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NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY

Before the Atomic Safety and Licensing Board

In the Matter of)	Docket Nos. 50-424-OLA-3
)	50-425-OLA-3
GEORGIA POWER COMPANY,)	
et al.)	Re: License Amendment
)	(Transfer to Southern
(Vogtle Electric Generating)	Nuclear)
Plant, Units 1 and 2))	
)	ASLBP No. 93-671-01-OLA-3

GEORGIA POWER COMPANY'S RESPONSE TO INTERVENOR'S MOTION TO COMPEL AND STATEMENT OF GOOD CAUSE, DATED MAY 6, 1994

I. INTRODUCTION.

Georgia Power Company ("GPC") hereby responds to (1) Intervenor's Motion to Compel Licensee to Produce A.W. Dahlberg; Reconvene the Deposition of George Hairston and Schedule the Deposition of Thomas Beckham, dated April 6, 1994 ("Intervenor's Motion"), and (2) Intervenor's Statement of Good Cause to File Interrogatory Questions Concerning Illegal Transfer of Control and to Convene Depositions Concerning Illegal Transfer of Control, dated April 6, 1994 ("Intervenor's Statement"). GPC opposes these efforts by Intervenor to conduct a substantial amount of additional discovery after the deadline established by the Board. Written discovery in this proceeding started in April 1993, and deposition discovery was permissible after February 1, 1994. Despite this generous schedule, Intervenor did not begin

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conducting depositions until April, a few weeks before the April 29 completion date scheduled by the Board. Given this failure by Intervenor to move forward vigorously, there is no good cause for Intervenor's substantial last minute requests.

GPC also opposes Intervenor's request to reconvene the deposition of Mr. Dahlberg because the additional questions that Intervenor wishes to pursue, such as review of the non-nuclear budget and Southern Company "politics" in the early 1980s, have no real bearing on the allegation of illegal license transfer. Such immaterial questions are an insufficient basis for further discovery at this late date.

Further, Intervenor's counsel failed to provide the parties with a copy of Intervenor's Statement by May 6, 1994 as had been required by the Licensing Board. Because this is not the first deadline that Intervenor has missed (and, in fact, Intervenor's counsel was specifically admonished not to miss any further deadlines and so committed), GPC believes that Intervenor's Statement should be stricken as untimely.

In addressing Intervenor's arguments, GPC is particularly concerned with a number of inaccuracies in Intervenor's characterization of prior discussions and rulings. Particularly egregious is Intervenor's assertion that the Licensing Board, in the January 27, 1994 prehearing conference, determined that Intervenor would have 30 days after the completion of depositions to file written discovery related to the illegal transfer of control issue. Intervenor's Statement at 2. Intervenor misrep-

resents the record.

With respect to the January 27, 1994 prehearing conference, Intervenor states that, after the Licensing Board chose April 29 as the last date to complete depositions, "Intervenor's counsel advised the Board that Intervenor needed additional time after April 29th to put together other discovery documents (i.e., interrogatory requests and requests for admissions)." Intervenor's Statement at 2, citing Tr. 231-32. At these pages, the Licensing Board and the parties were discussing the additions to stipulations which Licensee (by letter dated January 24, 1994) had proposed be scheduled after completion of the depositions. When the Licensing Board proposed that stipulation additions would be due on May 6 (a week after completion of depositions), Mr. Kohn objected to the time frame on the grounds that he did not have the resources to receive, review and digest depositions and put together other documents in this period. Mr. Kohn proposed a thirty-day period, which the Board granted, as reflected by the requirement in the Board's February 1, 1994 Order that by May 31, the Board and the parties shall receive proposed additions to stipulations based on the interview records. At no time during this dialogue was there any indication or discussion that Intervenor needed to put together other "discovery documents (i.e., interrogatory requests and requests for admissions)." Similarly, at no time did the Licensing Board "determine that Intervenor would have no less than 30 days after the completion of depositions to file written discovery related to the illegal

transfer of control issue," as Intervenor now maintains. See Intervenor's Statement at 2. Written discovery had been ongoing for ten months, and it was clear that the deposition schedule was intended to complete discovery on the illegal license transfer allegation.

Because of this type of inaccuracy in Intervenor's pleading, GPC urges the Board to take caution in accepting without check Intervenor's representations. To place this matter in proper context, GPC sets out the factual background below before addressing Intervenor's arguments further.

II. BACKGROUND.

Discovery in this proceeding commenced after the Board's Memorandum and Order of April 21, 1993. Intervenor filed interrogatories on May 4, 1993, of which a couple of dozen related to Southern Nuclear's character and the illegal license transfer allegation, as well as a request for production of documents on this issue. After this initial round of written discovery, Intervenor made no effort to ask further interrogatories related to license transfer until May 1994 -- more than a year later.

During the January 27, 1994 prehearing status conference, the allegation of illegal transfer of licenses was discussed. In response to a suggestion by the Board that Intervenor consider dropping that issue in order to conserve his limited resources, counsel for Intervenor stated that he would not drop the issue, that he intended to vigorously pursue that issue, and that he had

adequate resources to do so. Tr. 215, 225. The Board and the parties discussed and agreed that the schedule for completion of depositions on the allegation of illegal transfer of licenses would be April 29, 1994. The Board initially selected April 15, 1994, as the deadline but, at Mr. Kohn's request, extended the deadline to April 29th. Tr. 231. The Board then took up the topic of proposed additions to stipulations following the depositions and proposed the date of May 6, 1994.^{1/} However, at the request of Mr. Kohn, the Board extended the deadline for those proposed additions to stipulations to May 31, 1994. The Board's Memorandum and Order (Prehearing Conference Order: Schedule), dated February 1, 1994, required, in part, that

4. All depositions concerning the contention on alleged illegal transfer of operating authority (the 2.206 matter) will be completed by Friday, April 29, 1994.

5. By COB May 31, 1994, the parties and the Board shall receive proposed additions to stipulations based on the interview records. All requests for stipulations shall be filed by this time, with the exception of stipulations for which good cause for late filing is shown.

A month went by after this order without Intervenor taking any steps to depose witnesses. On March 1, 1994, another status conference (not transcribed) was held at the Licensing Board's offices. Immediately prior to the conference, counsel for the parties met to discuss discovery matters. Before and during the conference, Intervenor stated that he would like to depose GPC witnesses during the week of April 4, 1994 (letting yet a second

^{1/} The Board was working from a schedule proposed by GPC's counsel. See letter from John Lamberski to the Licensing Board, dated January 24, 1994.

month pass). The parties also discussed the stipulations which GPC had proposed to the other parties on February 3, 1994, concerning the illegal license transfer allegation. During the conference, it was agreed that the initial responses of the NRC Staff and Intervenor to those proposed stipulations would be submitted "soon" and by March 11, 1994, respectively. It was further agreed that following the depositions which Intervenor planned to conduct, he would provide an additional response to GPC's proposed stipulations. The date agreed upon for Intervenor's additional stipulations was April 15, 1994. See letter from Ernest L. Blake, Jr. to the Atomic Safety and Licensing Board, dated March 2, 1994, memorializing the agreements reached on March 1, 1994.

On March 8, 1994, counsel for Intervenor provided GPC with a list of ten witnesses he wanted to depose. See letter from Ms. Mary Jane Wilnoth to John Lamberski, dated March 8, 1994, a copy of which is attached hereto as Exhibit A. There was no indication provided by Intervenor's counsel that this was a preliminary list or a "first round" of depositions, and GPC understood it to be complete. GPC voluntarily arranged these depositions and subsequently rescheduled them to accommodate Intervenor's counsel a number of times. On the Friday before the week when the depositions were to occur, Intervenor's counsel requested two additional depositions (Messrs. Hairston and Chesnut); GPC accommodated Intervenor.

The following depositions were conducted during the weeks of April 4 and April 11:

April 6: Messrs. A.W. Dahlberg and C.K. McCoy
April 7: Messrs. G. Johnson and A.L. Mosbaugh
April 8: Mr. G.H. Baker
April 9: Mr. M.B. Hobby

April 11: Mr. S.H. Chesnut
April 12: Mr. D. Smith
April 13: Mr. W.G. Hairston, III
April 14: Messrs. R.P. McDonald and J.M. Farley

Of these, the depositions of Messrs. Mosbaugh and Hobby were taken by GPC and the remainder were taken by Intervenor.

Three other depositions scheduled for this period were not conducted at Intervenor's request. Intervenor cancelled depositions of Messrs. Glenn and Evans a few hours before they were to take place. Intervenor's counsel also decided not to depose Mr. Beckham at the time previously agreed (April 15), in order to attend a deposition in another case.

On April 11, 1994, counsel for the parties, who met in the Atlanta offices of Troutman Sanders, participated in a telephonic status conference with the Licensing Board, which was not transcribed. During that conference, GPC learned for the first time that counsel for Intervenor wanted to conduct additional depositions which he represented were necessary to "fill in gaps in peoples' recollections." Counsel for GPC requested Intervenor's counsel to provide GPC with a list of deponents so that the depositions could be scheduled prior to the April 29, 1994 deadline. Mr. Kohn said he could not identify those individuals until he had reviewed the transcripts of the first round of

depositions. Mr. Kohn did state that he wanted to further depose Mr. Dahlberg on the matters to which GPC counsel objected during his April 6, 1994 deposition. Finally, Intervenor's counsel stated that he wanted to file additional written interrogatories on the issue of illegal license transfer. The Licensing Board proposed a deadline for all discovery on the illegal license transfer issue of April 29, 1994, to which Intervenor's counsel did not object.

On April 12, 1994, the Licensing Board issued a Memorandum and Order (April 11 Status Conference Results) requiring, among other things, that:

1. With the exception of matters covered by paragraph 2 of this order, all discovery (including any additional depositions, interrogatories, and responses to pending requests for admissions) related to the alleged illegal transfer of authority over Vogtle shall be completed by April 29, 1994. (emphasis supplied)

2. By April 29, 1994, Mr. Mosbaugh shall file a motion covering all disputed discovery issues related to the testimony of Mr. Dahlberg. This motion shall contain all interrogatories or requests for documents that Mr. Mosbaugh plans to make on these issues.

On April 20, 1994, GPC's counsel, John Lamberski, was orally notified by Ms. Mary Jane Wilmoth, Mr. Kohn's associate, of twelve additional depositions, including Mr. Dahlberg, which Intervenor was requesting. By this time, half the time available between April 11 and April 29 had already expired. Ms. Wilmoth said that Mr. Kohn wanted to conduct these depositions beginning on April 27 and continuing into the week of May 2, 1994, although no request for an extension of the Board's April 29 deadline had

been requested or granted.^{2/}

GPC's counsel informed Ms. Wilmoth that the request for additional depositions was inconsistent with the Board's deadline of April 29, 1994, and was therefore troubling, and that he needed to speak with Mr. Kohn that day (April 20). Ms. Wilmoth said that Mr. Kohn could call GPC's counsel after 5:00 p.m. since the hearings that they were involved with in Virginia that day concluded at 5:00 p.m. GPC's counsel did not hear from Mr. Kohn and sent a letter stating that he would request the Licensing Board to address the matter during the telephonic status conference scheduled for the following day. See letter from John Lamberski to Michael Kohn, dated April 20, 1994, attached hereto as Exhibit B.

On April 21, 1994, GPC's counsel received a call from Mr. Kohn's receptionist who stated that Mr. Kohn would not be able to participate in the status conference scheduled for 2:00 p.m. that day. GPC's counsel said that he could not agree to reschedule the conference and asked to speak with Mr. Kohn about the matter. Mr. Kohn's receptionist said that was not possible since Mr. Kohn was in a hearing all day and would not be available until after 5:00 p.m. Nevertheless, prior to 2:00 p.m. that day, GPC's

^{2/} Intervenor states, "On April 20, 1994, Intervenor advised Licensee's counsel that Intervenor planned to conduct depositions on April 27 - 29 and asked that Licensee reserving [sic] the week of May 2nd to complete any depositions not completed by April 29." Intervenor's Statement at 8. This representation, which is discussed infra in GPC's response to Intervenor's Statement, is inaccurate. The communication clearly indicated that Intervenor's counsel wished to schedule and conduct depositions during the week of May 2.

counsel heard from Mr. Kohn, who stated that he could not participate in the conference call and wanted to reschedule the call until Monday, April 25, 1994. GPC's counsel informed Mr. Kohn that the matter of who would be deposed on April 27, 28 and 29 needed to be resolved as soon as possible and suggested that the conference call take place after 5:00 p.m. that day, or first thing the following morning. Mr. Kohn said he could not participate in the conference that day because he had to check out of his hotel and he would not be available in his office until 2:00 p.m. on April 22, 1994. As a result, the time set for the conference was 2:00 p.m. on April 22, 1994.

On April 20 or 21, GPC learned that Mr. Kohn had instructed the court reporters not to make transcripts of the depositions he had conducted.^{3/} This was significant for two reasons. First, Intervenor had represented that he needed to review deposition transcripts in order to identify gaps that needed to be filled by further depositions. Second, Intervenor had previously sought and obtained a May 31 deadline for additions to stipulations on the grounds that he needed time to digest deposition transcripts. Intervenor's decision not to prepare transcripts raises questions concerning the sincerity of these prior representations.

Mr. Kohn has represented to the Licensing Board that he instructed the court reporters to notify the other parties that

^{3/} The depositions of Messrs. Dahlberg and McCoy were apparently transcribed by one of the reporters before Mr. Kohn's instruction was received. A brief conversation among counsel at the end of Mr. G.H. Baker's deposition was also later transcribed at the Board's request.

certain transcripts would not be prepared. Tr. 319. No such notification was provided as of April 20 or 21, when GPC's counsel contacted the court reporters to check on the status of the transcripts and GPC first learned of Mr. Kohn's instruction. The NRC apparently first learned of this when informed by GPC during the April 22 conference call. See Tr. 255.

On April 22, 1994, the telephonic status conference was held. Mr. Kohn's request for additional depositions was the primary topic of discussion. GPC's counsel informed the Board and the NRC Staff counsel of the history of the discussions, agreements and Board rulings covering depositions on the illegal license transfer allegation. After GPC's counsel mentioned he had learned that Intervenor's counsel had cancelled deposition transcripts, Mr. Kohn became emotionally upset and the discussion was diverted to Mr. Kohn's state of mind. Tr. 254-55.

As a result of Mr. Kohn's condition, the Licensing Board suspended that portion of the Board's April 12, 1994 order concerning the April 29, 1994 deadline for discovery and re-scheduled the status conference for May 3, 1994. Tr. 272, 283. The Board specifically retained in effect the Board's April 12, 1994 requirement (§ 2) that motions concerning the deposition of Mr. Dahlberg be filed by April 29, and the Board urged Intervenor's counsel to complete as many of his tasks as he could. Tr. 289. Mr. Kohn was also instructed by the Board to provide an explanation by Monday, April 25, 1994, of his understanding of his obligation under NRC's Rules of Practice to prepare tran-

scripts of the depositions. Tr. 275. Mr. Kohn did not file his explanation regarding deposition transcripts until May 2, 1994, and, as of May 3, 1994, he had not filed any motion with respect to Mr. Dahlberg's deposition.

The next status conference was held at the ASLB offices on May 3, 1994. The Licensing Board ruled that discovery concerning the illegal license transfer issue would proceed separately from the diesel starts issue, and that the deadline for discovery of April 29, 1994 would not be disturbed except for good cause. Tr. 298-99. The Licensing Board admonished Intervenor's Counsel for failing to comply with the Board's order to file, by April 25, 1994, an explanation of his obligation to prepare transcripts of depositions. Tr. 298. Later, when Mr. Kohn attempted to argue a motion with respect to reconvening the deposition of Mr. Dahlberg, GPC counsel pointed out that, on April 22nd, the Board specifically preserved the April 29th deadline for motions respecting Mr. Dahlberg's deposition. Tr. 331-32 citing Tr. 289. Thereafter, the Board observed that Intervenor's counsel did not have a systematic way of keeping track of his obligations to Board and didn't even know when those obligations had not been fulfilled. The Board specifically warned Intervenor that if there were any other deadlines missed in this case, Intervenor would not be permitted to make up the filing and that "[t]his is the last time on a deadline waiver." Tr. 334-35. Intervenor accepted this stipulation and stated that "as a firm we are committed to making sure that all these deadlines are completely

fulfilled in the future." Tr. 335.

During the May 3, 1994 status conference, the Licensing Board also ruled that by Friday, May 6th, at the close of business, there should be a filing by Intervenor received by all the parties, with respect to his allegation of illegal transfer of licenses, including (1) all objections arising out of depositions, including Mr. Dahlberg's deposition, (2) a showing of good cause why Intervenor should be permitted to serve additional interrogatories,^{4/} (3) a showing of good cause why Intervenor should be permitted to request additional depositions, and (4) a showing of good cause why Intervenor should be permitted to request production of further transcripts of the Mosbaugh tapes which have been prepared by counsel for GPC.^{5/} Tr. 348-49, 356, 362. The Licensing Board permitted the NRC Staff and GPC to file responses (to Intervenor's May 6, 1994 filings) to be received by the Board and the parties by May 13, 1994. Tr. 349. The Board also required Intervenor to provide GPC and the NRC Staff with its list of witnesses on the illegal license transfer allegation, subject to later amendment, by May 6, 1994. Tr. 387.

On May 6, 1994, Intervenor provided by facsimile his witness list and Intervenor's Motion to Compel, though the latter was received by GPC after close of business. Attached to the witness

^{4/} The Board required Intervenor's counsel to make this showing as to each and every one of the interrogatories. Tr. 348.

^{5/} Intervenor has withdrawn his Motion to Compel Tape Transcripts, dated May 2, 1994, and it is, therefore, not addressed further in this response.

list was a certificate, attesting that a third document -- Intervenor's Statement -- was also being served by facsimile on May 6. However, Intervenor did not telecopy this document to the parties on May 6 and GPC did not receive it until it arrived in the mail the next week.[§] See letter from David R. Lewis to Michael D. Kohn, dated May 12, 1994, attached hereto as Exhibit C; letter from Charles A. Barth to Michael D. Kohn, dated May 9, 1994, attached as Exhibit D.

On May 10, 1994, GPC counsel requested and received from NRC Staff counsel consent to an extension of the May 13, 1994 deadline for filing responses to Intervenor's Motion and Statement. GPC counsel, David Lewis, also telephoned Michael Kohn to request his consent to an extension of the time to file GPC's responsive filing and reserved the right to oppose Intervenor's filings for failure to timely serve GPC. Mr. Kohn responded in writing and consented to an extension for GPC's filing to close of business on May 16, 1994. See letter from Michael D. Kohn to David R. Lewis, dated May 10, 1994, attached as Exhibit E. On May 10, 1994, GPC's counsel contacted Judge Bloch's office and was granted an extension for GPC's responsive filing until close of business on May 16, 1994.

[§] GPC's Washington counsel received a copy of Intervenor's Statement by mail on May 10th. GPC's Atlanta counsel received a copy of Intervenor's Motion and Intervenor's Statement by mail from Intervenor on May 11, 1994.

III. ARGUMENT.

A. INTERVENOR'S STATEMENT OF GOOD CAUSE SHOULD BE DISMISSED FOR FAILURE TO TIMELY SERVE GPC COUNSEL.

The Licensing Board admonished Intervenor's Counsel on May 3, 1994, to comply with the Board's orders. Tr. 298. The Board specifically warned Intervenor that if there were any other deadlines missed in this case, Intervenor would not be permitted to make up the filing. Tr. 334-35. Intervenor accepted this stipulation and committed to make sure all deadlines are completely fulfilled. Tr. 335. Yet only three days later, Intervenor again failed to comply with the Board's order.

As discussed above, the Board directed Intervenor to file Intervenor's Motion and Statement so that it was received by the Board and the parties before close of business on May 6, 1994. Despite the Board's clear instructions and admonition, Intervenor failed to provide Intervenor's Statement to the parties on May 6, 1994.

Intervenor has not shown good cause for its failure to comply with the Board's directive. Intervenor's May 10, 1994 letter (Exhibit E) suggests that GPC bears the burden of ensuring proper service of Intervenor's filings to it (asserting that the only reason the filings were not received was due to trouble with the fax machines on GPC's end). However, as explained in the May 12, 1994 letter of Mr. Lewis (Exhibit C), it appears that Intervenor made no attempt to transmit Intervenor's Statement to any of the parties when it was due on May 6, 1994. GPC counsel has not agreed to accept the late filing of Intervenor's Statement

and Mr. Kohn's May 10, 1994 letter fails to demonstrate any good cause for Intervenor's failure to deliver that document on May 6, 1994.

B. INTERVENOR'S MOTION TO COMPEL MR. DAHLBERG'S DEPOSITION SHOULD BE DENIED.

Mr. Dahlberg's deposition took place on April 6, 1994, in The Southern Company offices in Atlanta. The deposition was scheduled to begin at 8:00 a.m. and end at 11:30 a.m. Prior to the deposition, Mr. Dahlberg (who is the CEO of The Southern Company) also agreed to make himself available later that day after 4:00 p.m., if necessary. The deposition began late because the court reporter retained by Mr. Kohn arrived late (approximately 8:45 a.m. according to the transcript). The deposition concluded at approximately noon. (Mr. Dahlberg delayed an 11:30 a.m. appointment in the hope that Mr. Kohn would complete his questions.) At the conclusion of the deposition, Mr. Kohn stated that he had completed all his questioning except for those areas where GPC counsel had objected to the questions. Dep. Tr. 138.

Intervenor's Motion, at 7, argues that good cause exists for his failure to file a motion, on or before April 29, 1994, with respect to objections made during Mr. Dahlberg's deposition. GPC disagrees. First, without the transcript of Mr. Dahlberg's deposition, Intervenor could not have prepared an acceptable motion. Intervenor's counsel admits that he did not receive the transcript until about April 28 or 29, a full three weeks after the deposition took place. Intervenor's Motion at 7. Intervenor

could have expedited the delivery of Mr. Dahlberg's transcript but chose not to, making it virtually impossible for him to prepare and file a motion by April 29. Second, there was no indication, express or otherwise, that Mr. Kohn was operating under any disability on April 11 during the status conference when scheduling matters were discussed and the April 29th deadline was agreed upon. Furthermore, during the April 22, 1994 status conference, the April 29, 1994 deadline for motions concerning Mr. Dahlberg's deposition was discussed and expressly retained by the Board. Tr. 289. Finally, Intervenor's counsel made no effort to obtain an extension of the April 29th deadline before May 3, 1994 and, therefore, he should be held to the April 29 deadline for motions respecting Mr. Dahlberg's deposition.

Intervenor complains that he was prejudiced by being foreclosed from pursuing questions of Mr. Dahlberg in the area of budgeting. Intervenor's Motion at 2-4. Intervenor was permitted to ask a number of questions in this area despite his refusal to explain their relevance. Tr. 23-35. After about 15 minutes of questioning on this topic, Mr. Kohn asked whether non-nuclear budgets are reviewed at the same time as nuclear budgets. This question concerning non-nuclear budgets has no apparent relevance to the allegations of illegal transfer of control, and when counsel for GPC again asked Mr. Kohn to explain the relevance, Mr. Kohn again refused. Tr. 35-38.

Even now, Intervenor offers no good explanation why questions concerning non-nuclear budgets, or the time of such review,

have any bearing on this proceeding. The only explanation offered by Intervenor's counsel is that "[c]ontrol of an organization's budget is clearly relevant and central to whether GPC failed to maintain control over GPC's nuclear plants." Intervenor's Motion at 2-3. However, Intervenor's questions related only to the internal workings of GPC concerning the budget and the specific questions objected to related to the non-nuclear budget (i.e., the budget for GPC's fossil and hydro plants). None of Intervenor's questions inquired as to whom outside of GPC's management was controlling the GPC budget. Intervenor has already gathered more than enough background information on the GPC budget process; he has received testimony in that area from Messrs. Dahlberg, Farley and McCoy in this proceeding as well as from deposition and trial testimony in the Hobby v. GPC DOL case (90-ERA-30). For the same reasons, GPC objects to Intervenor's requests that "discovery on matters related to budgeting issues be re-opened altogether..." (Intervenor's Motion at 4).

Intervenor's counsel also complains that GPC counsel foreclosed him from asking questions concerning Mr. Dahlberg's understanding of nuclear matters. Intervenor's Motion at 4-5. Intervenor's counsel was permitted to ask Mr. Dahlberg a number of questions which, for lack of a better term, constituted a "pop quiz" on nuclear safety and regulatory matters. Dep. Tr. 89-94. Again, after asking Mr. Kohn to explain how those questions related to the scope of the deposition, which Mr. Kohn would not do, Mr. Withrow asked Mr. Kohn to move on to another subject.

Intervenor now claims that this line of questioning "was critical to determine whether GPC's then President and CEO had the capacity to comprehend what was occurring at GPC's plants and whether he had the requisite competence to do so and, if not, whether the SONOPCO project de facto CEO (Mr. Farley) was the only executive above Mr. McDonald who had the competence necessary to adequately control GPC's nuclear plants." Intervenor's Motion at 5. Intervenor's explanation does not demonstrate a nexus between this line of questioning and the allegation of illegal transfer of licenses. Whether Mr. Dahlberg is as knowledgeable about nuclear matters as Mr. Farley does not tend to prove that Mr. Farley rather than Mr. Dahlberg was in control of GPC's nuclear plants.^{2/} Further, Mr. Dahlberg was the President of GPC and was not a nuclear officer. Intervenor points to no regulation that requires a utility president to be a nuclear expert. That expertise is provided by the officers and staff specifically identified as having requisite expertise in the Final Safety Analysis Report. In sum, Mr. Kohn's questions were immaterial and appeared nothing more than an attempt to annoy and embarrass Mr. Dahlberg.

Intervenor next complains that his counsel was foreclosed from asking questions about past elections of Southern Company Board members or officers or about Board politics. Dep. Tr. 125-

^{2/} To GPC counsel's best recollection, Intervenor's counsel did not even ask Mr. Farley the same questions he asked Mr. Dahlberg. Mr. Farley's deposition has not been transcribed to GPC's knowledge.

28. Mr. Kohn has already explored this topic with other witnesses and makes no showing how further questioning of Mr. Dahlberg on Southern Company "politics" will help this case. He provides no explanation why this information is relevant, or why this line of questioning should be allowed when the Board has ruled that Southern Company's character is not at issue. 37 N.R.C. at 105.

Finally, Intervenor asserts that he should have been permitted to ask Mr. Dahlberg questions concerning how Mr. Hobby's performance as a GPC employee was rated by GPC management and about the "corporate response to Mr. Mosbaugh's tape recording activity."^{2/} Intervenor's Motion at 5-6. Both of these lines of questioning relate to the allegations that GPC discriminated against these individuals -- issues that have already been decided in GPC's favor in the recommended decisions of administrative law judges within the Department of Labor. They are irrelevant to the license transfer allegations before the Board.

Contrary to the assertion of Intervenor's counsel, at the end of Mr. Dahlberg's deposition, it was clear that Mr. Dahlberg would not be subject to further deposition on the afternoon of April 6, 1994. By the end of the deposition, Mr. Kohn's only remaining questions related to matters to which GPC counsel had objected. Dep. Tr. 138. Until those objections could be resolved by the Board, no further deposition was expected and, to the best recollection of GPC's counsel, there was no further

^{2/} Mr. Kohn was, in fact, permitted to, and did, ask Mr. Dahlberg questions about Mr. Dahlberg's response to Mr. Mosbaugh's taping. Dep. Tr. 99-103.

discussion of that matter on April 6, 1994, before or after Mr. McCoy's deposition.

C. INTERVENOR'S MOTION TO SCHEDULE THE DEPOSITIONS OF MESSRS. BECKHAM AND HAIRSTON SHOULD BE DENIED.

Intervenor could easily have scheduled the depositions of Messrs. Hairston and Beckham so that they would be completed prior to April 29, 1994, but failed to do so. Intervenor's counsel appears to argue that, but for the Board's action on April 22, 1994, he would have pursued both Hairston's and Beckham's depositions during the time frame of April 27-29, 1994. Intervenor's Motion at 9-10. However, neither Mr Hairston nor Mr. Beckham were among the individuals which Intervenor indicated he wanted to depose during this (or any other) time frame. See letter from John Lamberski to Michael Kohn, dated April 20, 1994 (Exhibit B).^{2/} In fact, until receipt of Intervenor's Motion on May 6, there was no indication that Intervenor still wished to conduct further depositions of Messrs. Hairston and Beckham.

Mr. Beckham was originally scheduled to be deposed on April 15, a date agreed to by all parties. Intervenor's counsel, however, decided not to conduct the deposition at that time, in order to attend a deposition in another case. Intervenor now adds that his counsel was also concerned about completing his travel plans. These assertions merely reflect Intervenor's failure to pursue the illegal license transfer allegation vigor-

^{2/} The list of deponents identified to GPC's counsel by Ms. Wilmoth on April 20 are the same individuals listed in Intervenor's Statement at 9-10.

ously, and his counsel's willingness to inconvenience witnesses and other parties for personal reasons.

On April 15, when Intervenor decided not to proceed with Mr. Beckham's deposition, GPC was willing to allow Intervenor to reschedule the deposition, as reflected in the April 15, 1994 letter from GPC's counsel to Intervenor (Exhibit 3 to Intervenor's Motion). However, that letter instructed Intervenor's counsel to schedule this deposition "promptly." Intervenor made no attempt to do so and provides no justification for his tardiness.

Intervenor has been similarly delinquent in pursuing a reconvened deposition of Mr. Hairston. Mr. Hairston's deposition took place on April 13, 1994 and, by agreement among the parties, was scheduled for a two hour period. At the conclusion of the deposition, Mr. Kohn indicated that he had additional questions for Mr. Hairston and wanted to reconvene the deposition at a later date. GPC was willing to allow this deposition to reconvene during the discovery period (i.e., prior to April 29), as reflected in the April 15 letter, and advised Intervenor to schedule such deposition promptly. Intervenor made no attempt to do so, and he offers no good reason why that deposition should be permitted now.

Mr. Kohn's "three-fold" explanation for cancelling Mr. Beckham's deposition (Intervenor's Motion at 10) deserves additional comment. Shortly before April 15, 1994, Mr. Kohn advised GPC's counsel that he may not go forward with Mr. Beckham's

deposition on April 15th, as scheduled, because he planned to conduct depositions in another case that day. There was no discussion between GPC's counsel and Mr. Kohn concerning when Mr. Beckham's deposition would be reconvened.¹⁰ Other than that communication from Mr. Kohn, GPC's counsel was not advised of any of the three reasons listed in Intervenor's Motion as to why Mr. Kohn wished to cancel Mr. Beckham's deposition. GPC's counsel did not discuss with Mr. Kohn where Mr. Hairston's deposition would occur (GPC's counsel assumed that the deposition would occur wherever Mr. Hairston was on the day that Mr. Kohn wished to depose him). The Board and the parties in this case should not have to adjust the schedule for this case whenever Intervenor's counsel decides that schedule is inconvenient. Intervenor's counsel should be held accountable for his schedular commitments.

In sum, Intervenor has not demonstrated good cause for his failure to schedule, or even to mention, the depositions of Messrs. Hairston and Beckham, so that they would be completed before April 29, 1994. Nor did Intervenor's counsel make any attempt to extend the April 29th deadline for discovery before the Board did so on April 22nd. The events of April 22, 1994 do not establish good cause for Intervenor's inaction prior to that date. Furthermore, on April 22nd, the Board urged Mr. Kohn to complete as many of his tasks as could. Tr. 289. Between

¹⁰ Intervenor's Motion asserts, at 11, that NRC Staff counsel agreed to accommodate Mr. Kohn respecting Mr. Beckham's deposition. According to the letter from Charles Barth to the Licensing Board, dated May 11, 1994, this is not correct.

April 22 and May 3, Intervenor's counsel took no action with respect to the depositions of Messrs. Hairston and Beckham, although he served five separate documents in this case. Even during the May 3, 1994 status conference, Intervenor's counsel gave no indication to the Board or the other parties that he intended to further depose Messrs. Hairston and Beckham.

D. INTERVENOR'S STATEMENT OF GOOD CAUSE IS INACCURATE.

As discussed at the outset of this response, Intervenor's recitation of the procedural history of this case is not in accord with the facts. the Board did not "determine[]" that Intervenor would have no less than 30 days after the completion of depositions to file written discovery related to the illegal transfer of control issue." Intervenor's Statement at 2 citing Tr. 231-32. Further, contrary to Intervenor's counsel's assertion (Intervenor's Statement at 4), GPC has no recollection of Intervenor stating during the April 11th telephonic status conference that there was a serious problem, for any reason, with his meeting the April 29, 1994 deadline for discovery.

Intervenor also asserts that the Board's April 12, 1994 order "provided that Intervenor would have an opportunity to conduct additional interrogatories after April 29th based on a [sic] disputed discovery issues that arose during the testimony of Mr. Dahlberg." Intervenor's Statement at 4. The order specifically states that Intervenor's motion respecting Mr. Dahlberg, which was due by April 29, "shall contain all interrog-

atories or requests for documents that Mr. Mosbaugh plans to make on these issues." (emphasis added) Intervenor's Statement misquotes the Board's order and omits the word "all." GPC does not understand how Intervenor could reasonably assert that this ruling permits interrogatories to be filed after April 29th.

Intervenor's counsel additionally complains that he was placed at a great disadvantage during the April 11, 1994 telephonic status conference because he was unprepared to discuss scheduling matters. Intervenor's Statement at 3. Intervenor's position is untenable. If Intervenor was unprepared to discuss scheduling, he should have said so at the time. Instead, he engaged the Board and the parties. Intervenor's counsel must abide by his own commitments. Intervenor should not be permitted to renege on his commitments to the Board, NRC Staff counsel and GPC counsel based on rationales provided long after the fact, particularly when the commitments were memorialized by a Board order issued the next day.

E. INTERVENOR HAS NOT SHOWN GOOD CAUSE FOR HIS BROAD, UNTIMELY, AND IRRELEVANT INTERROGATORIES.

With respect to his newly filed interrogatories,^{11/} Intervenor argues that he "was under the impression that he would have until the end of May, 1994 to file interrogatory requests and was concerned when the Board implemented [on April 12, 1994] an April

^{11/} See Intervenor's Request for Interrogatories Documents [sic] to Georgia Power Company Related to Illegal Transfer of Control, dated May 3, 1994 ("Intervenor's Interrogatories").

29th deadline on the filing of interrogatory questions." Intervenor Statement at 6. However, Intervenor did not express his concern and made no attempt to request relief from the unequivocal discovery deadline stated in the Board's April 12 order. Intervenor offers no good explanation why these interrogatories were not filed on or before April 29, in accordance with the Board's instructions.

Even now, Intervenor continues to ignore the Board's instructions. Noting that the interrogatories seem very general, the Board instructed Intervenor to provide "good cause for each interrogatory, one by one." Tr. 348. Instead, Intervenor addresses his interrogatories collectively and in the most general of terms.

Intervenor's only showing that he has good cause to file each of his 33 interrogatories was made by identifying two groups of interrogatories and asserting for both groups that they "concern the area of inquiry Intervenor was prohibited from questioning Mr. Dahlberg about." Intervenor's Statement at 7. Intervenor's assertion is far from the truth. First of all, with respect to the first group identified by Intervenor (Southern Company Board Politics/Control over GPC's Board) Intervenor's counsel was not prohibited from asking Mr. Dahlberg any questions concerning control over GPC's Board. Second, the two groups identified by Intervenor do not include all of Intervenor's interrogatories -- nos. 6, 8, 10, 29, and 32 are not listed -- and no showing of good cause has been made with respect to the

unlisted interrogatories. Third, many of the so-called interrogatories listed by Intervenor are, in fact, document requests (e.g., 3-5, 7, 8, and 12-14) or requests for detailed listings or chronologies (e.g., 2, 15, 16, and 33) which Mr. Dahlberg was not asked to provide, nor could he extemporaneously have provided such detailed historical information. Of the remaining interrogatories listed by Intervenor, none of them address Southern Company Board "politics." A number of the interrogatories address GPC's non-nuclear budget process (e.g., 16-18, 21-23, 25, and 28), which GPC objects to for the reasons stated above in response to Intervenor's request to reconvene the deposition of Mr. Dahlberg. Only interrogatory nos. 19, 20, 24, 26, 27 concern GPC's nuclear budget. However, Mr. Dahlberg answered all questions posed by Intervenor's counsel concerning the GPC nuclear budget process. The last of the interrogatories (nos. 1, 9, 11, 30, 31, and 32) concern matters which Intervenor either never asked Mr. Dahlberg or which were asked and answered. Based on the above, Intervenor has not shown good cause that his Interrogatories should be allowed because they "concern the area of inquiry Intervenor was prohibited from asking Mr. Dahlberg about." In addition, because it is Intervenor's position that these interrogatories relate to matters which were objected to in Mr. Dahlberg's deposition, he should have filed these interrogatories by April 29, in accordance with the Board's instructions during the April 22, 1994 status conference. Tr. 289 (retaining in effect the April 29th deadline respecting any motion concern-

ing Mr. Dahlberg's deposition).

Many of Intervenor's Interrogatories are irrelevant to the illegal license transfer issue and overly broad in scope. As discussed earlier, questions concerning the non-nuclear budgeting process of GPC (e.g., 16-18, 21-23, 25, and 28) do not appear to have any relevance to this case and Intervenor has offered no explanation of their relevance. A number of the interrogatories request information concerning the knowledge of GPC's co-owners (nos. 9, 11, 28 and 29). In ruling on the contentions, the Board's February 18, 1993 Order stated "lack of knowledge or consent of the co-owners of Vogtle has not been shown to be relevant." 37 N.R.C at 102. Intervenor also requests information concerning GPC's internal budgeting process (nos. 13, 14, 17-20, 25 and 26) which has no relation to the illegal license transfer issue. Many of Intervenor's requests seek "all materials" related to the formation of SONOPCO or which pertain to the nuclear budget for Vogtle that were reviewed by various board members (nos. 5, 12, 13 and 14); also Intervenor's Interrogatory 33 which requests the identity of "all documents" related to the inter-relationship between The Southern Company and GPC is overly broad and burdensome. There are hundreds of documents covered by these requests.

Intervenor further asserts that he "was not in a position to fashion interrogatories about budgeting related matters until after the depositions of GPC's executives with budgeting information were concluded and the extent of gaps in the information

sought could be determined." Intervenor's Statement at 7-8. Intervenor's counsel deposed and cross examined GPC witnesses extensively in the Hobby v. GPC DOL case, during which he covered the GPC budgeting process. Intervenor's counsel could easily have fashioned interrogatories on the GPC budget process without first assessing gaps in peoples' recollections. Furthermore, GPC finds it hard to believe that Intervenor's counsel would be able to reasonably assess the deposition testimony of GPC witnesses when he is not procuring the transcripts of those depositions.

Finally, Intervenor claims that he needed to reconvene the deposition of Mr. Hairston in order to receive testimony from him on the budget process before Intervenor could fashion interrogatories. Intervenor's Statement at 8. GPC does not understand how Mr. Kohn expected to both depose Mr. Hairston and fashion interrogatories before April 29, 1994, when he had not even scheduled Mr. Hairston's deposition as of April 22, 1994. Intervenor's counsel also states that he "was prohibited from completing Mr. Hairston's deposition and Licensee acknowledged that it was obligated to reproduce Mr. Hairston for this purpose" citing a letter from GPC counsel, dated March 1, 1994. Intervenor's Statement at 8. No such letter exists. If Intervenor's counsel is referring to Mr. Lamberski's April 15, 1994 letter, that letter (which is discussed above) instructed Intervenor's counsel to promptly schedule depositions for Messrs. Hairston and Beckham, which he did not do. Furthermore, Intervenor was not "prohibited" from completing Mr. Hairston's deposition; he simply

failed to complete it in the scheduled time.

F. INTERVENOR HAS NOT SHOWN GOOD CAUSE FOR CONDUCTING ADDITIONAL DEPOSITIONS.

Intervenor's counsel asserts that "[o]n April 20, 1994, Intervenor advised Licensee's counsel that Intervenor planned to conduct additional depositions on April 27-29 and asked that Licensee reserving [sic] the week of May 2nd to complete any depositions not completed by April 29, 1994." Intervenor's Statement at 8. This statement is not true. As documented in Mr. Lamberski's April 20, 1994 letter (Exhibit B), Ms. Wilmoth informed GPC counsel that Intervenor wanted to "begin the additional depositions next Wednesday, April 27th, and continue them into the week of May 2, 1994." There was no suggestion that Intervenor expected, or even hoped, to complete the twelve depositions (eleven new depositions plus Mr. Dahlberg) during the first three days and, obviously, twelve depositions could not be completed in that three day period. Furthermore, many of the individuals who Intervenor proposed to depose are upper management officials of the Southern system^{12/} with busy schedules, and some of these individuals are no longer employed within the Southern system. Intervenor's assertion that "Intervenor could have completed nine [depositions] without requiring leave from the Board to extend the April 29th deadline," is therefore not

^{12/} Intervenor's list of deponents includes Robert Scherer, Kerry Adams, Louis Long, Edward Addison, Tom Peacock, Jeff Wallace, Warren Jobe, Allen Franklin, John Meier, Fred Williams, George Head, and Bill Dahlberg.

credible.

There is no reason why Intervenor's counsel could not have identified any of the eleven additional individuals in his March 8, 1994 list of deponents. Intervenor's counsel was aware of these individuals from his involvement with Mr. Hobby in the Hobby v. GFC DOL proceeding (90-ERA-30) and in the Section 2.206 petitions filed by Messrs. Hobby and Mosbaugh with the NRC in 1990-91. Intervenor does not assert that he learned of any of these individuals for the first time during any of the depositions of GPC witnesses conducted in this proceeding. Moreover, three of the individuals who Intervenor's counsel now wishes to depose were previously deposed by him in the Hobby v. GPC DOL proceeding - Messrs. Kerry Adams, Fred Williams, and George Head.

Intervenor maintains that depositions of the eleven additional individuals are needed to "fill in gaps in the recollections" of the first round of witnesses he deposed. Intervenor fails to identify such "gaps" with any reasonable specificity. Intervenor identifies no specific questions that could not be answered. And because Intervenor instructed the court reporters not to prepare transcripts, Intervenor should bear the consequences of the lack of specificity in his pleading. See Tr. 337 (JUDGE BLOCH: "You see the bind we're in because there are no transcripts.").

1. Robert Scherer - Intervenor asserts that Grady Baker could not "adequately explain matters relating to the SONOPCO project reporting structure." This assertion is too vague to

respond to and no references to the transcript of Mr. Baker's deposition are provided.

2. Kerry Adams - Intervenor asserts that he was unable to ascertain from deponents "matters pertaining to the Management Council's involvement and oversight over the SONOPCO project." Again, this assertion is overly vague. The matters to which Intervenor is referring are not identified. The witnesses who were unable to explain those matters are not identified. No references to deposition transcripts are provided. Furthermore, GPC's counsel does not recall that Intervenor asked any of the witnesses a question concerning the GPC Management Council's oversight of the SONOPCO Project.

3. Louis Long - Intervenor asserts that Mr. Long's reporting relationship could not be adequately determined after completing the depositions of Messrs. McDonald and Farley. Intervenor received answers to all his questions of Mr. McDonald concerning the reporting relationship of Mr. Long. GPC counsel's recollection is that Intervenor's counsel did not ask Mr. Farley any questions concerning that reporting relationship. Since Intervenor has chosen not to transcribe those depositions, they are unavailable to clearly determine what was asked and answered.

4. Edward Addison - Intervenor complains that Mr. Farley was unable to adequately recall his conversations with Mr. Addison concerning Mr. Farley's role in the management of SONOPCO. Considering that these conversations occurred some six years ago, Intervenor's questions were adequately answered. Mr. Farley

was able to recall generally what he and Mr. Addison discussed. Mr. Addison is unlikely to recall anything more than Mr. Farley, and Intervenor provides no explanation of what additional information is expected or why it is needed. Intervenor is really fishing. Again, Intervenor's failure to prepare a transcript of Mr. Farley's deposition prevents a more specific response, and any doubt created by the lack of a transcript should be resolved against Intervenor.

5. Tom Peacock - Intervenor claims that Mr. Peacock's deposition is necessary to fill in gaps in Mr. Farley's and others' testimony concerning SONOPCO's budgeting process. There was no "SONOPCO budget" as Intervenor well knows. Further, Intervenor has reams of testimony on the GPC budgeting process. Messrs. Dahlberg, McCoy and Farley explained the GPC budget process during their depositions in this case (see, e.g., Dahlberg Dep. Tr. 35-37; McCoy Dep. Tr. 76-78) and a number of GPC witnesses discussed it in the Hobby DOL case. GPC also objects to questions on the GPC budget process for the same reasons stated above in response to Intervenor's request to reconvene Mr. Dahlberg's deposition. GPC further objects to Intervenor's assertion because he has not requested a transcripts of the depositions of Mr. Farley and other witnesses or even identified the other witnesses whose "memory gaps" he insists must be filled.

6. Jeff Wallace - Intervenor wants to depose Mr. Wallace to confirm Mr. Hobby's recollection of the Management Council's

review of the GPC nuclear budget. Intervenor provides no explanation why such confirmation is needed or important. Moreover, despite Intervenor's representation that these depositions are needed to fill in gaps in the first round of depositions, Intervenor provides no reference to such gaps here. He merely wishes to confirm testimony from Mr. Hobby's recollection. This could have been done long ago.

7. Warren Jobe - Intervenor wants to depose Mr. Jobe for the same reasons identified for Messrs. Adams and Wallace and because Mr. Jobe had responsibility for budgeting. This vague statement falls far short of a showing of good cause. Intervenor does not identify any specific gap that Mr. Jobe will be able to address; nor does he explain why further testimony on these topics are important.

8. Allen Franklin - Intervenor wants to depose Mr. Franklin because he was identified by Mr. Farley "as attending meeting [sic] Intervenor believes to constitute de facto SONOPCO board of director meetings while SONOPCO was unincorporated." Intervenor received answers to his questions in this regard in the depositions of Messrs. Dahlberg, McDonald and Farley (see, e.g., Dahlberg Dep. Tr. 65-70), and has not identified any "gaps" in recollection which need to be filled. Additional testimony on this topic is simply redundant and unjustified.

9. John Meier - Intervenor wants to depose Mr. Meier for the same reasons identified for Mr. Peacock (i.e., because he attended meetings relating to budgeting). This claim could be

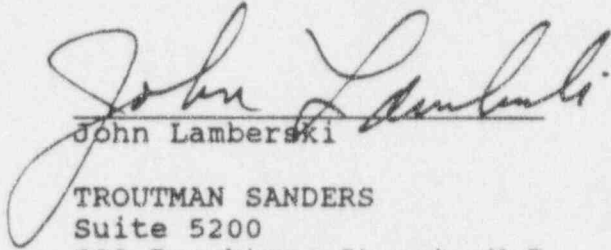
used to support depositions of virtually all GPC's managers. Intervenor provides no explanation how Mr. Meier's testimony is important to the allegation of illegal license transfer.

10. and 11. Fred Williams and George Head - At this time GPC does not expect to call either Mr. Williams or Mr. Head as witnesses in this case. Therefore, based on Intervenor's representations at page 9 of Intervenor's Statement, GPC assumes that Intervenor does not need to depose Mr. Williams or Mr. Head in this case.

IV. CONCLUSION.

For the reasons stated above, Georgia Power Company respectfully requests that the Licensing Board deny Intervenor's Motion to Compel and Intervenor's Statement of Good Cause, both dated May 6, 1994. No good cause has been shown as to why Intervenor should be permitted to conduct or reconvene any further depositions, or serve any additional written discovery requests, concerning the allegation of illegal transfer of licenses. Furthermore, Intervenor's Statement of Good Cause was not properly served upon Georgia Power in accordance with the Board's May 3, 1994 ruling.

Respectfully submitted,


John Lamberski

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Counsel for Georgia Power Company

Dated: May 16, 1994

UNITED STATES OF AMERICA

DOCKETED
USNRC

NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

⁹⁴ MAY 20 P2:50

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

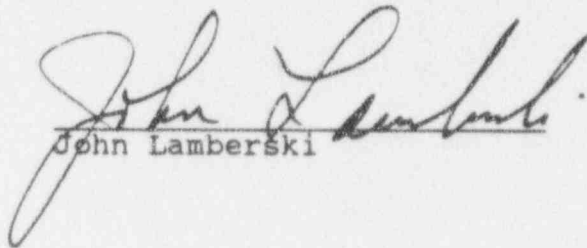
Re: License Amendment
(Transfer to Southern
Nuclear)

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

OFFICE OF SECRETARY

CERTIFICATE OF SERVICE

I hereby certify that copies of "Georgia Power Company's Response to Intervenor's Motion to Compel and Statement of Good Cause, dated May 6, 1994," dated May 16, 1994, was served by express mail, or, where indicated by an asterisk, by facsimile, upon the persons listed on the attached service list, this 16th day of May, 1994.


John Lamberski

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

In the Matter of
GEORGIA POWER COMPANY,
et al.

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

(Vogtle Electric
Generating Plant,
Units 1 and 2)

* Re: License Amendment
* (Transfer to Southern
* Nuclear)
*

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

SERVICE LIST

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ATTORNEYS AT LAW

EXHIBIT A

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MICHAEL J. KOHN ->
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DAVID K. COLAPINTO ->

OF COUNSEL
E. COOPER HOWAN -
ANNA T. R. KRONSTADT -
DANIEL O'BRYEN ->

ADMITTED IN DC
ADMITTED IN VA
ADMITTED IN MA
ADMITTED IN NJ
ADMITTED IN FL

March 8, 1994

Via Facsimile

John Lamberski, Esq.
TROUTMAN SANDERS
Suite 5200
600 Peachtree Street, N.E.
Atlanta, GA 30308-2216

RE: Intervenor's list of deponents
Docket Nos. 50-424-OLA-3; 50-425-OLA-3

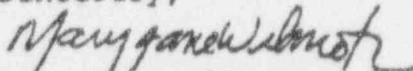
Dear John:

The following is a list of the witnesses we plan to depose.

1. H. G. Baker
2. J. T. Beckham, Jr.
3. A. W. Dahlberg
4. Bill Evans
5. Joseph Farley
6. Lee Glen
7. Gerald Johnson
8. C. K. McCoy
9. R. P. McDonald
10. Dan Smith

Michael Kohn will be contacting you this week with further information in regard to the scheduling of these depositions.

Sincerely,


Mary Jane Wilmoth

cc: NRC Staff Counsel

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JOHN LAMBERSKI

DIRECT 404-885-3360

April 20, 1994

VIA FACSIMILE

Michael D. Kohn, Esquire
Kohn, Kohn & Colapinto, P.C.
517 Florida Avenue, N.W.
Washington, D.C. 20001

Re: Georgia Power Company (Vogtle Electric Generating Plant, Units 1 and 2)
NRC Docket Nos. 50-424-OLA-3, 50-425-OLA-3; License Amendment for
Transfer to Southern Nuclear Operating Company

Dear Michael:

Today your associate, Mary Jane Wilmoth, telephoned and provided me with a list of twelve people that you wish to depose on the alleged illegal license transfer issue.¹ Your associate informed me that you want to begin the additional depositions next Wednesday, April 27th, and continue them into the week of May 2, 1994. As I informed Ms. Wilmoth, I have a problem with your request.

I do not understand the basis for your request for these additional depositions. Your request is inconsistent with the Board's April 12, 1994, Memorandum and Order (April 11 Status Conference Results). As a result, I plan to ask the Licensing Board during tomorrow's status conference, scheduled for 2:00 p.m., to hear oral arguments on your request at that time.

In addition, I have received no response from you concerning my request that the parties exchange lists of witnesses on the alleged illegal license transfer issue. Counsel for the NRC Staff has informed me that they plan to provide such a list. I assume that you will provide GPC and the NRC Staff with your list before mid-day tomorrow. Georgia Power Company's list of witnesses for the alleged illegal license transfer issue is as follows: A.W. Dahlberg, J.M. Farley, R.P. McDonald, W.G. Hairston and C.K. McCoy.

¹ One of these people, Mr. Dahlberg, has previously been deposed in this proceeding and there is an outstanding dispute concerning any further deposition of him.

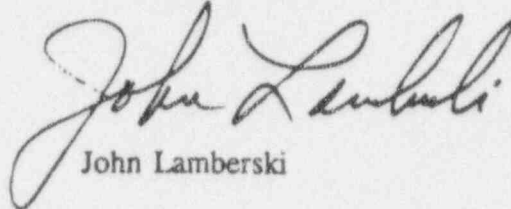
TROUTMAN SANDERS
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Michael D. Kohn, Esquire

April 20, 1994

Page 2

Very truly yours,



John Lamberski

xc: Atomic Safety and Licensing Board
Charles A. Barth, Esq.
Mitzi A. Young, Esq.

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DAVID R. LEWIS
(202) 663-8474

May 12, 1994

Michael D. Kohn, Esq.
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517 Florida Avenue, N.W.
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In the Matter of
Georgia Power Company
Vogtle Electric Generating Plant, Units 1 and 2
Docket Nos. 50-424-OLA-3 & 50-425-OLA-3
License Amendment for Transfer to Southern Nuclear

Dear Michael:

When we spoke on Tuesday, May 10, you indicated that you would call me back in a few minutes with your decision on our request for an extension of time to respond to certain filings. I was therefore surprised to receive instead your May 10 letter responding to the request.

In your letter, you suggest that I should have called you on Friday (May 6) to identify difficulties in receiving the fax transmissions. I have checked with our telecopy personnel and we did not have any difficulties receiving facsimiles on Friday evening. The transmission of your telecopy to us late on Friday was not interrupted and it appears that we received all the pages that you sent. Because you did not identify on the telecopy cover sheet the number of pages being sent, our personnel had no reason to believe otherwise. The certificate of service was located several pages into the package, after the telecopy cover sheet and after the witness list, and therefore was not noted by our personnel. In addition, because you did not transmit the facsimile to my office about 6 p.m., I had left for the day and I was unable to check the document myself.

Your letter asks when Shaw Pittman and Troutman Sanders received your various filings. Shaw Pittman received your "Witness List Concerning Alienation of Control," "Motion to Compel and Reconvene Depositions," and certificate of service at about 6 p.m. on Friday, May 6. The telecopy to Troutman Sanders, also received late Friday, included only your witness list, certificate, and telecopy cover sheet. In your telecopy cover sheet for

SHAW, PITTMAN, POTTS & TROWBRIDGE

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

Michael D. Kohn, Esq.
May 12, 1994
Page Two

the transmittal to Troutman Sanders, you specifically identified that only seven pages were being sent to Troutman Sanders. Seven pages corresponds to the length of the witness list, certificate and cover sheet.

On Monday morning, May 9, we obtained from the NRC Staff a copy of your transmission to the NRC. It contained the same pleadings that had been transmitted to Shaw Pittman on Friday (i.e., the witness list, the motion to compel, and certificate). Further, your telecopy cover sheets to the Staff identified the number of pages that you had sent, which corresponded to the number of pages of the motion to compel, witness list, and certificate. We were therefore confident that we had received all the documents that you had transmitted on Friday. It was not until Tuesday, May 10, when I received your Statement of Good Cause in the mail, that I learned that you had filed an additional document by mail. Troutman Sanders received your mailing on Wednesday, May 11.

I trust this answers your questions. Because you have suggested that your failure to comply with the Board's filing schedule was caused by difficulties with our receiving the facsimile, I request that you check the record of transmission printed by your telecopy machine on Friday to determine the number of pages that was sent by you to my office. I would appreciate receiving a copy of this document. Based on my review of the situation, it appears to me that you made no attempt to transmit your statement of good cause to any of the parties on Friday, when it was due.

Sincerely,



David R. Lewis

cc: Service List

M:/0329/045DRL 94



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555-0001

EXHIBIT D

May 9, 1994

Michael D. Kohn, Esq.
Kohn, Kohn and Colapinto, P.C.
517 Florida Avenue, N.W.
Washington, D. C. 20001

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

Dear Mr. Kohn:

The Licensing Board required the Intervenor to make certain filings by the close of business May 6, 1994. I and the Office of the Secretary received parts of a Motion to Compel and all of your witness list regarding the alleged illegal transfer. Your Certificate of Service states that a Statement of Good Cause was also filed. Neither I nor the Commission's secretary received any part of such a filing.

Sincerely,

A handwritten signature in cursive script that reads "Charles A. Barth".

Charles A. Barth
Counsel for NRC Staff

cc: Service List

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May 10, 1994

Via Facsimile

David R. Lewis, Esq.
Shaw, Pittman, Pitts & Trowbridge
2300 N Street, N.W.
Washington, D.C. 20037

Re: Vogtle Electric Generating Plant, Units 1 & 2
License Amendment (Transfer to Southern Nuclear)
ASLBP No. 69-671-01-OLA-3
Docket Nos. 50-424-OLA-3; 50-425-OLA-3

Dear David:

I am writing to response to your phone call to me today requesting a continuance to file a response to Intervenor's pleadings filed on May 6, 1994. You indicate that you are requesting additional time to respond because of difficulties in obtaining fax transmissions. I wish to point out that the first document transmitted included a certificate of service for all three documents and that the cover page to the fax transmissions includes a phone number to call if you are having difficulty receiving a fax (I also note that in the middle of the transmissions, Mr. Lamberski transmitted a 13 page fax to me which interrupted the faxing process; that there was difficulty in reaching Judge Carpenter's fax machine; and NRC Staff's fax machine would not respond on no less than six separate attempts).

Today you first advised me that you would like an extension, which I agreed not to oppose if you could file by close of business on May 16, 1994. You then advised me that, with this extension, you may still file a motion to strike. I am concerned that, after you received the certificate of service indicating that three documents were to be served last Friday that you waited until Tuesday to tell me that you did not receive by fax all three documents. Had your office called and reported a problem with the transmission on Friday or Monday my office would have responded immediately to correct the problem. I also note that if you needed the documents and the delay in fax transmissions posed a problem, it would have been easy for my office to arrange for hand-delivery of the documents last Friday (of course, your office could have sent down a courier to pick up the documents as you have done any no less than half a dozen occasions in the past).

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Kohn to Lewis
May 10, 1994

Intervenor does not oppose a continuance to include the last date in which your office or Mr. Lamberski received a document. Please let me know the earliest date and time either you or Mr. Lamberski received each of the three documents transmitted and I will gladly agree to consent to an extension based on the latest day to respond to the motion transmitted. If you do not wish to provide this information, I will gladly agree to an extension of time to until close of business on Monday, May 16, 1994. If it were not for the fact that the ASLB conference is scheduled for May 19th, I would not hesitate to extend the filing date. I also note that Intervenor had three days to file and, based on your filing responses on May 16th, Licensee will have a significantly longer amount of time to file responsive pleadings (10 days compared to three).

Finally, should you decide to file a motion to strike, I request that you forward a copy of this letter when you make your filing.

Sincerely yours,



Michael D. Kohn

cc: Charles Barth