.

14 JUDGE BLOCH: All right. So you could have called  
15 up immediately to find out if you were going to get a  
16 transcript, in which case the issue would have been the  
17 money.

18 MR. BARTH: No. Because immediately, the first  
19 deposition taken was of the president of the Southern  
20 Company, and that transcript was made and sent to us. And  
21 so we sit there in blissful glee that this is going to  
22 continue.

23 JUDGE BLOCH: It was sent to you without your  
24 ordering it?

25 MR. BARTH: And the first time we knew that the

1 transcripts were not going to be made was when Mr. Lamberski  
2 informed us in the last telephone conversation that he  
3 talked to the reporter and that there was a hold on the  
4 transcripts.

5 JUDGE BLOCH: So it was sent to you without your  
6 ordering it?

7 MR. BARTH: No, we ordered it. We have an order  
8 for the rest of them. When the transcript is made, send us  
9 a copy. We've already ordered that for all transcripts, all  
10 depositions.

11 JUDGE BLOCH: Okay. So you put in a contingent  
12 order when the transcript is made, send us a copy. Now, you  
13 could have put in one that said, we want to know if there  
14 any problem on the date.

15 MR. BARTH: No. Why would we ever do something  
16 like that? That's never happened. I don't --

17 JUDGE BLOCH: It has never happened in the history  
18 of this agency?

19 MR. BARTH: I've been here since 1972, and this  
20 never happened to us. This is the first impression, your  
21 Honor.

22 JUDGE BLOCH: Okay. Except you did know from the  
23 Labor Department case that it might happen?

24 MR. BARTH: No. I was not a participant in the  
25 Department of Labor case. I know nothing about the

1 Department of Labor case, except what these gentlemen have  
2 told me tid bits from both sides, here and there. Some of  
3 the stipulations proposed by Mr. Lamberski have parts of the  
4 record in the Department of Labor case.

5 JUDGE BLOCH: Is there any further argument you'd  
6 like to make?

7 MR. BARTH: Yes. The foreclosure of your order  
8 for the 29th without the transcripts prohibits us or  
9 prevents us from using parts of those transcripts in  
10 requests for admissions. The reason for requests for  
11 admissions is, a request for admission can be used as  
12 evidence where the transcript cannot be.

13 And, therefore, if we wanted to introduce parts of  
14 these transcripts into the hearing, we would have to do this  
15 by requests for admissions, otherwise the consent of the  
16 party. You can also use this for motions for summary  
17 disposition. You may use a request for admission because  
18 you cannot use a transcript, because a transcript is not  
19 part of the record.

20 JUDGE BLOCH: So you have been delayed in asking  
21 for request for admission, is that the point?

22 MR. BARTH: Prevented.

23 JUDGE BLOCH: No. Delayed. You can still do it.

24 MR. BARTH: Not unless you change your order, your  
25 Honor. You still have the -- your last order foreclosed



1 requests for admission --

2 JUDGE BLOCH: Oh. Prevented by that date. That's  
3 correct.

4 MR. BARTH: The judge stops me, nothing else.

5 JUDGE BLOCH: Okay. Thank you. Anything else?

6 JUDGE MURPHY: I have a question.

7 JUDGE BLOCH: There is a question from Judge  
8 Murphy.

9 JUDGE MURPHY: Mr. Barth, in Green versus  
10 Williams, when they discuss whether or not a deposition is  
11 going to be transcribed, you need to provide notice. Does  
12 that mean, and you've got to talk now to a scientist because  
13 I don't have a sense for this, does that mean that you have  
14 to produce a written record of it, or the fact is that there  
15 was a stenographer there taking verbatim transcript and it  
16 just was not produced in a written form?

17 I guess I don't understand. What does the term  
18 "transcribe" mean? Does it need to be produced in a written  
19 form, or can it be taken down, made a record of in  
20 somebody's notes or on a tape and then just not transcribed?

21 MR. BARTH: We're using the word a number of  
22 times.

23 JUDGE MURPHY: Yes. I guess I'm confused.

24 MR. BARTH: The Federal Rules provide that it must  
25 be --

1 JUDGE BLOCH: I'd like to clarify -- just a  
2 second. I also would like clarification of whether in the  
3 Green case there was a transcription made, but it just  
4 wasn't made into a written record?

5 MR. BARTH: Yours is an easier answer. There was  
6 a transcription made. The transcription is when someone  
7 takes it down as the reporter is doing now. But then it is  
8 transcribed onto paper later, to a written work. I'm  
9 corrected by my co-counsel. The word is "reported" or  
10 "recorded", versus "transcribed."

11 JUDGE BLOCH: In Green, it was recorded and not  
12 transcribed, is that correct?

13 MR. BARTH: I think the language is most precisely  
14 stated that way. And of course, "report" also covers video  
15 cameras and tapes and other mechanisms. The rules can  
16 change to provide for that too.

17 JUDGE BLOCH: Because we're aware of Intervenor's  
18 argument, I'd think I'd like to take Licensee's argument  
19 next, or Applicant's argument.

20 MR. BLAKE: We received the transmittal setting  
21 out the Intervenor's argument at our offices at about 8:00  
22 last night, and Troutman Sanders received it this morning, I  
23 believe. So we're not prepared to talk about these cases,  
24 or what the law is.

25 I, like the Board, was waiting. We expected to

1 hear last week what they were going to do about transcripts,  
2 whether or not they were going to, in fact, have any of them  
3 written out, whatever the term is.

4 JUDGE BLOCH: Wait a second. We've got some kind  
5 of a hum in here. Do we know what that is coming from?

6 (Pause to adjust mikes.)

7 JUDGE BLOCH: Yes, that took care of it. That's  
8 great. Sorry, Mr. Blake.

9 MR. BLAKE: And we're just plain not prepared to  
10 argue what the legalities are of cost. But it's not the  
11 cost, I don't think that is the important thing. Remember  
12 the context in which this came up. It came up because in a  
13 conference call that we had with the Board, this was the  
14 telephonic conference call.

15 For the first time we heard that the Intervenors  
16 wanted to depose another 11 or so, or a number, or had  
17 additional depositions that they wanted to do. April 11th  
18 was the date, I'm reminded. And we then asked for the  
19 identification of who are these people.

20 Because at that point, having gone through the two  
21 weeks of depositions, down in Alabama and in Georgia, we  
22 thought and that was all. We had indication to believe that  
23 that was the end of the depositions. And now I'm told that  
24 at that conference call with the Board did we hear about the  
25 desire for more.

1           When we asked for the identification of who are  
2 these people, and why is it coming up at this point, the  
3 response was, we can't tell you yet because we need to  
4 review the transcripts of the depositions because there were  
5 things left out. I don't remember the exact language, but  
6 certainly that was the theme of it.

7           We didn't get the answers we expected, or there  
8 were omissions in people's responses, and we need to review  
9 the transcripts. So we all sat waiting, facing the April  
10 29th deadline for the identification of witnesses, all  
11 presumably because we were waiting for the review of the  
12 transcripts.

13           When we hadn't heard anything for some number of  
14 days, we went to the court reporter then ourselves and said,  
15 when are we going to get these transcripts? And for the  
16 first time hearing, which we reported to the Board and Mr.  
17 Barth earlier indicated, we learned that the court reporter  
18 had been instructed not to transcribe these recordation of  
19 the depositions.

20           That's when we raised it on the telephone  
21 conference. It was shortly after that that Mr. Kohn  
22 expressed his difficulties. So that was the context in  
23 which it rose, and that is the way in which we heard, and  
24 that is the way, in my view, in which this schedule, over  
25 all, has been impacted.

1 JUDGE BLOCH: So your principal concern is over  
2 the ability to respond to whatever cause the Intervenor  
3 wishes to show about the need for those other 11  
4 depositions?

5 MR. BLAKE: Yes. Because today when we talk about  
6 additional depositions and people, we are going to ask the  
7 Board to require the Intervenor to identify with some  
8 precision, why this individual; what was missing from a past  
9 deposition which you had expected and were unable to get;  
10 why, in view of the fact that this person is no longer with  
11 the company; why, in view of the fact that this person was  
12 deposed by you in the Hobby case; why, in view of the months  
13 and months we've spent in discovery, is it now coming at  
14 this late date?

15 And one of those elements is, in fact, what  
16 occurred in the depositions. We have no need for any of  
17 those depositions, frankly, unless somebody else wants to  
18 use it in the proceeding. So we'll have no use for them, if  
19 nobody else does.

20 JUDGE BLOCH: Thank you.

21 MR. BARTH: May I make one further comment, your  
22 Honor, about this matter of the transcriptions before you  
23 turn it over to the Intervenor for his --

24 JUDGE BLOCH: I'm not sure. You forgot to say  
25 something when you had the opportunity?



1 MR. BARTH: Yes.

2 JUDGE BLOCH: If the Intervenor has no objection,  
3 it's okay with us.

4 MR. MICHAEL KOHN: No objection, your Honor.

5 MR. BARTH: The main case he cites, on page 2 of  
6 his letter to your Honor, is Melton versus McCormick, 94  
7 F.R.D. 344. When your Honors adjourn to consider this  
8 matter, I wish you would carefully review that case for two  
9 reasons.

10 The Melton case stands for the proposition that  
11 the Intervenor does not pay for someone else's copy of the  
12 deposition. We are not asking the Intervenors to pay for  
13 the Government's copy. The case does not apply. Second of  
14 all, the case is extremely sui generis. You are having  
15 impoverished plaintiffs --

16 JUDGE BLOCH: Can we slow up a second? In the  
17 Melton case, who ordered the deposition?

18 MR. BARTH: The plaintiffs decided not to order  
19 the transcript after the deposition was completed because of  
20 limited resources.

21 JUDGE BLOCH: The plaintiff ordered the  
22 deposition?

23 MR. BARTH: No. The plaintiffs decided not to.

24 MS. YOUNG: No, that's not the question.

25 JUDGE BLOCH: They ordered that there be a

1 deposition?

2 MR. BARTH: Yes. I'm sorry. They conducted it.  
3 Yes, your Honor.

4 JUDGE BLOCH: And then they didn't want to pay for  
5 it, right?

6 MR. BARTH: They did not want to pay for the  
7 transcription. I assume they paid the reporter for her  
8 attendance. I don't know.

9 JUDGE BLOCH: And were they required to pay for  
10 the transcription?

11 MR. BARTH: No.

12 JUDGE BLOCH: So it sounds like it's on point.

13 MR. BARTH: No.

14 JUDGE BLOCH: Why is that?

15 MR. BARTH: Because the defendants asked to have  
16 them pay for a copy of the transcription for the defendants.  
17 And we are not asking that Mr. Mosbaugh pay for the  
18 Government's copy of the depositions. Second of all --

19 JUDGE BLOCH: You are telling me in this case the  
20 Government actually asked for them to pay for the  
21 transcripts to be given to the Government?

22 MR. BARTH: It was a private case. The Government  
23 was not involved. We're the Government in this case, but  
24 there was no Government in Melton versus McCormick.

25 JUDGE BLOCH: You just used the word,

1 "government." Did I misunderstand?

2 MR. BARTH: Mr. McCormick wanted Mr. Melton to pay  
3 for his copy of the transcription. In this case, the  
4 Government does not want Mr. Mosbaugh to pay for our copy of  
5 the deposition.

6 JUDGE BLOCH: So it wasn't that he had to pay for  
7 the -- the only ruling in this case is that he didn't have  
8 to buy a copy for the other party?

9 MR. BARTH: Yes. Well, there is another ruling.  
10 The plaintiff did not have to order a copy himself, either.

11 JUDGE BLOCH: Okay.

12 MR. BARTH: Mr. McCormick.

13 JUDGE BLOCH: All right. So that part is directly  
14 on point, isn't it?

15 MR. BARTH: If you can parse it to that degree,  
16 yes. I do not think you can parse it to that degree.

17 JUDGE BLOCH: Of course, I can. It's a holding  
18 that says you don't have to buy a copy of your own  
19 deposition.

20 MR. BARTH: But the holding depends upon the facts  
21 of the case, which are unique.

22 JUDGE BLOCH: Well, the other holding might be  
23 unique, if they asked them to buy it for the other side.  
24 That part doesn't control here, but the part that he doesn't  
25 have to buy it for himself does hold here.

1 MR. BARTH: The judge's reasoning was that the  
2 plaintiffs were impoverished and did not have money. And  
3 that is the reason why, in the compassion of the court, they  
4 did not order him to take a deposition and pay for it.

5 JUDGE BLOCH: And did he take proof of how much  
6 money they had?

7 MR. BARTH: That's not in the case.

8 JUDGE BLOCH: Because I assume that that's the  
9 same argument they are making here, that they can't afford  
10 to have it made either.

11 MR. BARTH: But in that case, I would point out to  
12 you the policy statement for the conduct of proceedings  
13 which is 43 F.R. 28058, June 28, 1978, where the Commission  
14 speaks of fairness requires a participant to fulfill his  
15 obligations even when they possess fewer resources than  
16 others.

17 JUDGE BLOCH: Yes. But that also is a little  
18 circular.

19 MR. BARTH: And you have an obligation here that  
20 the Intervenor schedule depositions, the first two  
21 transcriptions were received by the Government. The  
22 Government sat blithely by expecting other transcriptions so  
23 it could fill your Honors' order to conclude by the 29th.

24 JUDGE BLOCH: Okay. You were misled. That is the  
25 same argument that Mr. Blake has made, that it was difficult

1 to fulfill the terms of the scheduling order and to contest  
2 now. I hear that argument.

3 MR. BARTH: Thank you, your Honor.

4 JUDGE BLOCH: Mr. Kohn?

5 MR. MICHAEL KOHN: Thank you, your Honor. First,  
6 with respect to transcriptions, court reporters, generally  
7 their turn around time is between 2 weeks and 30 days.  
8 There was no first. And being that these depositions did  
9 not end until April 15, depending on the court reporter,  
10 there was no way a good portion of these would ever be  
11 available for any purpose for any party by the 29th.

12 Any party at any time was able to order expedited  
13 copies of the depositions at an additional cost and no party  
14 chose to do that. Second, Intervenor does not know what  
15 deposition is relevant to this proceeding ultimately from an  
16 evidentiary perspective. The depositions were cut, were  
17 done for discovery to determine what facts are out there.

18 At this point, there are contradictions from  
19 information that we have that we were unable to get during  
20 the deposition process, and that is one of the reasons -- I  
21 guess that is a separate issue on additional depositions.  
22 We'll get to that at a later point.

23 But I do believe that the Melton case is directly  
24 on point. Mr. Mosbaugh remains unemployed since 1990. He  
25 cannot afford his attorney's fees, let alone the actual

1 costs of this litigation, but yet he is persevering.

2 The fact is that the first deposition of Mr.  
3 Dahlberg was transcribed, and other depositions -- let me --  
4 -- we decided when the transcription was going to take place  
5 when the court reporter called up and said, well, what do  
6 you want with the deposition?

7 At the hearing both parties ordered a copy, and I  
8 was under the understanding that they were making their own  
9 arrangements to obtain their copies. I then spoke with the  
10 court reporter and they said that to notify the parties that  
11 we are not ordering all the transcripts. So Mr. Blake  
12 indicated that --

13 JUDGE BLOCH: Wait. The court reporter said that  
14 to you?

15 MR. MICHAEL KOHN: I asked the reporter to notify  
16 the parties, and the reporter indicated to me that they  
17 would normally notify the parties so that they could make  
18 their own arrangements to order the transcripts. That's  
19 what the court reporter told me while I was in Virginia,  
20 during a phone conversation.

21 JUDGE BLOCH: So you relied on the reporter and  
22 never followed up to make sure it would happen? You could  
23 see that it was important, in terms of the schedule of the  
24 case?

25 MR. MICHAEL KOHN: I believe she wrote them a

1 letter and indicated that. She indicated to me that she was  
2 going to do that. And when the conversation occurred, I was  
3 in Virginia during a hearing that lasted the entire week in  
4 Virginia. I did not have access to anything more than a  
5 telephone.

6 JUDGE BLOCH: Did the letter --

7 MR. MICHAEL KOHN: And I did speak with Mr.  
8 Lamberski, or I think I spoke with Mr. Lamberski. And Mary  
9 Jane Wilmoth spoke with Mr. Lamberski to advise them of the  
10 additional depositions that we wanted to go forward, and  
11 there was conversation at that time about the availability  
12 of transcripts --

13 JUDGE BLOCH: What's the date of that  
14 conversation? Perhaps Applicant can let us know?

15 MR. MICHAEL KOHN: Our initial recollection, Mary,  
16 an initial recollection is a conversation she had, it was on  
17 the 19th; and my conversation was on the 20th.

18 MR. LAMBERSKI: I think it was the 20th and the  
19 21st, your Honor.

20 JUDGE BLOCH: And the depositions were concluded  
21 on what day?

22 MR. MICHAEL KOHN: April 15th, I think. Or April  
23 14th with a --

24 MR. LAMBERSKI: Yes. April 14th.

25 JUDGE BLOCH: And how long was the turn around on

1 the Dahlberg deposition?

2 MR. MICHAEL KOHN: I just got it a few days ago,  
3 and I ordered it when it was completed.

4 JUDGE BLOCH: Okay.

5 MR. MICHAEL KOHN: April 25th, and the deposition  
6 was the first one, which occurred April 24th. And the  
7 transcription was done April 25th.

8 JUDGE BLOCH: Okay. Is there any further argument  
9 on this issue?

10 MR. MICHAEL KOHN: The only other issue, I can't  
11 see where we're drawing the line, deals with the additional  
12 deponents. But they were given the identity two weeks  
13 before discovery closed in this case. And they were made  
14 aware that there would be a need to conduct numerous  
15 additional depositions before I left on April 14th, as well.  
16 And I requested them to begin scheduling a time in their  
17 calendars for that event.

18 JUDGE BLOCH: Okay.

19 (Judges confer.)

20 JUDGE CARPENTER: Mr. Kohn?

21 MR. MICHAEL KOHN: Yes, your Honor.

22 JUDGE CARPENTER: Do I understand correctly that  
23 you are saying that at the moment you have neither the  
24 resources nor the inclination to order these transcripts of  
25 the depositions, but that at some undefined time in the



1 future you might?

2 MR. MICHAEL KOHN: Yes, your Honor. There is a  
3 lot of variabilities. There are witnesses who we will  
4 interview who we will not depose. And based on the  
5 information we understand that we may obtain from these  
6 witnesses, if we believe that there is contradictory  
7 comments in some of the depositions, we may want to use that  
8 at the hearing for impeachment purposes.

9 So there is no way at this point for Intervenor to  
10 know all the information they are going to need to present  
11 at the hearing itself.

12 JUDGE CARPENTER: What concerns me, by and large I  
13 have found it isn't very useful to allow surprise at our  
14 proceedings. And I'm a little bit concerned we're going to  
15 get close to the hearing and then by surprise you decide  
16 that you want to go another avenue and put the other parties  
17 at a disadvantage at the last minute before the hearing.  
18 Can you understand my concern?

19 MR. MICHAEL KOHN: Yes, your Honor. I can state  
20 they all attended, they all took the same notes I did. And  
21 I don't think any party has an advantage over anything else.  
22 In fact, it is the Intervenor that has a complete  
23 disadvantage because every single person we deposed is at  
24 the beck and call of the utility.

25 I do not have that advantage. The only way I can

1 get any information from them ever is to deposition. And  
2 that is why we have to go forward with the deposition  
3 process which is time consuming and costly. There is no  
4 informal process allowed to us.

5 JUDGE CARPENTER: Would you be comfortable that  
6 after some point in time we'll have a hearing date, that  
7 there be a cut-off as to when you might do that? Some  
8 number of days before the scheduled hearing so that the  
9 other parties might have a chance?

10 JUDGE BLOCH: No. But they can get it now. Judge  
11 Carpenter, they can get it now.

12 JUDGE CARPENTER: That makes them spend the money  
13 in order to catch all the fish, when they don't know which  
14 fish they may see at the hearing. You see my issue of  
15 fairness?

16 MR. MICHAEL KOHN: I do, but I think you must also  
17 understand that it's my understanding that it is the  
18 Licensee's burden to go forward, so we would be presenting  
19 rebuttal testimony to statements there.

20 And there is no general way we can absolutely  
21 determine what rebuttal evidence we were going to be putting  
22 forward. So there is certain information we absolutely know  
23 we want to put into the record, but there may be rebuttal  
24 evidence which we may not know until the hearing process is  
25 even under way.

1 JUDGE CARPENTER: Thank you. It's not as simple  
2 as a deadline. Thank you.

3 JUDGE BLOCH: I'd like to note, as we pass on to  
4 the next issue, that we did notice there is one loss to the  
5 judicial process through this delayed transcription. And  
6 that is that the witness doesn't have a chance to make a  
7 current review of what they've said. Whenever it's  
8 transcribed and it may be months later, it'll be a little  
9 harder for them to remember whether the transcription is  
10 accurate. And I don't know how important that is in this  
11 balance, but it's something that I notice.

12 (Judges confer.)

13 JUDGE BLOCH: Judge Murphy reminds me that we  
14 passed quickly over 1.E. on our agenda. We haven't passed  
15 over it, the question is whether we need to have much  
16 discussion. Are there objections to the Board going ahead  
17 with its plans to find out the impact of investigations on  
18 the proceeding?

19 MR. BLAKE: Yes. We will be objecting.

20 JUDGE BLOCH: Okay. And I guess I've heard that  
21 objection before, and we've also listened to it before. My  
22 concern is, as we're getting closer, it looks to be there is  
23 more reason to know what might be happening. Do you want to  
24 say more about that, Mr. Blake?

25 MR. BLAKE: I don't remember precisely all that

1 we've said before, so I don't know that I'll be repeating  
2 myself entirely or not. But it is simply a fairness  
3 argument.

4           And the fairness is, we've only really seen one  
5 example of additional allegations having been advanced at  
6 least by Mr. Mosbaugh because it was identified and provided  
7 to the Board and the parties. And on that occasion, what we  
8 saw was largely, if not completely, a rehashing of views  
9 that Mr. Mosbaugh had about events in April of 1990, and  
10 then pleadings by the Licensee about a year later in  
11 response to the 2.206 petition.

12           Forward in this case as allegations, in the form  
13 of allegations when they could, in my view, easily have been  
14 presented in the forum of this proceeding so we'd have had  
15 an opportunity to react to them and to present the Board  
16 with a more balanced view. Here, I don't know what these  
17 are about. I don't even know whether they are written by  
18 Mr. Mosbaugh, frankly.

19           But my view of all of this is, if these are  
20 allegations which relate to this proceeding, if they have  
21 some bearing on this proceeding, then the only way they  
22 ultimately will is if all the parties have input to provide  
23 to the Board so that you can make a balanced decision. If  
24 they don't, then, of course, they have no business being  
25 presented to the Board. And I always worry about your

1 hearing from just one party from a prejudiced standpoint.

2 So we would oppose an in camera session on  
3 whatever this topic is. I don't know for sure whether it  
4 relates or doesn't, but I've tried to present an argument  
5 on, whether it does or doesn't, the propriety of it.

6 JUDGE BLOCH: Are there other parties that would  
7 like to comment on this?

8 MR. BARTH: I would like to make a small  
9 rejoinder, your Honor. Commission's statement on policy on  
10 investigations authorizes the Licensing Board to have an in  
11 camera session. And from the Staff's point of view, if you  
12 want it you'll have it. We have no objection to it. I  
13 think it complies with what the Commission wants.

14 MR. BLAKE: Judge Bloch, it does indeed, but as  
15 Mr. Barth stated in his notice to the Board, the Staff  
16 doesn't know whether they will impact this proceeding, that  
17 is, the allegations. And as he indicated, when it has  
18 information which would be meaningful to the Board and the  
19 parties, they'll communicate it. I'm not sure that at this  
20 juncture we have something sufficiently meaningful to  
21 warrant that briefing of the Board.

22 JUDGE BLOCH: Well, what we're wanting the  
23 briefing for -- what I'm wanting the briefing for, at least,  
24 I'll speak more for myself -- is to know whether there is  
25 something likely to come up the pike later that might hold

1 us up. And to attempt to find out whether we can expedite  
2 that so it won't hold us up.

3 MR. BLAKE: And I would hate to have the Board  
4 make that determination without our input on whether or not  
5 it has the significance which might appear from just one  
6 party's presentation to you.

7 JUDGE BLOCH: Incidentally, is this something that  
8 is actually beyond the Commission's authority? Is there  
9 actually something unconstitutional about this or illegal?

10 MR. BLAKE: I don't know the answer. I've tried  
11 to put it in just elemental fairness terms. I've not  
12 researched whether or not there is some constitutional  
13 argument that we might advance as well.

14 MR. STEPHEN KOHN: Your Honor, Intervenor does not  
15 object to an in camera review. And our understanding of the  
16 nature of the allegations, we would object to a full  
17 disclosure of the O.I. investigatory process until O.I. is  
18 comfortable with having that be public.

19 JUDGE BLOCH: We have no intention of getting a  
20 full disclosure of the O.I. report.

21 MR. STEPHEN KOHN: Thank you.

22 (Judges confer.)

23 JUDGE BLOCH: So we briefly interrupted the flow  
24 of argument because the other two issues are really closely  
25 interrelated. I'd like to pass on now to the issue of

1 additional depositions, or continued depositions because of  
2 objections that arose in the last phase. In fact, the  
3 parties if they want to, can address any objections that  
4 really must for some reason be decided before we know what  
5 our schedule should be.

6 And I think probably in this case, since the new  
7 witnesses are being proposed by Intervenors, and their  
8 objections are the ones that we'll be considering, it would  
9 be appropriate to start with them on this argument.

10 MR. BARTH: Your Honor, could I respectfully  
11 request the opportunity to present a very short rejoinder to  
12 Mr. Kohn's argument about the lack of transcriptions?

13 (Judges confer.)

14 JUDGE BLOCH: The request is denied. We think the  
15 Staff had adequate opportunity to argue this motion. There  
16 were two separate occasions in which you spoke.

17 Mr. Kohn?

18 MR. MICHAEL KOHN: Thank you, your Honor. First,  
19 the cost of doing depositions is extremely high for the  
20 Intervenor. It requires air travel, hotel rooms; it comes  
21 to thousands of dollars, even if you don't order the  
22 transcripts, for every week you are away. In an attempt to  
23 reduce those costs to all the parties, Intervenor has filed  
24 a request for some additional documents in interrogatories.

25 And based upon the response to those, it is highly

1 likely that a substantial number of the depositions noticed  
2 could be -- we may not need to go forward with them. That  
3 is the first matter that I did want to bring to the Board's  
4 attention. Second, there are two separate --

5 JUDGE BLOCH: Well, let me ask. Have you had  
6 discussions with Applicant about the implications of what  
7 you have just said, to see if there is any agreement with  
8 them?

9 MR. MICHAEL KOHN: No.

10 JUDGE BLOCH: I was curious. We were pleased to  
11 see that Mr. Kohn's filing came from Applicant's attorneys.  
12 I thought maybe that was a sign that there was some  
13 agreement happening here.

14 MR. MICHAEL KOHN: Mr. Lewis decided it didn't  
15 look from our copy like the Board would have had any advance  
16 notice of those interrogatories, and so Mr. Lewis thought it  
17 would be best to get it to you in advance of the session.  
18 That's really all.

19 JUDGE BLOCH: Okay. That wasn't even done by  
20 agreement.

21 MR. MICHAEL KOHN: No.

22 JUDGE BLOCH: Okay. Thank you. Please continue.  
23 So are you proposing that the discussion of whether you need  
24 additional witnesses be deferred until after you get your  
25 answers?



1 MR. MICHAEL KOHN: Yes, we are, your Honor.

2 JUDGE BLOCH: If you were to do that, I'd be  
3 inclined to follow a rule that I've applied in some other  
4 cases, which is that if you really need additional  
5 depositions at that point, I might authorize one or two.  
6 And based on whether you net anything in the first two, we  
7 might authorize more. But we need some way to draw this  
8 funnel to a close.

9 MR. MICHAEL KOHN: I need a minute to consider  
10 that, your Honor. But there are two matters that -- well,  
11 there is one matter that has been very troubling to  
12 Intervenor. First, many of these witnesses may also be  
13 deposed on matters related to the diesel generator.

14 JUDGE BLOCH: Okay. We're not impressed by that  
15 because we already decided that we'd go forward on discovery  
16 on this issue separately.

17 MR. MICHAEL KOHN: Well, the second issue concerns  
18 Mr. Dahlberg's deposition. During the course of Mr.  
19 Dahlberg's deposition, we specifically -- colloquy between  
20 Licensee's counsel and myself indicated to Intervenor that  
21 we were not foregoing our right to depose any of the  
22 witnesses with respect to the character issue. That,  
23 essentially, the depositions were going forward on at least  
24 three separate tracks.

25 First, the illegal license transfer; second, the

1 character and competence of the individuals; and third, on  
2 specific factual events related to the site area emergency  
3 and the response to the 2.206 petition. We view it as three  
4 separate areas.

5 JUDGE BLOCH: Do you have any reason to believe  
6 that the Board views it that way, since we were the ones  
7 that established that you go forward on the alienation of  
8 the license issue, the illegal transfer issue first? Why  
9 would you think that we wouldn't require you to do all of  
10 the character stuff that has to do with license transfer,  
11 with illegal transfer?

12 MR. MICHAEL KOHN: I did. And I attempted to do  
13 that in the first deposition of Mr. Dahlberg, at which point  
14 I was -- Licensee's attorneys indicated that they were not  
15 objecting to going forward, and did not suggest -- maybe I  
16 should look at the exact language, so that we're not saying  
17 things out of context.

18 MR. LAMBERSKI: Your Honor, I'm a little confused  
19 on this Dahlberg issue. I thought your instructions in our  
20 last telephonic status conference were clear, that there was  
21 to be a motion filed by Mr. Kohn on that issue by the 29th,  
22 in accordance with your April 12th ruling. And we've not  
23 seen such a motion.

24 JUDGE BLOCH: That was on the transcript of the  
25 telephone conversation call?

1 MR. LAMBERSKI: Yes. Of April 22nd.

2 JUDGE BLOCH: And do you have the citation to the  
3 page?

4 MR. LAMBERSKI: I believe I do.

5 (Judges confer.)

6 MR. BLAKE: Judge Bloch, it appears in your order  
7 of April 12th. The second paragraph is the order with  
8 regard to Mr. Dahlberg. Mr. Mosbaugh would file a motion  
9 conserving all disputed discovery issues by the 29th of  
10 April. And it was specifically raised by Mr. Kohn, in the  
11 last telephone conference that we had after the Board, based  
12 on its sensitivity, deferred otherwise the schedule.

13 On page 289 of the transcript of that call, Mr.  
14 Kohn asked with respect to -- or Mr. Lamberski asked whether  
15 or not with respect to Dahlberg the schedule would be  
16 maintained. And you said, yes, you'd like to keep that  
17 particular provision in effect.

18 So we had been expecting a motion with regard to  
19 Dahlberg's -- any discovery disputes about Mr. Dahlberg's  
20 deposition to be filed by the 29th, in accordance with the  
21 Board's order. And seeing none, had expected that that had  
22 been foregone.

23 JUDGE BLOCH: Mr. Kohn, would you respond to that?

24 MR. MICHAEL KOHN: Yes, your Honor. During the  
25 course of that telephone conference, I was upset and I don't

1 have a transcript, so I can't tell you what it says one way  
2 or the other on that matter. I left with the understanding  
3 that I didn't have to think about Georgia Power Company's  
4 licensing proceeding until we were coming back and getting  
5 ready for this proceeding, and I didn't.

6 JUDGE BLOCH: That also explains why I didn't get  
7 the call that you promised on Monday.

8 MR. MICHAEL KOHN: Yes, your Honor. I think it  
9 was -- I was having a hard time refocusing on this matter,  
10 and I did have Mary prepare a draft of the letter, and I was  
11 probably negligent in overseeing that it actually got filed  
12 on time, that date. And I apologize for that.

13 JUDGE BLOCH: What strikes me about the point the  
14 Applicants have just made is it really is not going to be  
15 very efficient to argue any motion about Mr. Dahlberg orally  
16 right now without having had a written filing. You are  
17 going to be referring to specific portions of the  
18 transcript, and they haven't had a chance to review your  
19 argument. That really is the kind of thing that's going to  
20 be much better done in writing.

21 MR. MICHAEL KOHN: I would agree with that, your  
22 Honor. And the fact is that we didn't get the transcript.  
23 The reporter finished it on the 25th. I don't even recall  
24 if we actually received it at the office by the 29th, so I  
25 was not really in a position to sit down and digest what is

1 in this transcript and go forward where we stand. So it was  
2 I'd say, basically an impossible process to adequately brief  
3 what areas were covered in his deposition, and what areas  
4 were not, and what the party -- the positions already took -  
5 -

6 JUDGE BLOCH: There is something that is getting  
7 impossible. You don't have asystematic way of keeping track  
8 of your obligations to the Board. And so you don't even  
9 know when you haven't fulfilled them.

10 MR. MICHAEL KOHN: Your Honor, I would say that  
11 prior to the conference call, I do not recall not fulfilling  
12 any obligations to the Board.

13 JUDGE BLOCH: I have no objection if you want to  
14 share the response instead of having one attorney respond.  
15 It seems inefficient to have one attorney speaking through  
16 another.

17 MR. STEPHEN KOHN: Your Honor, if I may be heard.  
18 We apologize for missing that deadline. And instead of  
19 arguing the circumstances, we would move for leave for 72  
20 hours to file a written response to the motion for the  
21 continuation of Mr. Dahlberg's deposition.

22 JUDGE BLOCH: We would consider that, but I want  
23 to be very clear that if there any other deadlines missed in  
24 this case, the consequence will be that you won't be able to  
25 make up the filing.

1 MR. STEPHEN KOHN: Your Honor, we will accept that  
2 stipulation, and we think what happened last week was  
3 extraordinary and as a firm we are committed to making sure  
4 that all these deadlines are completely fulfilled in the  
5 future, and we do ask the Board's --

6 JUDGE BLOCH: Because of the difficulties, I would  
7 suggest it becomes even more important to make concurrent  
8 notes whenever there is a date that is mentioned with the  
9 Board. Because we really will do that. We will require  
10 that you meet all the other deadlines and that if you miss  
11 them, you will have missed your opportunity.

12 MR. STEPHEN KOHN: Your Honor, we are willing to  
13 live with that and I just ask that the Board accept our  
14 apology for that deadline.

15 (Judges confer.)

16 JUDGE BLOCH: Okay. We will allow the 72 hours  
17 requested. This is the last time on a deadline waiver.

18 MR. STEPHEN KOHN: Thank you very much, your  
19 Honor.

20 JUDGE BLOCH: The same thing is maybe true here of  
21 showing cause on the continuation. Are you prepared to do  
22 that now? How are you going to be able to show cause that  
23 you need these other witnesses? What is the status of that?  
24 Is it that you are relying on the argument that you filed  
25 your written interrogatories and that is your principal way

1 of proceeding, and you may need further witnesses but it'll  
2 be a very limited need after that?

3 MR. MICHAEL KOHN: We can go over -- well, first,  
4 I have not had the opportunity to review any of the  
5 transcripts of our last two conferences. I do --

6 JUDGE BLOCH: Mr. Kohn, I've got to tell you,  
7 that's not true. You've had the opportunity, you haven't  
8 done it.

9 MR. MICHAEL KOHN: Yes. That's -- I've had the  
10 opportunity, I haven't done it. I'm indicating my  
11 recollection of the, I guess it was, the April 11th  
12 conference was that we were in the middle of the deposition  
13 process. And depending on the responses that came out of  
14 there, there may be a need for follow-up depositions.  
15 That's my recollection of --

16 JUDGE BLOCH: I'm not denying you the depositions.  
17 But because we had a deadline in the case, where everyone  
18 was expecting to complete discovery by the 29th, I'm  
19 requiring you to show why you need the additional  
20 depositions. What happened that was a surprise? What was  
21 the problem so that the promised deadline isn't being met?

22 MR. MICHAEL KOHN: Your Honor, I can explain some  
23 of the difficulties. The witnesses' memory after four years  
24 were not as fresh and could not respond.

25 JUDGE BLOCH: That I have no way of responding to

1 because there is no details about it. It is a general point  
2 of view. It's not based in the record.

3 MR. MICHAEL KOHN: I mean, I can go forward and  
4 give you some understanding as to what areas where I was  
5 specifically disturbed with the responses. I think that the  
6 -- I can provide you with as much information as I have at  
7 my recollection at this time, if that would be --

8 JUDGE BLOCH: You see the bind we're in because  
9 there are no transcripts. You are going to try to show that  
10 there is a need for additional depositions, but you can't  
11 even refer to a record of the ones that were conducted.

12 MR. MICHAEL KOHN: Well, I can just go right to  
13 Mr. Dahlberg's that was, we were discussing matters related  
14 to budgeting. There was an objection made that Intervenor  
15 was not allowed to review information concerning the  
16 budgeting of Georgia Power Company. And it seems to me that  
17 the budget of an organization, and who controls the budget,  
18 and the process used, is probably one of the most greatest  
19 determinative matters --

20 JUDGE BLOCH: Then you are going to argue that  
21 separately, as to whether you can go back to Mr. Dahlberg  
22 about budgeting, right?

23 MR. MICHAEL KOHN: Yes.

24 JUDGE BLOCH: You've got the 72 hours for that.

25 MR. MICHAEL KOHN: Yes. But a bulk of the other



1 witnesses concerned with budgeting matters that we're  
2 interested in deposing and there is --

3 JUDGE BLOCH: Now, wait. What changed there? You  
4 say that even if Mr. Dahlberg gives you the information that  
5 you requested, you still want other witnesses. And that's  
6 to say that in fact you weren't surprised, you always needed  
7 it.

8 MR. MICHAEL KOHN: No, your Honor. I can't tell  
9 you that Mr. Dahlberg is going to testify as I understand  
10 things to have occurred. And that poses a problem. There  
11 is credibility.

12 JUDGE BLOCH: That was true beforehand. He hasn't  
13 told you what he is going to say in response to your  
14 questions. And you say that even though he hasn't done that  
15 you haven't had a chance to question him. Even if you had a  
16 chance to question him you need more witnesses. That's  
17 exactly the situation you were in before you started talking  
18 to him in the first place.

19 MR. STEPHEN KOHN: Your Honor, what I would  
20 propose at this time, and request, that the Board allow us  
21 to go forward on the additional request for document and  
22 interrogatory requests. And once those answers are filed by  
23 the Applicant, if at that time we believe any additional  
24 depositions are necessary, we would then show good cause to  
25 you and make the application at that time.

1 JUDGE BLOCH: And the consequence of that would be  
2 that you are going to be doing that at a later time. We're  
3 going to look more tightly at it at that time than if you  
4 had requested it currently. It doesn't mean you can't get  
5 it, but it's going to be a harder row to hoe at a later time  
6 because we're trying to have a deadline in this case, a  
7 schedule.

8 MR. STEPHEN KOHN: Your Honor, one moment. That  
9 would be acceptable to the Intervenor.

10 JUDGE BLOCH: Have you finished your argument?

11 MR. STEPHEN KOHN: One last point, your Honor, is  
12 that the identities of the 11 deponents were provided to the  
13 Applicant prior to the close of discovery. And the request  
14 for those depositions was made prior to the close of  
15 discovery.

16 So with that and, I think, the better way of  
17 moving the proceeding forward would be to go to the response  
18 to the interrogatories and documents requests. And if  
19 additional depositions are needed, we would then apply to  
20 the Board.

21 JUDGE BLOCH: Would Applicant like to comment?

22 MR. BLAKE: Yes, Judge Bloch. I have three  
23 comments, three areas that I want to discuss. One is that  
24 we oppose the idea of putting off the argument on additional  
25 deponents until after some expected response to

1 interrogatories. And I say that because I think they need  
2 to show good cause for this late filing of these extensive  
3 interrogatories, in view of the fact that discovery on this  
4 topic has been underway for one long time.

5 And although we haven't counted them, my  
6 expectation is that when we do that we will find that  
7 they've already filed more than 100 interrogatories in this  
8 proceeding. This is a topic which is not new.

9 With regard to the deponents, when we had the  
10 telephone conference and were going forward on our schedule  
11 headed for April 29th, we at that point were prepared to ask  
12 the Board to require them name by name to show the good  
13 cause for any of these people being deposed now. I have not  
14 heard it, I hear generalities but nothing specific about  
15 with regard to each one of these people.

16 And I don't want some automatic opportunity. I  
17 don't think it's correct to have some automatic opportunity  
18 for additional depositions six weeks from now after  
19 responses from interrogatories are heard. We're behind the  
20 eight ball in terms of whether they'll even have an  
21 opportunity to do it. I think --

22 JUDGE BLOCH: I can assure you, it won't be  
23 automatic. That's for sure.

24 MR. BLAKE: I appreciate that. But just the  
25 scheduling of it, the theme. We were headed, when we had

1 that telephone conference, for an end of all discovery on  
2 this topic on April 29th. And somehow now we're talking  
3 about interrogatories and responses to a load of questions -  
4 - I haven't counted them up today, but there are whole lot  
5 of them in there -- to some time in the future. At which  
6 point then we'll talk about the idea of the prospects of  
7 additional depositions.

8 I don't think that's the right approach to be  
9 taken at this juncture. I don't know what the good cause  
10 for these interrogatories, and I certainly don't know what  
11 the good cause is for additional depositions. I understand  
12 the Board's ruling on Mr. Dahlberg, and as you heard me, I  
13 didn't oppose that.

14 JUDGE BLOCH: Instead of going to the Staff right  
15 now, I'd like Intervenors to have an opportunity to show  
16 good cause for the late filing in the interrogatories.

17 MR. STEPHEN KOHN: Your Honor, the good cause for  
18 the late filing of the interrogatories is specifically that,  
19 one, we did inform the Applicant of the desire to depose 11  
20 individuals and provided those names. Scheduling conflicts  
21 and general disagreements between the Intervenor and the  
22 Applicant made it impossible to conduct those depositions at  
23 the time we asked that they be conducted.

24 We then went back and rethought the matter over  
25 and have decided that it would save all the parties

1 considerable costs and expenses to have some of those issues  
2 that we were looking to be resolved answered by the use of  
3 interrogatories and document requests. And so the good  
4 cause would be that it would avoid the necessity of having  
5 to conduct 11 depositions.

6 And I think because of the cost issues, which  
7 apparently are very important to Staff and Applicant, are  
8 extremely important to the Intervenor, we think this would  
9 be the most expeditious way to go forward with this matter.  
10 And that would be the good cause.

11 Now, I do understand and I think what is important  
12 is we identify the 11 individuals prior to the April 29th  
13 deadline. And I know that Mr. Michael Kohn and Mr.  
14 Lamberski had a fairly heated conversation about attempting  
15 to schedule those, and they weren't able to be scheduled.  
16 So I think good cause does exist.

17 I also understand, through Mr. Michael Kohn, that  
18 in the April 22nd conference call, there was a general  
19 understanding that some of the deadlines would be moved to  
20 May 3rd. So I don't think we're necessarily out of time.

21 JUDGE BLOCH: I understand that the argument is,  
22 in part, that this is largely a substitution for the 11  
23 witnesses. So, basically, if you were to come in for more  
24 witnesses at a later time, it would be like asking  
25 additional witnesses above the 11. This is in place of the

1 11 witnesses?

2 MR. STEPHEN KOHN: That's correct.

3 MR. BLAKE: Judge Bloch, just one sort of  
4 correction on history here. The 11 are not a given, and  
5 they weren't a given on April 20th when they were first  
6 identified to us.

7 JUDGE BLOCH: No, I understand that.

8 MR. BLAKE: That's the argument that I want to  
9 engage that I never have yet heard. What is their basis for  
10 that 11, person by person. What did they hear, what were  
11 the disappointments, why somebody who was already deposed -  
12 - each of those factors with regard to each of those people.  
13 And I haven't heard it yet.

14 JUDGE BLOCH: And I guess they haven't done that.  
15 But I have the feeling that in terms of their substituting  
16 the interrogatories, that while it is a burden, it really  
17 isn't the same thing as deposing 11 people. I don't feel  
18 like the same level of cause is necessary for the additional  
19 depositions. It seems like a way of getting the information  
20 with a little less burden on everybody.

21 MR. BLAKE: But it's not as though it's something  
22 less and therefore we ought to feel good about it. Because  
23 I might have won on all 11, and therefore it wouldn't have  
24 been any good deal for me to wind up with 100  
25 interrogatories now.

1 MR. LAMBERSKI: And this is quite some list of  
2 interrogatories, your Honor.

3 JUDGE BLOCH: Mr. Barth?

4 MR. BARTH: I'd like to tackle the good cause  
5 first, your Honor. Let me read you the first interrogatory.  
6 "Identify all committees or other entities established  
7 within the Southern system to study the creation of  
8 SONOPCO."

9 This is a question that could have been asked  
10 January 11, when you and I were down in the rain in Augusta,  
11 when we had the first prehearing conference. This is not an  
12 interrogatory which arose out of the depositions that have  
13 taken place in Atlanta and Birmingham the last two weeks --  
14 the first two weeks of April.

15 JUDGE BLOCH: Stop for a second. Let me focus on  
16 the point you are making.

17 MR. BARTH: It's on page 7, your Honor.

18 JUDGE BLOCH: It does seem pretty basic.

19 MR. BARTH: Your Honor, you're absolutely correct.  
20 It's basic. He could have asked this question year ago.  
21 This is not something new. There is no good cause to ask  
22 this question now having said to themselves I'll turn on the  
23 light to reveal something which I need to know now which I  
24 did not ask before. There is no good cause for that  
25 particular question.

1           As I go through the interrogatories, I do not see  
2 good cause, from the face of the interrogatories, for  
3 extending discovery to cover these. The second argument  
4 that he makes is that these substitute for the 11  
5 depositions. That's just -- my office will be angry with  
6 me. That's just frivolous.

7           If you take a look at the first interrogatory,  
8 that does not cover for depositions of 11 people. The  
9 purpose of the depositions of the 11 people at the last  
10 minute in the telephone conversation with your Honor, was  
11 that information came to light in the depositions which  
12 showed need for more. There were holes in Mr. Dahlberg's  
13 deposition which needed to be filled.

14           You asked to identify what those holes are and he  
15 has now asked for 72 more hours to fulfill those holes. I  
16 see no reason to go with the 11 depositions, but that's  
17 another matter.

18           Mr. Kohn raised two other issues, which I'm  
19 getting an opportunity to reargue. I'd like to point out,  
20 your Honor, that instead of depositions, the 1993 Amendments  
21 to the Notes to the Rules of Civil Procedure, on Rule 29,  
22 state that Counsel are encouraged to agree to less expensive  
23 and time consuming methods to obtain information in  
24 depositions.

25           If cost is of such a value to the Intervenors,



1 there are other methods to obtain this information. He  
2 could have called Mr. Lamberski and said, why don't we have  
3 lunch with Mr. Dahlberg, and I'll talk to Mr. Dahlberg at  
4 lunch. There is other ways to do this.

5 JUDGE BLOCH: Okay. I don't consider this  
6 relevant to the argument that was just made. Please, I  
7 don't think you do have a reason to reargue the prior  
8 matter.

9 MR. BARTH: He said that the cost of the 11  
10 depositions to come up would be a very important matter to  
11 him. And I think that the rules encourage other ways than  
12 those depositions.

13 JUDGE BLOCH: Okay.

14 MR. BARTH: Second, your Honor, you, yourself,  
15 brought up the matter in the Green case of the resources of  
16 the people who had to pay for the depositions. And I think  
17 we have no -- he has said Mr. Mosbaugh has been out of work  
18 for two years.

19 I think if you find that poverty is a reason for  
20 not ordering depositions, you should investigate if the  
21 poverty does exist, rather than make a ruling without  
22 knowing more. But I leave this because I don't think this  
is a plausible argument.

24 In regard to -- I make a suggestion which may well  
25 be turned down. I have a copy of Mr. Dahlberg's deposition

1 in my hand. It has not been read by Mr. Dahlberg, it has  
2 not been proofed by him, it's not been signed by him. If  
3 you are going to entertain arguments that there are holes in  
4 this deposition. If I could obtain the consent of the  
5 parties, I --

6 JUDGE BLOCH: No, we're not. There is going to be  
7 a written motion filed in 72 hours.

8 MR. BARTH: I would continue, your Honor, that if  
9 I could have the consent of the parties, I would provide you  
10 with a copy of this deposition so the Board could look at  
11 the motion by the Intervenors, having a more meaningful  
12 understanding of what took place.

13 JUDGE BLOCH: I assume that if it's going to be a  
14 motion filed with respect to this deposition, that we are  
15 going to have to be furnished a copy of the transcript.

16 MR. BARTH: You might be furnished partial copies  
17 of it. I offer you the entire thing so that you can read it  
18 in para mat'ria.

19 JUDGE BLOCH: You can certainly file the entire  
20 transcript. We would receive that happily. We even would  
21 read it.

22 MR. BARTH: We will do that, your Honor, as soon  
23 as we get back. We've covered the rule, the cost, and the  
24 - again, let me close by suggesting that I urge the Board  
25 and all the members to read the interrogatories which were

1 proposed by the Intervenor on the date of May 3, and ask  
2 yourselves this is something that now is new, that could  
3 have been asked previously? Is there really a good reason  
4 for this? And second, do these substitute for 11  
5 depositions? Thank you, your Honor.

6 JUDGE BLOCH: It's now 2:20. The Board plans a 10  
7 minute deliberational recess until 2:30. And we'll be back  
8 then either to start again or tell you we're still  
9 deliberating.

10 (Off the record for a brief recess.)

11 JUDGE BLOCH: We're prepared to rule on several  
12 issues pending before the Board. First, we rule that by  
13 Friday, May 6th, at the close of business, that there shall  
14 be a filing by Intervenors received by all the parties  
15 concerning, one, all objections arising out of depositions,  
16 including Mr. Dahlberg's deposition.

17 We recognize that that's not going to be simple  
18 since some of them are not transcribed, but nevertheless,  
19 that is what we're going to have to do right now. Whatever  
20 the objections are that you want rulings on, you are going  
21 to have to file by Friday the 6th.

22 In addition, we're not going to rule on whether  
23 the interrogatories are acceptable at this time. We're  
24 going to require that this filing by Friday the 6th include  
25 good cause for each interrogatory, one by one. We notice

1 that some do seem to be very basic and very general.

2 And we want to know why there is good cause for  
3 filing at this time, giving the specific problems that arose  
4 with respect to the deponents that you have already  
5 interviewed. There has to somehow be shown there is good  
6 cause arising out of the difficulties in the depositions.

7 We point out that licensing cases are a little  
8 different from other adversarial proceedings because there  
9 is a third party here which is the Staff, which is required  
10 to look at the evidence also to assure the protection of the  
11 public interest on this issue. So there is a possibility  
12 that you will have forfeited some of the questions you  
13 wanted to ask or some of the depositions you might otherwise  
14 have had.

15 We take some comfort from the Staff's  
16 responsibility to see that this issue is carefully examined  
17 anyway. We would permit the other parties to respond by  
18 serving responses should be received by the parties and the  
19 Licensing Board by the close of business Friday, the 13th of  
20 May.

21 We wish to issue a tentative ruling at this time,  
22 tentative because neither the Applicant nor the Staff has  
23 had adequate opportunity to study the precedence and make a  
24 formal response. But a tentative ruling is that we see no  
25 reason to require that the Intervenor prepare transcripts of

1 the depositions that have been completed by them.

2           There are consequences for their being able  
3 to make adequate showings of good cause, but aside from  
4 that, we see no reason to require the preparation of the  
5 transcripts. If either Licensee or Staff were to decide to  
6 make a written filing on the question, we would consider the  
7 question fresh as if we haven't ruled at all.

8           And we have decided to go forward with an in  
9 camera session with the Staff. We assure all the parties  
10 that we will exclude whatever substance we can. The sole  
11 issue we are concerned about is the impact of ongoing  
12 investigations on our proceeding.

13           And we'll primarily be asking for the opinions of  
14 the Staff, and not for detailed evidence supporting those  
15 opinions, because we do see the need to avoid seeing  
16 evidence that can't be commented on the parties.

17           As I issue these rulings, it occurs to me that we  
18 haven't addressed the Staff's question about the need to  
19 study the evidence on response. Can the Staff comment on  
20 how that need meshes with the schedule promulgated in this  
21 proceeding?

22           MR. BARTH: The schedule was originally for the  
23 29th, your Honor. And the phone conversation with your  
24 Honor was held on the 50th floor of the Licensee's law  
25 firm's office in Atlanta, Georgia.

1           At the time I stated my problem and objection to  
2 such a schedule was that our reviewer needed to review the  
3 depositions that were being conducted in order that we could  
4 arrive at a position which would encompass all the evidence  
5 brought to light. I think that is still a tenable position.

6           JUDGE BLOCH: The only problem I have with it is,  
7 if that's legitimate for the Staff, why isn't it also  
8 legitimate for the Intervenors?

9           MR. BARTH: Because then it becomes ping pong.  
10 They review what we review, we review what they review, and  
11 it goes back and forth. There has got to be an end  
12 somewhere.

13          JUDGE BLOCH: I don't understand the ping pong.  
14 What you are saying is that there have been depositions  
15 conducted, and after they are transcribed you want to have  
16 an opportunity to study them?

17          MR. BARTH: Yes.

18          JUDGE BLOCH: Now, what Intervenors told us is  
19 that the fastest that those things can be transcribed in the  
20 ordinary course is in about 20 days.

21          MR. BARTH: We received Mr. Dahlberg's in two  
22 weeks, or something like this. We got it before the  
23 Intervenors, if their receipt date is correct.

24          JUDGE BLOCH: But in any event, did you make this  
25 comment when we were setting the 29th?

1 MR. BARTH: Yes, your Honor.

2 JUDGE BLOCH: That was in the face to face  
3 conference that we held here?

4 MR. BARTH: It was not a face -- Oh, on the 29th.

5 JUDGE BLOCH: I thought we set that 29th date as a  
6 target among all of us, as a result of a face to face  
7 conference in this room?

8 MR. BARTH: That was the completion of the  
9 depositions, your Honor, the conference we had in the room  
10 where we sat around the same table.

11 JUDGE BLOCH: Okay. And what --

12 MR. BARTH: And discovery came up on the phone  
13 conversation between Kohn, Mr. Lamberski, and myself, and  
14 Mr. Withrow in the Licensee's office while the depositions  
15 were being conducted.

16 JUDGE BLOCH: No. The date that we set after our  
17 conference on April 12th was, and I'll quote it because it  
18 doesn't seem to be heard or understood.

19 We first said all discovery, and we listed things  
20 related to the illegal transfer of authority over Vogtle  
21 shall be completed by April 29th. That's what I'm  
22 questioning. Why is it the Staff now says that it needs  
23 more than April 29th, when there was an order issued by the  
24 Board that covered all the parties?

25 MR. BARTH: Your Honor, this is confusing, but

1 your February 1st order --

2 JUDGE BLOCH: Why are we going back to the  
3 February 1st order?

4 MR. BARTH: On paragraph 4, it states that all  
5 depositions shall be completed by Friday, April 29.

6 JUDGE BLOCH: Yes. And then on April 12th, we  
7 said all discovery will be completed by April 29.

8 MR. BARTH: That was a change. You are asking why  
9 we did not object to the April 12 order? At our conference  
10 I have consistently taken a position that the Staff has to  
11 review the evidence produced by the Licensee and the  
12 Intervenors. I have not changed our position whatsoever.

13 JUDGE BLOCH: But you not only have to review it,  
14 you have to review it more slowly than the Intervenors can.  
15 Because they also have to review it to decide what else they  
16 have to do. You just need more time. You've got more  
17 people, but you need more time.

18 MR. BARTH: Your Honor, I don't fathom the  
19 argument. The argument we wanted and I made very clear in  
20 our telephone conversation during the depositions was that  
21 the reviewer had to review those depositions to discern  
22 whether new information was produced.

23 JUDGE BLOCH: Okay. So the question I have to ask  
24 you is, in order to be exactly even on all scores with what  
25 we've done with the Intervenors, we want a filing by this



1 Friday showing good cause why there should be any additional  
2 discovery rights for the Staff, in light of the order of  
3 April 12th. So you have to show good cause on why there  
4 should be an exception for the ruling of April 12th.

5 MR. BARTH: Your Honor, may I suggest that you  
6 consider that if the Staff wants additional discovery, it  
7 file a motion and ask the Court's permission and provide  
8 good cause then. To provide good cause in advance, I don't  
9 know what these depositions are going to produce.

10 JUDGE BLOCH: Let me ask you, since the Staff has  
11 it's own means of obtaining information from the Applicant  
12 anyway, why do they need to do it in the context of  
13 discovery?

14 MR. BARTH: Your Honor, I assume that Mr. Kohn  
15 knows his case. I assume Mr. Kohn has certain facts which  
16 will support him. Our review so far has not shown that the  
17 decision made in the 2.206 by the director of NRR, which  
18 found there was no illegal transfer, is incorrect. We find  
19 no evidence so far.

20 But it is not practical nor is it in the public  
21 interest for the Staff to take a firm locked, hard position  
22 that will not change without hearing what the Intervenor may  
23 produce.

24 JUDGE BLOCH: Okay. That's fine. What I'm asking  
25 is, why can't you use the Staff processes? You've got

1 enormous ways of obtaining information, why do you have to  
2 have an exception from the discovery rule?

3 MR. BARTH: Are we at loggerheads, your Honor? I  
4 really don't believe so.

5 JUDGE BLOCH: I don't know. I'm wanting you to  
6 show good cause by Friday, if you need any exception from  
7 the order of April 12th for good cause.

8 MR. BARTH: We'll accept that, your Honor.

9 MR. BLAKE: Judge Bloch, one clarification. Is it  
10 inherent in the Intervenors' position with regard to the  
11 significance or importance of the interrogatories and now  
12 with the Board's ruling, that there are no deposition  
13 requests currently pending?

14 JUDGE BLOCH: That's my understanding of what they  
15 stated.

16 MR. BLAKE: Thank you.

17 MR. STEPHEN KOHN: Your Honor?

18 JUDGE BLOCH: Yes.

19 MR. STEPHEN KOHN: If I may clarify the deposition  
20 request, or our statement that we were waiving our request  
21 for those 11 depositions was contingent upon the filing of  
22 the additional written discovery. The record should reflect  
23 that.

24 In other words, we said that the reason why we  
25 wanted to file the additional discovery was because it would

1 probably mean we wouldn't need the additional 11  
2 depositions. But I just wanted the record to be clarified.

3 JUDGE BLOCH: So it seems that if you do want to  
4 pursue that, you also should show good cause for each of  
5 those depositions by the filing this Friday.

6 MR. STEPHEN KOHN: Thank you, your Honor.

7 JUDGE BLOCH: Is there objection to that way of  
8 proceeding? Because that is correct, we have not allowed  
9 the interrogatories as yet either. Logically following  
10 through what we said before, if we do allow some of the  
11 interrogatories, there could possibly be something you  
12 discover which you would file a still later request for  
13 further discovery. But as we go down the pike, the  
14 standards are going to get more difficult.

15 The next issue concerns the question concerning  
16 the discovery of tapes transcripts, which we received just  
17 this morning. We would not require any current response to  
18 that from Applicant, but we'd permit Applicant to say  
19 something about it, if it wanted to right now.

20 MR. LAMBERSKI: Your Honor, I did have a few  
21 minutes before I left Shaw Pittman's office to come up here  
22 to review Mr. Kohn's document. I have not seen it before  
23 that. If I can just have a moment to pull it out here?

24 I do note that Mr. Michael Kohn and I did have a  
25 conversation about these transcripts sometime ago, prior to

1 March 7th, and at that time provided him with some  
2 additional transcripts. And I'd be happy to share a copy of  
3 the letter that I provided to Mr. Kohn at that time.

4 JUDGE BLOCH: Do you want to submit that for the  
5 record?

6 MR. LAMBERSKI: Sure.

7 JUDGE BLOCH: Or you could mail it in  
8 subsequently, if it doesn't need to be in the transcript.

9 MR. LAMBERSKI: I could provide it with a written  
10 filing. Of course, we'll file the written response to his  
11 motion, but Mr. Kohn represents here that GPC's counsel have  
12 declined Intervenors request to obtain a copy of the  
13 following tapes. And he lists tapes here that I have not  
14 discussed with Mr. Kohn at all. So I don't understand his  
15 representation, first of all.

16 Secondly, my March 7 letter indicates to Mr. Kohn  
17 that at his request I again reviewed transcripts that had  
18 been prepared by Georgia Power. And I understand Georgia  
19 Power's attorneys did not prepare transcripts of each and  
20 every one of Mr. Mosbaugh's tapes, this set of 201 tapes,  
21 that is.

22 Nor in cases where we did prepare a transcript was  
23 it a full transcript of the entire tape. It was little  
24 snippets here and there of things the attorneys thought were  
25 important to Georgia Power's defense. Without waiving our

1 right to object to the production of those things, I  
2 voluntarily provided certain transcripts, and those are  
3 listed in my March 7th letter.

4 And I did this, by the way, on the representation  
5 by Mr. Kohn that there would be no filing of a motion to  
6 compel on this issue. And so now --

7 JUDGE BLOCH: Do we have any record of that?

8 MR. LAMBERSKI: My March 7th letter.

9 JUDGE BLOCH: Your letter says that?

10 MR. LAMBERSKI: Yes.

11 Let me make clear, your Honor, my letter does not  
12 say that -- it does not recount an agreement that he will  
13 not file a motion to compel. But that was my understanding  
14 from the conversation, which I did not set out completely in  
15 the letter, that if he was satisfied with this that there  
16 would not be a motion to compel.

17 And I heard nothing from him after March 7th, so  
18 to that extent, your Honor, it was my understanding that  
19 there would be no motion to compel.

20 JUDGE BLOCH: Are you relying on that solely on  
21 your recollection, or do you also have some kind of a note  
22 that you could help us with? Something at the office, or -

23 -

24 MR. LAMBERSKI: Give me a moment to look through  
25 my notes here. I have them from that time period.

1 JUDGE BLOCH: We'll go off the record briefly.

2 (Off the record.)

3 JUDGE BLOCH: Mr. Lamberski?

4 MR. LAMBERSKI: Your Honor, I don't have any notes  
5 that I made from our conversations with Mr. Kohn.

6 JUDGE BLOCH: Let me ask another question just to  
7 clarify? If I understand correctly, you have said you have  
8 not transcribed all of these tapes. That you selected  
9 certain portions in response to what your client thought  
10 they might want to have transcribed, and that's what you  
11 transcribed? Is that correct?

12 MR. LAMBERSKI: Certain portions of certain tapes.

13 JUDGE BLOCH: Okay, so it's not all the tapes that  
14 you have transcribed?

15 MR. LAMBERSKI: Correct.

16 MR. BARTH: I missed a question, your Honor.

17 JUDGE BLOCH: We'll go off the record.

18 (Off the record.)

19 MR. LAMBERSKI: So I simply wanted to say that  
20 once I received Mr. Kohn's motion, I asked my office to fax  
21 to me a copy of the letter that I recollected, and what I  
22 described to you is simply my recollection of the discussion  
23 I had with Mr. Kohn at the time.

24 JUDGE BLOCH: Mr. Kohn, does this history strike  
25 you as accurate?

1 MR. MICHAEL KOHN: Partly and partly not.  
2 Basically, on more than one occasion Mr. Lamberski and I had  
3 conversations about producing the transcripts. During one  
4 of those I was under the impression that all of them had  
5 been transcribed. Mr. Lamberski did agree in the hallway,  
6 after one of our meetings here, to review them and give me a  
7 determination whether he would be releasing all of the tape  
8 transcripts.

9 At that time I indicated that I was interested in  
10 filing a motion to compel. Mr. Lamberski then did forward  
11 and some transcripts, and I think I mentioned that in  
12 footnote 1 of the motion. GPC did produce a handful of  
13 these transcripts.

14 JUDGE BLOCH: And he said that at that time he  
15 recalls that he did that because he had the understanding  
16 that you would not file a further motion to compel. Do you  
17 recall anything about that?

18 MR. MICHAEL KOHN: Yes. Specifically, what  
19 occurred is he indicated to me that he would review them and  
20 he would be responding. And there was a subsequent phone  
21 conversation, and he indicated that he would be producing  
22 some. And I indicated I would happily receive whatever I  
23 could.

24 And subsequent to that there were additional  
25 discussions, and I was told that none of the other

1 transcripts would be made available period. And I at no  
2 time indicated that we were waiving our right to seek or  
3 obtain these transcripts in any way. I indicated that we  
4 did want those transcripts. And that's where my  
5 recollection is of where we parted ways.

6 MR. LAMBERSKI: Your Honor, it might help  
7 Michael's recollection if I reminded him that what I  
8 promised to do and what I did do was to search through those  
9 transcripts and produce to him copies of everything that was  
10 relevant to the diesel generator issue. And that is just  
11 what I did, and that is what my letter says I did.

12 MR. MICHAEL KOHN: And I agree, that is what he  
13 did. And I think my subsequent conversation was, well,  
14 there was another issue related to the illegal license  
15 transfer, and you know, I guess we really wanted to review  
16 all of them, if possible. And I think that's where we  
17 parted ways. That's my recollection.

18 All of our communications on this, with the  
19 exception of Mr. Lamberski's cover letter forwarding some of  
20 the transcripts, were oral. But I know that I in no way  
21 indicated that I would be waiving a right to seek  
22 information.

23 And I suggest that under different circumstances,  
24 I think there would be more oral requests and more  
25 communications, but at this point I am just filing papers



1 rather than having those communications.

2 JUDGE BLOCH: I'd like to note that the earlier  
3 regime where Counsel were talking freely was of advantage to  
4 the clients not to the attorneys. And the regretful  
5 situation that we have now is not just hurting the  
6 attorneys, it's hurting the clients. Because I don't think  
7 this kind of disagreement would have occurred before.

8 This is something that is happening because of the  
9 heat between the attorneys. And without assessing any  
10 culpability about that, I would just like to note that  
11 that's hurting the clients.

12 And if there was any way to establish that level  
13 of confidence, so that we could proceed more efficiently, it  
14 would be helpful to the proceeding, and to justice. And I  
15 don't know at this point how to do that. I just want to  
16 state that that's the situation as I see it.

17 It strikes me that this issue ought to be covered  
18 by the same principle that we had before on additional  
19 discovery. And, therefore, if you have good cause for these  
20 additional tapes, you should include that within the filing  
21 you are going to make on Friday.

22 (Judges confer.)

23 JUDGE BLOCH: It appears to me that this is the  
24 correct time to break for the in camera session. We'll  
25 continue with this portion later. I believe that there are

1 rooms that the parties could retire to that are nearby.  
2 There is a room off to the right, and one off to the left,  
3 so they don't even have to retire to the same room.

4           And we'll be signalling the parties soon. My  
5 expectation is that this conference won't last more than 15  
6 minutes. And I'm sure it won't last more than a half hour.  
7 We'll be signalling you when we're ready.

8           (Off the record for in camera session.)

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## OPEN SESSION

1  
2 JUDGE BLOCH: Our next issue is number 5. And  
3 although the issue is an important one, I think it can be  
4 argued briefly. So I'd like to restrict each party to five  
5 minutes on this issue.

6 And the question is whether there should be a  
7 joint trial of phase 1 and phase 2, or we should proceed to  
8 a trial of phase one after we conclude discovery on it. The  
9 reason for taking it up in this order is that it affects the  
10 kind of schedule we're going to adopt for the conclusion of  
11 phase 1. So on this issue, why don't we go on the order  
12 that we usually use at the NRC which is to start with  
13 intervenors?

14 MR. STEPHEN KOHN: Thank you, your Honor. The  
15 Intervenor strongly supports a trial of phase 1 and phase 2  
16 together. The basic issue overriding both is character and  
17 competence. We think that the credibility determinations,  
18 which may come out on certain witnesses in the questioning  
19 about the site area emergency, would shed light on their  
20 credibility in other areas. So I think many of the  
21 witnesses will be the same.

22 Most significantly is an interference. If we were  
23 to start trial preparation now on what we call phase 1, it  
24 would significantly interfere with our ability to complete  
25 discovery and organize our case for phase 2. The two

1       apparently would be happening simultaneously.

2               Also, is the question of costs and resources.  
3       Many of the witnesses will be the same people. And to  
4       require preparation for two separate trials will increase  
5       the cost and resource issues, which are important for the  
6       Intervenor.

7               But I think both because of the delay in discovery  
8       on phase 2, and because many of the issues will be identical  
9       for both phase 1 and phase 2, specifically credibility  
10       determinations which the Board has to make, we think that  
11       the two should be tried jointly. Thank you.

12              JUDGE BLOCH: Thank you. Licensee?

13              MR. BLAKE: Judge Bloch, I don't want you to be  
14       shocked by this but there will be some stripes of agreement  
15       between the Intervenors and the Licensee. I don't think  
16       that we yet should make the decision, or have to make the  
17       decision about the joint, although I'm willing to predict  
18       that when we make it, it will come out the way Mr. Kohn has  
19       advocated.

20              I think once we've finished these left over bits  
21       of discovery, and once we have filed our motion for summary  
22       disposition, which we expect to file, I think we'll find  
23       that there is not so much left of that case that would  
24       warrant a wholly separate affair that would indeed conflict  
25       schedule-wise with our, what I anticipate would be about the

1 same time frame, wrapping up of discovery on the steam  
2 generator issue.

3 So, I'm not sure that, as I say, we need to make  
4 it today. But if I would predict at that point in time  
5 whether there would be a real need for it, I would think  
6 that Mr. Kohn would probably be right in the elements that  
7 we'll consider at that point in time.

8 MS. YOUNG: Did you mean, "steam" generator?

9 MR. BLAKE: Well, I meant this phase 2. Diesel  
10 generator. I've got steam generators on the brain. I'm  
11 sorry.

12 MR. BARTH: Your Honor, at one of these  
13 conferences we had, your Honor had urged the separation of  
14 the illegal transfer allegation from the improper reporting  
15 of the number of starts on LER which created part of this  
16 problem. We proceeded on that basis, and I think there is  
17 no good sound reason to change your Honor's judgement.

18 I think that whether or not there was an illegal  
19 transfer in 1989 and 1990 from Georgia Power Company to  
20 Southern Nuclear Operating Company, Inc. for the control of  
21 operation of the two Vogtle facilities, I think can be  
22 separated from whether or not there was an improper  
23 reporting of the number of diesel starts the March 20, 1990  
24 site incident.

25 JUDGE BLOCH: Can I interrupt for a second? I was

1 never explicit on this, but I must tell you I never directed  
2 my mind to separating anything other than the discovery  
3 phases. And I understand how you might think we ruled on  
4 the hearing as well, but I never focused on that. And that  
5 is why I'm asking for this argument now.

6 MR. BARTH: I take your amendment. I did not  
7 understand it to be that. But that being so, I think that  
8 they should be tried separately. Because if the discovery  
9 is separable, the issue is separable. And I see no  
10 difference between the discovery on the issue and the trial.  
11 Because once the discovery has been determined to be  
12 separable and completed, there is no reason not to go ahead  
13 and try the issues.

14 If you recall in our filing, which we made on the  
15 28th of April, we concluded it's the Staff's view that  
16 discovery on the alleged illegal transfer issue should be  
17 concluded as rapidly as possible. The parties should join  
18 the issue and the evidentiary hearing should be held. I  
19 think that represents our contemporaneous position.

20 JUDGE BLOCH: Does Mr. Blake's argument appeal to  
21 you, that we shouldn't decide this now but wait until after  
22 the summary disposition motion is filed?

23 MR. BARTH: This is only a very small issue of the  
24 whole thing, your Honor. And discovery has or will be  
25 rapidly concluded. Once discovery is concluded, there can

1 be no good reason not to hold a hearing on it. You've got  
2 all the discovery and all the evidence.

3 JUDGE BLOCH: One good reason would be if there is  
4 a motion for summary disposition that concluded the hearing.

5 MR. BARTH: Well, summary disposition though,  
6 would have -- on both issues?

7 JUDGE BLOCH: No. On the illegal transfer issue.

8 MR. BARTH: Then you are agreeing with what I say,  
9 it's separable. The motion for summary disposition is  
10 separable from the other. And in this regard, I see no  
11 distinction.

12 JUDGE BLOCH: Okay. Mr. Kohn did give us some  
13 reasons. The costs from trying it at two separate times.  
14 In fact, I suppose, depending on what happens on the other  
15 issue, there may not even need to be a trial on the illegal  
16 transfer issue.

17 Imposing the burden of going forward on an issue  
18 that a party has raised so that we have timely discovery  
19 seems to me to be a separate question, so that we don't hold  
20 the case up, from imposing also the cost of a trial on an  
21 issue that may not need to be tried. That's my concern.

22 (Judges confer.)

23 JUDGE BLOCH: Based on the Board's discussion just  
24 now, what it is right to handle this, is not to decide this  
25 issue right now, and to proceed now to schedule discovery in

1 both sides of the cases and not schedule a hearing. We'll  
2 wait for that for a later scheduling conference, which we  
3 will schedule.

4 So the first part of what we'd like to do here is  
5 complete the schedule for phase 1. And I guess, in  
6 argument, what we'd like to do is have the parties fill in  
7 the matrix. If there is any comments you need to make in  
8 addition to the matrix, we can also hear those.

9 I'm hoping that we'll need to spend less than 10  
10 minutes a party on page one. But we'll allow up to 10  
11 minutes, if that should be necessary. So let me set my  
12 watch that way.

13 Intervenor has the most complete filing on this  
14 subject, that's because they filed it late. We would like  
15 to start with the Intervenor on what they would like to  
16 suggest for the completion dates for these events.

17 MR. STEPHEN KOHN: And your Honor, in terms of  
18 phase 1, the illegal license transfer, the first end date of  
19 discovery and the completion of additional continuing  
20 depositions, it's my understanding that there is no need to  
21 fill in any dates on that because --

22 JUDGE BLOCH: There could be, because you could  
23 win on it.

24 MR. BLAKE: But hasn't the Board already ruled  
25 that discovery is completed on that topic other than for



1 good cause shown, and we've already had a number of topics.  
2 And so that's --

3 JUDGE BLOCH: Yes. But they are going to file  
4 good cause by Friday, and if we were to approve up  
5 something, then we would need a date.

6 MR. BLAKE: Fair enough.

7 MR. STEPHEN KOHN: Your Honor, if I can we go off  
8 the record for, say, five minutes?

9 JUDGE BLOCH: Let's go off the record.

10 (Off the record.)

11 JUDGE BLOCH: During the off the record  
12 conversation, we've reached three determinations. First, is  
13 that there will be a scheduling conference held in the same  
14 facility on May 19th at 2:00 p.m. That's a Thursday.

15 Second, the Intervenors will file their witness  
16 list at the same time that they file their show cause  
17 filing, which is the 6th of May. The third decision we  
18 reached is that the Staff and Intervenors have both  
19 stipulated that they can respond to the Licensee  
20 stipulations on the illegal transfer issue by May 24th.

21 And so I think that we can provide that those will  
22 be filed in the regular way on May 24th, unless the parties  
23 want to stipulate to some other way of filing. We won't  
24 direct that.

25 Now we'll go off the record again.

1 (Off the record.)

2 JUDGE BLOCH: During the off the record  
3 conversation, we've decided that on May 13th the parties  
4 will exchange their witness list for phase 2, it being  
5 understood that that will be their best current information  
6 about the witnesses that they'll be using at the trial. And  
7 we would, of course, ask that those be updated periodically  
8 as the parties have new information.

9 On that same date of the 13th, the Intervenors  
10 will provide their first round of notices of witnesses, so  
11 that discussions can begin about the actual setting of the  
12 depositions for phase 2 of the case. It's understood that  
13 we'll schedule the completion of discovery based on the  
14 release of the report of the Office of Investigations, which  
15 has been referred to by Intervenors as unredacted.

16 We understand now that unredacted means that the  
17 opinions of the Staff will be published, but there may still  
18 be some minor redactions protecting the identity of  
19 witnesses. So we'll schedule the completion of discovery  
20 based on that release of the O.I. report, with the Staff  
21 opinions included.

22 (Judges confer.)

23 JUDGE BLOCH: After an extremely definitive  
24 discussion among the Board members, we've decided that we'll  
25 provide for a close of discovery 50 days after the filing of

1 the Staff report.

2 Are there any additional matters to be covered in  
3 today's conference?

4 MR. STEPHEN KOHN: Just to clarify, the ruling is  
5 that 50 days after the release of the O.I. report, discovery  
6 will cut off on phase 2?

7 JUDGE BLOCH: That's correct. Well actually, on  
8 the whole case.

9 MR. STEPHEN KOHN: Okay.

10 JUDGE BLOCH: There being no further matters for  
11 the record, I'd like to thank the parties for their  
12 participation. The session is adjourned. We will meet  
13 again on the 19th.

14 (Whereupon, at 4:05 p.m., the hearing was  
15 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: Vogtle Electric Station, Units 1 & 2

DOCKET NUMBER: 50-424-OIA-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.

*Ann Riley Reese*  
\_\_\_\_\_  
Official Reporter  
Ann Riley & Associates, Ltd.

## AGENDA

### 1. Board Statement

- A. Reason for new configuration
- B. Motions Concerning Opposing Counsel -- No need to rule.
- C. Law of the Case: Discovery on Phase I, Illegal Transfer, shall proceed to completion.
- D. Commitment to Conclude Discovery by end of April 29, as recorded in our Order of April 12: Variations from that order only for cause.
- E. Schedule I in camera session at 3 pm concerning potential impact of any investigative matters on this proceeding. Discussion of 13?

2. Transcript Issue (Was the preparation of transcripts implicit in the April 29 completion date? What are the cost implications? Could another party have ordered a transcript from the reporter?)

3. Additional Depositions (Dahlberg + 11)?; Deposition disputes.

4. Discovery of tape transcripts. Argue now? Schedule response?

5. Should there be a joint trial of Phase I and Phase II or should we wait for a trial until both issues can be tried together?

6. Discovery on Phase II. Board's inclination to rule that discovery should commence immediately. Early in April, the Commission said the full OI report would be available imminently. Should the release of the unredacted report require additional time for discovery or the reopening of completed matters, we would consider that. Discussion of Phase II discovery.

7. Setting deadlines. (Fill in matrix.)

8. Next Status Conference; before June 12. Additional Necessary Items.

SCHEDULE FOR PHASE I (Illegal License Transfer)

Event	Mosbaugh	Georgia Power	Staff	Board	Comment
Complete additional or continuing (?) depositions (scheduled after oral argument on need for these depositions)					
End of Discovery (Date)					
Exchanges of Witness and Exhibit Lists (including taped conversations) First Exchange  Final Exchange					
Response to Licensee's request for stipulations					
Last date for filing requested stipulations					
Summary disposition motions					
ALL SUBSEQUENT ENTRIES MAY APPLY TO ALL ISSUES IN CASE					
Pretrial hrg for motions, establish trial date, receive prefiled findings, set an order for evidence, etc.					
Exchange prefiled exhibits					
Reveal Schedule of witnesses					
File pretrial brief in lieu of opening argument					

SCHEDULE FOR PHASE II (All other issues including false statement allegation)

Event	Mosbaugh	Georgia Power	Staff	Board	Comment
Start of Discovery: Now					
Of Report					
End of Discovery (elapsed time)					
Exchanges of Witness and Exhibit Lists (including taped conversations)					
First Exchange					
Final Exchange					
Motions in Limine (Both phases)					
Last date for filing requested stipulations					
Summary disposition motions					
ALL SUBSEQUENT ENTRIES MAY APPLY TO ALL ISSUES IN CASE					
Pretrial hearing to rule on in limine motions, establish trial date, receive prefiled findings, set an order for evidence, etc.					
Exchange premarked exhibits					
Reveal schedule of witnesses					
Filing of pre-trial brief in lieu of opening argument					