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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:  
Peter B. Bloch, Chair  
Dr. James H. Carpenter  
Thomas D. Murphy

SERVED MAY 23 1994

\* RE-SERVED MAY 24 1994

In the matter of  
  
GEORGIA POWER COMPANY,  
et al.  
  
(Vogtle Electric Generating  
Plant, Units 1 and 2)

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

Re: License Amendment  
(Transfer to Southern  
Nuclear)

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

MEMORANDUM AND ORDER  
(Effect of Enforcement Demand on Depositions)

This afternoon, Intervenors and Licensee called Judge Bloch to discuss the effect on scheduled depositions of the demand for information recently made by the Nuclear Regulatory Commission (NRC) on individuals employed by Georgia Power.<sup>1</sup> The individuals involved in the scheduled depositions are Mr. Frederick, Mr. Majors and Mr. Burr. Mr. Burr

<sup>1</sup>The "Notice of Violation and Proposed Imposition of Civil Penalties - \$200,000, and Demands for Information," was transmitted to Georgia Power Company in a letter of May 9, 1991 (Docket No. 50-424, License No. NPF-68, EA '3-304.

Present during the call were John Lamberski, Ernest Blake and David Lewis for Georgia Power; Michael Kohn and Stephen Kohn for Mr. Mosbaugh; and Charles Barth and Joe Rutberg for the NRC. The NRC was added as a party to the conversation at the request of Judge Bloch.

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is not subject to a demand for information. Mr. Frederick and Mr. Majors are. At the outset, Judge Bloch determined that counsel did not know any precedent that would govern the Board's determination.<sup>2</sup>

Counsel for Georgia Power, with the agreement of counsel for Mr. Mosbaugh, asserted that Mr. Frederick has employed new private counsel last Thursday. Mr. Majors has had private counsel for some time. Private counsel were not, however, participating in the telephone conversation among the parties and Judge Bloch.<sup>3</sup>

Licensee argued that the pending demand for information could have very serious consequences for Mr. Frederick and Mr. Majors and that it would be appropriate to recognize their interests and to delay their depositions in order to be fair to them. It was argued that since Mr. Frederick had new private counsel it might take some time for his attorney to master the volume of materials involved. Georgia Power also argued that the nature of the review of evidence,

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<sup>2</sup>There was some argument about the relevance of prior Board rulings about deferring depositions so that Georgia Power witnesses could first review Mr. Mosbaugh's surreptitiously recorded tapes. Judge Bloch determined, without objection, that there was no direct relevance of this prior ruling in this instance.

<sup>3</sup>The relationship between counsel for Georgia Power and the private counsel for these individuals is not clear. There is, therefore, the possibility that private counsel might have different arguments that they would be entitled to raise despite the Board's ruling on the arguments of the parties.

particularly of audio tapes,<sup>4</sup> has now changed for these individuals. They now need to hear many tapes that did not seem so important before.

Staff, which developed a position in the course of this conference call, argued that there was no need to rush ahead with these depositions at this time.        did not think that whether or not a delay occurred would affect the ability to discern the truth at the depositions. In response to Judge Bloch's questions, it stated that the Demand for Information could be met in 30 days from the time of issuance of the Notice of Violation (stamped May 9 on the copy sent to Judge Bloch).

Intervenor argued that it was important to it to conduct the depositions next week. It preferred for tactical reasons not to wait for the witnesses to extend their review of existing evidence before depositions are conducted.<sup>5</sup> It argued that these individuals have been aware of the allegations for a long time and did not need further preparation to testify truthfully.

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<sup>4</sup>Mr. Mosbaugh made many surreptitious tapes of conversations held by him with other employees of Georgia Power. These tapes were submitted to the Office of Investigations as evidence in its investigation of the allegations that recently resulted in the issuance of a Notice of Violation concerning representations to the NRC about diesel generators.

<sup>5</sup>Judge Bloch asked whether Intervenor thought it might be advantageous to it to wait until after private counsel had talked with the witnesses about their position in light of the Demand for Information. Counsel clearly stated his preference to proceed forthwith.

Judge Bloch concluded, for the Board, that the depositions should go forward. He urged the intervenors to attempt to complete the depositions within two days and he acknowledged that success in that endeavor could be affected by the nature of objections that are interposed by Georgia Power during the depositions. He therefore offered to be available to respond to objections. He also agreed, after a suggestion by Mr. Blake, to resolve on Monday (May 23) questions concerning the scope of the depositions.<sup>6</sup>

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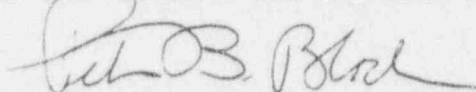
<sup>6</sup>It was also understood, at Mr. Bloch's urging, that questions concerning the scope of the Subpoena Duces Tecum (the documents to be brought to the deposition) would be resolved among counsel. This includes objections concerning documents already in possession of Mr. Mosbaugh and other objections concerning the relevance of documents.

ORDER

For all the foregoing reasons and upon consideration of the entire record in this matter, it is this 20th day of May, 1994, ORDERED, that:

The noticed depositions of Mr. Burr, Mr. Frederick and Mr. Majors, shall proceed. Georgia Power Company's request for a delay of these depositions is denied.

FOR THE ATOMIC SAFETY AND LICENSING BOARD

A handwritten signature in cursive script, appearing to read "Peter B. Bloch".

Peter B. Bloch, Chair

Bethesda, Maryland

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of

GEORGIA POWER COMPANY, ET AL.

(Vogtle Electric Generating Plant,  
Units 1 and 2)

Docket No.(s) 50-424/425-OLA

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LBP MEMO & ORDER DTD 5/20/94 have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

Office of Commission Appellate  
Adjudication  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Administrative Judge  
Charles Bechhoefer, Chairman  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Administrative Judge  
James H. Carpenter  
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Atlanta, GA 30306

Docket No.(s)50-424/425-OLA  
LBP MEMO & ORDER DTD 5/20/94

Dated at Rockville, Md. this  
23 day of May 1994

  
Office of the Secretary of the Commission

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Administrative Judge  
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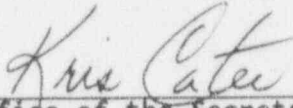
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Docket No.(s)50-424/425-01A-3  
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C. K. McCoy  
V. President Nuclear, Vogtle Project  
Georgia Power Company  
Post Office Box 1295  
Birmingham, AL 35201

Dated at Rockville, Md. this  
24 day of May 1994

  
Office of the Secretary of the Commission