

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: Thursday, May 26, 1994

PAGES: 390 - 430

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

- - - - - X  
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

4350 East-West Highway  
5th Floor Hearing Room  
Bethesda, Maryland

Thursday, May 26, 1994

The above-entitled matter came on for prehearing  
conference, pursuant to notice, at 4:05 p.m.

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

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## 1 APPEARANCES:

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1 APPEARANCES [continued]:

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3 On behalf of the Intervenor, Kohn, Kohn and Colapinto:

4 MICHAEL KOHN, ESQ.

5 STEPHEN KOHN, ESQ.

6 DAVID COLAPINTO, ESQ.

7 MARY JANE WILMOTH

8 Kohn, Kohn and Colapinto

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11

12 ALSO PRESENT:

13 DARL S. HOOD

14 LOUIS L. WHEELER

15 Office of Nuclear Reactor Regulation

16 LARRY L. ROBINSON, Senior investigator

17 NRC Office of Investigations, Atlanta

18 BEN B. HAYES, Director

19 NRC Office of Investigations

20 JOYCE MCDOW, Assisting Judge Bloch

21

22

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

[4:05 p.m.]

1  
2  
3 JUDGE BLOCH: Good afternoon. I'm Judge Bloch.  
4 On my left is Judge Carpenter, and my on my right Judge  
5 Murphy. The reporter has taken the step of getting the role  
6 of the counsel for the parties for the record, so we don't  
7 need to do that orally.

8 The first item on the agenda which has been  
9 circulated to the parties is the status of negotiations that  
10 they've been conducting. I'd like to state for the record  
11 that negotiations started about 1:00, and it's now about  
12 3:30. We've accommodated the negotiations by delaying the  
13 start of the prehearing conference.

14 Who would like to report on the negotiations.

15 MR. BLAKE: Judge Bloch, I will try on behalf of  
16 the three parties to describe the number of agreements that  
17 we've made today. As in the past, with the board's status  
18 conferences, I think the scheduling of these conferences  
19 really has served as quite an effective vehicle to get us  
20 together and cause us to address what otherwise we might be  
21 addressing in rounds of pieces of paper. So I think it has  
22 been productive.

23 To the extent I goof in describing the agreements  
24 that I think we have, I'm sure the other parties will  
25 correct me.

1           As the matter of the order in which I address  
2 these things, I'm going to go through the report in the  
3 order in which we discussed them in our meeting. And that  
4 was to go through first the agenda items which the licensee  
5 had proposed in its May 24 submittal to the board, and next  
6 to go through Intervenor's proposed agenda items which were  
7 submitted also to the board in advance of the status  
8 conference today. That is about what I'm going to use at  
9 least as the outline.

10           With respect to first our agenda items -- and I  
11 think in the course of doing that, it will cover the various  
12 agreements that we've reached. With respect to the first  
13 item on our suggested agenda, which was Roman Numeral I,  
14 closure of discovery on license transfer allegations, the  
15 board's recent order really has cured most of those items  
16 for the parties and there is not much to be discussed there.  
17 The one item that was left out for further discussion among  
18 the parties also appeared on the board's agenda and that was  
19 the three days of the illegal transfer discovery depositions  
20 and how we would divide that up.

21           The parties have agreed to discuss in a conference  
22 call next Wednesday, June the 1st, at 2:00 in the afternoon  
23 a number of items, of which this is one. That is next  
24 Wednesday we will discuss what specific three days we will  
25 set aside to complete illegal license transfer discovery,

1 which means to complete depositions of people on that topic.  
2 We now have agreed that it will be sometime during the week  
3 of June 6, or June 13. It will actually be at the beginning  
4 of a chunk of time during those two weeks that we have set  
5 aside for depositions. The first group of depositions will  
6 be on illegal license transfer. And that means complete Mr.  
7 Dahlberg's deposition, plus three full days on people that  
8 the Intervenor will identify to us next Wednesday in this  
9 2:00 conference call.

10 Also during that conference call, while I'm fixed  
11 on it, we will set the remaining deposition schedule for  
12 that two-week period. And that will be made up of four  
13 additional named individuals. And it will deal with the  
14 diesel generator issue. That will be the completion of Mr.  
15 Frederick's deposition, which was started this week but not  
16 completed. The other two individuals' depositions were  
17 completed as they reported to the board on what occurred.  
18 Mr. Frederick's was not. He'll be one. Mr. Aufdendampe  
19 will be deposed sometime during that two-week period, Mr.  
20 Green and Mr. Horton.

21 In addition, during the June 1, 2:00 conference  
22 call we will talk about the remaining open stipulations on  
23 illegal license transfer. At this point we appear to have,  
24 that is the licensee appears to have agreement with the  
25 staff other than our numbered stipulation 4. We have



1 agreement with the Intervenor as well on the vast bulk of  
2 the stipulations. There are a number of them that we think  
3 with some additional conversation we'll be able to narrow to  
4 just a very few where we'll agree probably to disagree.  
5 That is another topic for that conference call. And that is  
6 all to be discussed during that conference call next  
7 Wednesday.

8 JUDGE BLOCK: Is there a chance to actually be an  
9 agreement on the statements of what is left to be  
10 adjudicated on that side?

11 MR. BLAKE: I haven't even tried that question  
12 out. I don't know the answer to that, Judge Bloch.

13 JUDGE BLOCH: If the parties can actually frame  
14 the issues over which they're fighting or the two or three  
15 issues, that also would help to focus what we're doing.

16 MR. BLAKE: I understand how productive that might  
17 be; we just haven't focused on it yet.

18 JUDGE MURPHY: Mr. Blake, did you expect us to be  
19 part of that conference call?

20 MR. BLAKE: No, we didn't, Judge Murphy. But I  
21 would expect following that conference call we'd be able to  
22 make a report to the board on exactly where we were headed  
23 on these items. And to the extent that we can't make it we  
24 might need to enlist your help at that point.

25 JUDGE MURPHY: Is it my understanding that you

1 expect to finish depositions on not only the illegal  
2 transfer but also the diesel generator issues in this?

3 MR. BLAKE: No, sir. No, sir. It with was  
4 hopeful wishing maybe on your part.

5 JUDGE MURPHY: When you said four depositions I  
6 thought maybe --

7 MR. BLAKE: The vast depositions will come later  
8 in the scope outline later. But with respect to these  
9 individuals they will be deposed during that two-week period  
10 or not at all. Mr. Lamberski has pointed out to me that  
11 this schedule has to depend on the fact that he has to  
12 consult with separate outside counsel for the individuals.  
13 But believe me, we'll be working as hard as we can to make  
14 this schedule fit.

15 The next item on our proposed agenda is the Roman  
16 Numeral II, which was the Intervenor's witness list  
17 concerning alienation of control. This was not an area of  
18 agreement. But I will report and make my statement and move  
19 onto the next. I will tell the board what I have told Mr.  
20 Mosbaugh's counsel that I thought their witness list on  
21 illegal license transfer was bologna. We've been involved  
22 in discovering on this topic for a long time. We're really  
23 narrowed down to just three more days of depositions in  
24 order to complete this issue entirely. We had agreed to  
25 give each other witness lists. And at the chairman's

1 suggestion, it was to be characterized as a preliminary list  
2 to leave open the prospect that you might have to amend it  
3 based on additional discovery or additional thinking. We  
4 all have to do that from time to time.

5 But the list that we got, some 37 people and  
6 unnamed characterizations of people, was just not in my view  
7 a best efforts list at this point to show who they really  
8 thought were going to be their witnesses.

9 JUDGE BLOCH: If they want, given this isn't  
10 purely on the settlement discussion, they can respond to  
11 that now.

12 MR. BLAKE: Sure. They can now if they want,  
13 Judge. I just said I'm just reporting on each of the agenda  
14 items. I'm saying exactly.

15 JUDGE BLOCH: If you feel like it you can wait  
16 until later or say something now.

17 MR. MICHAEL KOHN: I didn't want to interrupt.

18 JUDGE BLOCH: I think your mike isn't on.

19 MR. MICHAEL KOHN: Earlier I was going to wait  
20 until Ernie was done with everything he was saying. But  
21 there was one thing on point one that I wanted to cover and  
22 we can deal with the witness list thing after we're done  
23 with everything. But there was something on point one.

24 MR. BLAKE: Sure, go ahead.

25 MR. MICHAEL KOHN: That is on the group of the

1 people we will depose starting June 6, we were going to come  
2 up with the schedule, our best shot at the schedule on the  
3 June 1 meeting conference. But inasmuch as there is the  
4 possibility that the scheduling would require some of the  
5 illegal license transfer people potentially to come first or  
6 in between, I didn't mean ever to suggest that we were going  
7 to hold off on beginning depositions until we finished the  
8 illegal license transfer. But I would follow with your  
9 ability to produce whatever witnesses you could, and we  
10 would try to reach an agreement on that.

11 MR. BLAKE: That is fine. The sense was we were  
12 going to try to get the illegal license transfer out of the  
13 way in the order of business because of the availability of  
14 independent counsel or the individual witnesses. One of  
15 these people wasn't available until Wednesday the second  
16 week. We did not mean to squeeze their time of Thursday and  
17 Friday the next week.

18 JUDGE BLOCH: If everyone is confident things are  
19 really under control, that's fine. If you think there is  
20 any questions that might be out of control, one thing I  
21 suggest is getting a way to account for the time when you're  
22 switching back and forth among cases, if you do do that.  
23 Make sure you understand how you're accounting for how much  
24 time has elapsed on the illegal transfer issue.

25 MR. BLAKE: The next item on the agenda was the

1 schedule for completion of stipulations on license transfer  
2 and I've covered that previously. We believe we'll be able  
3 to work that out and complete that topic in the conference  
4 call next Wednesday.

5 The second page of our agenda had first the  
6 confirmation of a date for completion of discovery. This is  
7 the board's prior order which established 50 days from the  
8 issuance of the Office of Investigations report which was  
9 May 11. Although I understand the intervenors didn't get it  
10 until the 12th as the schedule for completion of all  
11 discovery and the diesel generator issue. And the  
12 Intervenors are concerned with not having received all the  
13 tapes and that the 50 days shouldn't start to run until the  
14 date by which they do receive all the tapes.

15 I think we've avoided the argument about tapes and  
16 whatnot by the following schedule, which I'd like to outline  
17 for you. And it really amounts to a joint request for the  
18 extension in the discovery schedule in order to accommodate  
19 the parties' interests. We'd propose the following  
20 schedule: That depositions, which I've already outlined,  
21 occur during the week of June 6 and June 13. That that out  
22 -- that that schedule for depositions will be established  
23 during the conference call on the afternoon of June 1, and  
24 that the licensee will respond to the Intervenor's request  
25 for admissions on the OI stemming to or relating to the

1 Office of Investigations report by June 30.

2 JUDGE MURPHY: 30?

3 MR. BLAKE: Yes, sir. That also by June 30 the  
4 Intervenor will respond to licensee's March 1 proposed  
5 stipulations by regarding those as requests for admission.  
6 We will conform the modification of our request for  
7 stipulations into a request for admissions in a letter or  
8 some form of document that we'll give to the Intervenors as  
9 soon as we can so that we have no doubt about what is meant  
10 there.

11 JUDGE BLOCH: Let's go off the record for a  
12 moment.

13 [Discussion off the record.]

14 MR. BARTH: I have a question. Are these  
15 stipulations on diesel matters?

16 MR. BLAKE: Yes. All the stipulations on illegal  
17 license transfer I think have been the subject of the prior  
18 agreement other than those few which we'll discuss next  
19 Wednesday afternoon in the conference call.

20 JUDGE BLOCH: So what I understand is getting this  
21 done before a lot of the depositions will narrow the scope  
22 of the depositions.

23 MR. BLAKE: Exactly. That is the hope and that's  
24 the reason that you're going to hear more about our  
25 willingness to extend schedule. Because in fact, as Mr.

1 Mosbaugh's counsel observed, that is their anticipation,  
2 that by putting the depositions, the bulk of them after  
3 getting our response on the admissions that they will be  
4 able to do that.

5 After the responses from the licensee and the  
6 Intervenor are exchanged on the admissions on June 30, there  
7 would follow essentially the month of July ending on August  
8 1 an opportunity for depositions on the diesel generator  
9 issue. No date or names have been yet exchanged on that.

10 JUDGE MURPHY: When will that be done, Mr. Blake?

11 MR. BLAKE: August 1.

12 JUDGE MURPHY: When will the names be exchanged?

13 MR. BLAKE: We haven't established any even target  
14 schedules for when the names would be exchanged, but we're  
15 hopeful with the end date having been agreed to by the  
16 parties, if we can get the board to extend the schedule to  
17 accommodate that, that they'll be plenty of incentive to get  
18 names early enough so that you can reach agreement and get  
19 them in within that schedule.

20 JUDGE BLOCH: There will be no problem, I'm sure,  
21 getting the agreement by the board on a reasonable schedule  
22 that has been agreed to by the parties.

23 MR. BLAKE: Thank you.

24 When I said the end of depositions by the end of  
25 August, that is also August 1 -- I'm sorry -- the end of

1 depositions by August 1, that is also the end date for  
2 completion of discovery in all respects. And by that I  
3 mean, interrogatories will have been sent, delivered to the  
4 other parties in a time frame so that under the NRC's  
5 regulations for typical responses, responses would be due by  
6 August 1.

7           Therefore, if you decided to serve your  
8 interrogatories by mail, you would subtract 19 days about  
9 from August 1, 14 for typical time for interrogatories, and  
10 5 for motion -- for serving by mail and you would have to  
11 have submitted your interrogatories 19 days prior to August  
12 1.

13           JUDGE BLOCH: I see one possible problem with that  
14 and that is just that it's possible that adding a bunch of  
15 interrogatories could be so extensive that the party sending  
16 it would know that there is going to be an extension. I  
17 would think that you really want it done so that  
18 interrogatories are filed as early as possible, and whatever  
19 is done at that last moment would be the smallest amount  
20 that is left until that moment.

21           MR. BLAKE: Speaking for the licensee, I would  
22 certainly follow that lead and we will try to do that.

23           JUDGE BLOCH: That seems to be something the  
24 intervenors can stick with also. As I was thinking about  
25 it, the interrogatories are awfully useful to get back



1 before you do the depositions.

2 MR. COLAPINTO: Your Honor, we have attempted  
3 already to file all the interrogatory questions that we  
4 think are relevant. We're going to try to finish that off  
5 so we don't have to file any in July. But it's a good  
6 suggestion. As we discussed in our negotiations, we do  
7 anticipate some follow-up written discovery once the answers  
8 to the admissions come in, and so it's kind of foreseeing  
9 the small period of time to do that. But I think as a  
10 general rule, I agree completely. But I don't want -- but  
11 the way it is set up now is the parties would be able to  
12 file their last set of interrogatories 14 days prior to  
13 April 1, or if they did it by mail, 19 days.

14 JUDGE BLOCH: I thought I heard you say something  
15 else, I'm not sure, and that is you thought there might also  
16 be some interrogatories following the last two weeks of  
17 depositions to follow-up?

18 MR. COLAPINTO: No, no, no, following the  
19 admission, the requests for admissions which are due on June  
20 3.

21 JUDGE BLOCH: But that is well in advance?

22 MR. COLAPINTO: Yes.

23 MR. MICHAEL KOHN: There is one other item that we  
24 haven't really covered in this, but the deposition schedule  
25 from July through August 1st -- when we were framing it, it

1 was in my mind leaving at the most the time to do that and  
2 we would be filing our discovery, that the due date would  
3 actually end on July 1st as well. But I don't know if the  
4 parties actually agreed that because we may have a vigorous  
5 deposition schedule going on there, that the actual answers  
6 might actually arrive after August 1st, but the actual  
7 filings would occur before that time.

8 MR. LAMBERSKI: You're talking about August 1st?

9 MR. MICHAEL KOHN: Yes.

10 MR. LAMBERSKI: You said July 1st.

11 MR. MICHAEL KOHN: I'm sorry.

12 JUDGE BLOCH: What is this one time, that will be  
13 an exception? I didn't understand that.

14 MR. MICHAEL KOHN: I'm afraid I didn't, either.

15 MR. COLAPINTO: What he is saying is that the way  
16 the schedule is that the discovery has to be filed so that  
17 it would be answered by July 1 -- August 1. I'm sorry.  
18 That would not necessarily foreclose a party from asking for  
19 an enlargement of time to answer that discovery request, you  
20 know, if they were in the middle of depositions, but when it  
21 is setting the final date is when there will be no more  
22 discovery filed.

23 JUDGE BLOCH: I understand that, but I thought  
24 there was a question on that which is to attempt to get  
25 interrogatories so there won't be a multiple one to answer

1 so it will reduce the chance of needing an extension.

2 MR. BLAKE: That, I believe, gives you the  
3 schedule that we were talking about for completing discovery  
4 in this case. We did not go on and discuss the other items  
5 that appear in your agenda, or even try to.

6 JUDGE BLOCH: It could be better to put that off.

7 MR. BLAKE: If we could, please.

8 Let me continue now with our agenda items and give  
9 you any other agreements or things that we are agreed upon.

10 JUDGE BLOCH: Just one second. I would like to  
11 ask the reporter to bind our agenda in so that there will be  
12 a record of what it is. Bind it at this point in time in  
13 the transcript, not at the back, right there.

14 [The Board's Agenda follows:]

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## AGENDA -- May 26, 2 pm

1. Report from the parties on the status of their negotiations.
2. Computer-compatible record: Proposed findings, preliminary proposed findings, reports to be placed in evidence, exhibits, transcripts. Obtaining files that make it possible for us all to have a single, searchable data base. ASLBP will provide a PC with a modem beginning next week. Contact Jack Whetstone (301-492-7479), Mack Cutchin (301-492-7498).
3. Renewed request that all motions be accompanied, when possible, in computer format. Send disk or send e-mail with an attached Word Perfect (or, less preferable, text file) by internet to pbb@nrc.gov, copy to tdm@nrc.gov).
4. Schedule Intervenor's three days of illegal transfer discovery. Reset date for requests for stipulations.
5. Target date for end of discovery on diesel issues. (Complete release of OI tapes. Georgia Power's transcript of tapes 57, 58.)
6. Availability of Georgia Power documents for use by Intervenors.
7. Alleged unreasonableness of discovery requests and witness list. (Admissions, Third Set of Interrogatories, Deposition by Written Interrogatories and Oral Examination, May 13 List of Deponents, Witness List.)
8. Questions concerning Staff completion of discovery on illegal transfer.
9. Further scheduling questions. (Board Chairman not available June 13-17. ASLBP moves on July 9.) Pre-hearing conference on evidence issues and rulings on exhibits. Filing date for pre-filed proposed findings. Hearing. Next status conference.

1 MR. BLAKE: On the request for admissions, the  
2 Intervenor's request as provided to us seeks admissions on  
3 literally every sentence in the OI report. We've agreed  
4 today that what we will provide is a response with regard to  
5 all those numbered factual statements that relate to each of  
6 the allegations in the way they've been outlined in the  
7 report and will not provide our admission or denial of other  
8 boilerplate sentences or other general sentences largely at  
9 the beginning of the OI report.

10 JUDGE BLOCH: So the synopsis, for example, you  
11 won't be responding to.

12 MR. BLAKE: That's correct, we won't be responding  
13 to every sentence in there, but we will be going through  
14 every one of the numbered factual statements with respect to  
15 each of the violations.

16 JUDGE BLOCH: The easiest way to regulate the  
17 proceeding is if your admissions have to do with general  
18 principles, but those are going to be excluded, you're going  
19 to be admitting individual facts. This is going to be a  
20 little hard to use admissions in governing the proceeding.  
21 Just the comment. I'm not saying you can't do it. But  
22 obviously the way you streamline the proceeding most is to  
23 have broad areas that you agree on instead of just  
24 individual facts.

25 MR. BLAKE: It may be once we have this level of

1 agreement or even agreement to disagree in certain areas,  
2 other greater agreements may appear.

3 JUDGE BLOCH: Of course, the greatest hope I would  
4 have is that you'd actually agree on what you're disagreeing  
5 about, so we can have a statement of what we're trying.

6 MR. BLAKE: With respect to the second item, B-2,  
7 which was the Intervenor's third set of interrogatories and  
8 request for production of documents, we agreed that we would  
9 respond to that by June 10, although by our calculations,  
10 our response without that agreement would have been due on  
11 May 31. We also agreed that while --

12 JUDGE BLOCH: You said June 10, right?

13 MR. BLAKE: I should have said June 10, if I did  
14 not. We also agreed that while Intervenor's request could  
15 be read to require individual affidavits from all the named  
16 individuals in that request, that our response would take  
17 the form more typically used in responding to  
18 interrogatories provided to an entity, in this case the  
19 licensee, by way of an affidavit of a person who has  
20 conducted a survey of these people who indeed is willing to  
21 swear that what they're getting is an accurate answer, and  
22 that we would canvass the named people about their knowledge  
23 of these areas but we would not be trying to provide 30 or  
24 40 or more individual affidavits.

25 JUDGE BLOCH: I take it that procedure on that is

1 that the people whose testimony is included in the summary  
2 get a chance to read their testimony and sign off that t's  
3 accurate?

4 MR. BLAKE: That is generally the case. We don't  
5 normally provide information that individuals are not  
6 comfortable with, where they're being cited as the source.  
7 But it's a good deal more difficult for us to prepare  
8 affidavits, get them out to people, wherever they are, than  
9 simply talk with them on the phone.

10 JUDGE BLOCH: I want to be absolutely sure of what  
11 procedure you had in mind. As long as the individuals are  
12 comfortable, we're not going to get up them up on the stand  
13 saying we really didn't know about that stipulation and we  
14 didn't know about that statement. I'd like to avoid that.

15 MR. BLAKE: The next item --

16 JUDGE MURPHY: Excuse me, Mr. Blake. Can I go  
17 back to item B-1 for a minute?

18 MR. BLAKE: Item 1, B-1? Yes.

19 JUDGE MURPHY: I guess I'm a little bit confused  
20 about what it was you agreed to. Are you just going to  
21 respond to those paragraphs that have numbers in them?

22 MR. BLAKE: Yes. Numbers in them, or numbers at  
23 the beginning of them?

24 JUDGE MURPHY: No, numbers at the beginning of the  
25 paragraph. I mean there are paragraphs throughout here.

1 For instance, background summary review and analysis of  
2 pertinent documents, those kind of paragraph headings, that  
3 don't have numbers. For example, investigator's analysis.

4 JUDGE BLOCH: Judge Murphy is pointing out page  
5 51, for example. The first paragraph and background has no  
6 number.

7 MR. BLAKE: Correct.

8 JUDGE BLOCH: So that would not be responded to.

9 MR. BLAKE: That's correct.

10 JUDGE MURPHY: Same with summary, same with  
11 investigator's analysis.

12 MR. BLAKE: That's correct.

13 JUDGE MURPHY: Just the numbered paragraphs is  
14 what you agreed to.

15 MR. BLAKE: That's correct. I think it appears  
16 under the word evidence in each of those sections.

17 JUDGE MURPHY: All right. I just wanted to make  
18 sure I understood what it was.

19 MR. BLAKE: The next item in our agenda, B-3, was  
20 the Intervenor's notice of deposition by written  
21 interrogatories and oral examination of request for  
22 documents. This item as well we would expect to respond to  
23 by June 10.

24 Tomorrow afternoon at 4:00, we will have a  
25 conference call to discuss licensee's objections to a number



1 of the individual questions that were proposed by Intervenor  
2 in its submittal.

3 I think those objections come in just two types.  
4 One is questions which are on illegal license transfer. The  
5 second is those that we regard as overly broad which we  
6 would like, and Intervenor's have indicated they think an  
7 ability to do this, to narrow to some more reasonable  
8 definition, and I will give you one example of that kind.  
9 And I may be wrongly paraphrasing the question, but it was  
10 in essence list all articles you've read in newspapers  
11 relating to this or since 1990. That kind, we think we  
12 ought to find a more productive way of phrasing it which is  
13 -- be a little more realistic result. Since this vehicle  
14 doesn't have a place for objections and discourse between  
15 the parties, rather it in the end will really be like  
16 interrogatories by way of answer, but here with individual  
17 sworn statements by the named individuals. We've agreed  
18 with the Intervenor's that there is not a need for these  
19 individuals to turn up in Atlanta on the dates and times  
20 indicated in this document, but rather we'll be given the  
21 flexibility to talk with each of those people, provide them  
22 with the questions that we agree on in tomorrow's conference  
23 call, and that these people then will set out their answers  
24 and swear to them and that is the response that will be  
25 provided to the Intervenor's.

1 MR. MICHAEL KOHN: I think the only question is  
2 what happens to the ones we don't agree on.

3 MR. BLAKE: Where we don't agree on questions  
4 tomorrow, I don't think it's any choice but to get the board  
5 involved before we start these people off trying to answer  
6 them.

7 JUDGE BLOCH: I will be gone until the 1st of  
8 June, though. That could cause a problem; three days at the  
9 beginning of next week.

10 MR. MICHAEL KOHN: I guess the Intervenor could  
11 accommodate those scheduling issues simply by the ones we  
12 don't agree on, if we believe we both work in good faith to  
13 reach agreement, then the ones we don't agree on, we'll  
14 raise with the board at that time, and we would extend  
15 licensees to enter those questions at some additional time.

16 JUDGE BLOCH: You know, it would help in the  
17 course of your discussion if you understand what the  
18 disagreement is, what the issue is. That would make it  
19 easier than having to argue the issues.

20 MR. BLAKE: Well, I'm looking forward  
21 optimistically to agreement on what the issues --

22 JUDGE BLOCH: That is even better, but if you  
23 can't agree, you could at least agree about what you  
24 disagree about

25 MR. BLAKE: That completes the items that appeared

1 on licensee's agenda.

2 We then went through the Intervenor's --

3 JUDGE MURPHY: Excuse me, Mr. Blake, did you  
4 comment on item 4 or did I miss that?

5 MR. BLAKE: No, I didn't, thank you, Judge Murphy.  
6 I didn't because I really don't have any comments at this  
7 juncture. There is nothing about that list which requires  
8 us at the moment to really join issue. Unlike the illegal  
9 license transfer where I had a different view of proposed  
10 witnesses and whatnot, this is really early in the discovery  
11 process and I hadn't anticipated that they'd be able to come  
12 up with a very final list.

13 MR. BARTH: Could I interject at this stage, Your  
14 Honor? Although this is a May 13, 1994 list from Mr. Cone  
15 to Mr. Lamberski, and its discovery between those parties, I  
16 think the board should give serious consideration to request  
17 that Intervenor depose boards of directors from the  
18 beginning of this corporation, which started in 1974, and  
19 see how it relates to any issue in this thing. I think the  
20 Intervenor --

21 JUDGE BLOCH: Why are you raising this issue? Is  
22 the licensee unable to do that?

23 MR. BARTH: Your Honor, I have some kind of  
24 obligation to see that the procedure that my agency uses is  
25 not abused, and I think it's an abuse of the process of the

1 Nuclear Regulatory Commission to depose a board of  
2 directors' member from 1964 with regard to a diesel issue  
3 that happened on March 20, 1990.

4 JUDGE BLOCH: I think we have competent counsel on  
5 behalf of the company, so I'm not worried about --

6 MR. BLAKE: Well, what Mr. Barth may not have  
7 heard in the discussions was that when we expressed our view  
8 of the unreasonableness of this list at this point and that  
9 sort of expectation of numbers of people that they might  
10 depose, the Intervenor said in the end after we have the  
11 admissions response, after we have the other types of  
12 responses on discovery, we don't anticipate the list will be  
13 anything like this. We're going to be more reasonable in  
14 who we plan to depose. So I don't think Mr. Barth  
15 necessarily heard that, and hopefully these kinds of  
16 concerns will in fact be erased by the approach we've  
17 outlined.

18 On issue number 1 in the Intervenor's proposed  
19 agenda, the issue of whether or not the staff had released  
20 all the tapes, I think that is largely overtaken in terms of  
21 at least its import by the schedule that we've outlined. I  
22 don't know the answer to the question about the tapes,  
23 frankly.

24 MR. COLAPINTO: Just for the record, we understand  
25 that all the tapes now have been placed in the mail to us.

1 And if Mr. Mosbaugh hasn't received them today, then he'll  
2 be receiving them momentarily, so item number 1 is no longer  
3 an issue.

4 MR. BARTH: I'm not absolutely certain that Mr.  
5 Kohn is correct, but if he is not, I will make certain that  
6 he is, that the tapes are provided.

7 MR. MICHAEL KOHN: There is one small issue on  
8 that is that the tapes that are not part of the OI report --  
9 and we understand NRC's desire to hold on to those, the  
10 originals --but the tapes that are -- a good segment of  
11 these are Mr. -- are tapes outside of that, and I think we  
12 would like the originals returned to Mr. Mosbaugh on those  
13 tapes, because we no longer see NRC's reason for holding on  
14 to Mr. Mosbaugh's property and it would aid Mr. Mosbaugh to  
15 have the originals, rather than the duplicate tape.

16 JUDGE BLOCH: What do you say about that, Mr.  
17 Barth?

18 MR. BARTH: If Michael Kohn will identify the  
19 tapes he wants back, we will consider within the framework  
20 of his statement, we'll consult with the licensee and with  
21 Mr. Kohn and Mr. Rupert and myself to see whether or not  
22 these could have an influence in this proceeding. If they  
23 don't, I'm certain we'll give them back. We'll return the  
24 originals of the tapes to Mr. Mosbaugh in the long run,  
25 anyway. Our OI office is holding these very closely under

1 the strong guidance for chain of evidence rule in case  
2 they're needed for the board's ultimate decision.

3 JUDGE BLOCH: There are other investigations under  
4 way, so it may be that they're not in the OI report; you  
5 want to make sure that the originals aren't needed for  
6 another investigation, too.

7 MR. BARTH: Well, if he'll tell us what he wants  
8 back, we'll --

9 JUDGE BLOCH: While we're on that question, there  
10 was one board notice authorizing a presentation to us about  
11 staff - another investigation that we haven't had any  
12 briefing on yet. Is there anything the staff can tell us  
13 about whether we need the briefing on that one?

14 MR. BARTH: Give me two minutes, will you, please,  
15 Your Honor.

16 [Pause.]

17 MR. BARTH: The Office of Investigation has opened  
18 the investigation on Board Notification 94-09. This is  
19 preliminary. They have just started. They have come to no  
20 conclusions whatsoever. So there is nothing I can tell the  
21 board about this except that OI is looking at this. But the  
22 board should also realize at the same time whenever we  
23 receive an allegation that there has any kind of safety  
24 implications, two parts of NRC goes to work. The people  
25 from NRR and the people immediately go to check the safety,

1 is there a problem today. But the investigators also go to  
2 find out, investigate whether there was a problem or whether  
3 there was any kind of wrongdoing with that. For all these  
4 board notifications you have had, Your Honor, you should  
5 understand that, gee, there might be a problem, but the  
6 safety people from NRC are on site, taking a look  
7 immediately upon getting these types of allegations and the  
8 investigation may go on for sometime thereafter.

9 JUDGE BLOCH: We are concerned because we know now  
10 of three investigations that are underway, and we have no  
11 way of estimating whether or not they're important to the  
12 character and competence issue which we would try. And that  
13 does create some problems for knowing when we're going to be  
14 able to conclude the case.

15 MR. BARTH: The best I could offer you on that,  
16 Your Honor, is to have OI make a presentation to the  
17 licensing board in camera.

18 JUDGE BLOCH: Well, I don't think it will help,  
19 because I've already stated everything I learned that really  
20 matters to this board. What we know is there are three  
21 investigations underway and we have no idea when they're  
22 going to be completed or how important they are. And that  
23 makes it hard to know whether we should go ahead and try  
24 this case. I guess if there is any way that we can be  
25 assured of the nature of the connection between our concerns

1 and those investigations, that's the only way I think that  
2 we're going to know whether it makes sense to go ahead with  
3 the hearing.

4 MR. BARTH: I understand what you're saying, Your  
5 Honor, and I find myself in the same dilemma. I just cannot  
6 make a better statement until I know where the  
7 investigations go themselves and they are just started.

8 JUDGE BLOCH: What I was reassured by is that in  
9 our annual meeting of the judges, we were assured that new  
10 policy of OI is to try to tell boards as early as possible  
11 what is going on. So I hope that may be possible.

12 MR. BARTH: They did. I think this time they told  
13 you before they started. That's early.

14 JUDGE BLOCH: Well, yes, but there could be later  
15 steps where they're in the middle of something, where they  
16 know again whether or not it's relevant to what we're doing.

17 MR. BARTH: I will commit that if we find in the  
18 process of the --

19 JUDGE BLOCH: What they said was they wanted to  
20 make public statements as early as possible.

21 MR. BARTH: If we find during the course of the  
22 investigation something which could influence this  
23 proceeding, we will bring it to the board's attention.

24 JUDGE BLOCH: I know, but you wouldn't tell us  
25 what it is.



1 MR. BARTH: Oh, yes, we would have OI come and  
2 tell you. That doesn't bother me.

3 JUDGE BLOCH: Thank you.

4 MR. BLAKE: Judge Bloch, I believe the next item  
5 is item number 2 on the Intervenor's proposed agenda. That  
6 is the transcripts for tapes number 57 and 58 in the  
7 agreement between the parties. At an earlier point during  
8 depositions in Atlanta, Intervenor counsel and licensee  
9 counsel and staff counsel were able to reach agreement on  
10 tape number 57. And that licensee is currently attempting  
11 to reduce to some written final form that would be usable in  
12 the proceeding and available for the board. It turns out  
13 not to be mechanically all that easy to get rid of bumps in  
14 the transcript and get one transcript printed out which is  
15 what we agreed on. We were unable at that point in time to  
16 do the same thing on the transcript for tape 58. But we  
17 have agreed that the next time that we are together in  
18 Atlanta when Mr. Mosbaugh is available for his counsel,  
19 which presumably will be this week of the 6th of June, that  
20 first week of the two weeks of deposition, that we'll find  
21 an opportunity at that point to do the same thing with the  
22 transcript for tape number 58 that we have already  
23 accomplished with 57, and that we will undertake, if 57 has  
24 been completed by that point, to get it to Intervenor at  
25 that point. And if we are still working on it, then we'll

1 get it to them at the same time that we get them 58. But in  
2 any event, that is the schedule.

3 JUDGE BLOCH: If the parties know what you're  
4 talking about, that is fine. I really don't understand what  
5 you have said at all but that is okay, if the parties are  
6 satisfied. I don't know what the agreement is. I know  
7 something is going on that has something to do with an  
8 agreement.

9 MR. BLAKE: There are transcripts for each of  
10 these tapes and different parties heard different things on  
11 the tapes and had different versions of what those  
12 transcripts ought to read. And this is the reconciliation  
13 to the extent we can do it, the agreement between the  
14 parties on what those tapes actually say. And, in fact, 57  
15 and 58 are the April 19th tapes, among them, important in  
16 this case. So this is pretty important stuff.

17 Number 3 I think we've covered, completion of  
18 discovery for the diesel generator phase.

19 Number 4 was the Intervenor's request that we move  
20 licensee's documents to Washington. Our agreement on that  
21 is that we will do a better job as licensee in accommodating  
22 Intervenor's request for times during which they can review  
23 documents at the offices in Atlanta where the documents are  
24 stored. The documents will not be moved to Washington but  
25 rather we will attempt to accommodate off hours and

1 mechanics for making copies of the documents which we've  
2 discussed but haven't reduced to any final rules that I can  
3 outline for you.

4 But clearly there is a sense that we'll be able to  
5 work our way through it.

6 I think that concludes.

7 JUDGE BLOCH: There must be some of those  
8 documents already in Washington.

9 MR. BLAKE: Sure, some have been provided, and as  
10 there are specific requests for documents, those documents  
11 are generally provided. But, for example, we don't have a  
12 set in our offices in Washington, that is in our law firm's  
13 office in Washington, or we'd be able to make it available  
14 to them. They're used in Atlanta to work with the  
15 witnesses, to work on discovery responses, and we've not  
16 undertaken to make another set of this literal wall of  
17 documents.

18 MR. COLAPINTO: Your Honor, I'd like to say that  
19 Mr. Blake has accurately summarized the agreements we  
20 reached and I have to commend him because it was a large  
21 amount. And the one that I think needs a little  
22 clarification is the last one we discussed, item number 4,  
23 on Intervenor's proposed agenda. Intervenor has not waived  
24 our right to asking to transfer some of the documents to  
25 Washington. We do think on the basis of our conversation,

1 an accommodation can be reached so they can remain in  
2 Atlanta.

3 JUDGE BLOCH: So you have the working agreement  
4 but if it doesn't work out, you reserve the right to make a  
5 different motion?

6 MR. COLAPINTO: Correct, and we're optimistic that  
7 that will be resolved.

8 JUDGE BLOCH: Is the report of the parties  
9 completed?

10 MR. BLAKE: Yes, sir.

11 JUDGE BLOCH: Then there is an item on our agenda  
12 that we would like to cover. We are concerned to expedite  
13 the work of the board in the concluding portions of this  
14 proceeding, and one way to do that is to make sure that we  
15 have the computer compatible record so that we can do  
16 searches, if we have them, among the preliminary proposed  
17 findings. Any of the preliminary reports that may already  
18 be on disk would be helpful to us on the OI report and the  
19 group report and notice of violation. There may be other  
20 reports that will be submitted in evidence, perhaps they're  
21 licensee reports, that we can also get on disk, plus any  
22 exhibits that are available in computer form. There may be  
23 a way, depending on how this is done, that it would be  
24 helpful to the parties, but I suspect the parties have  
25 already decided how they are going to do that for

1 themselves. What we do need to know in doing this whether  
2 everyone is using compatible programs.

3 Why don't we go off the record for that  
4 discussion.

5 [Off the record.]

6 JUDGE BLOCH: We have established that the parties  
7 all use compatible word processing programs and we've  
8 requested that the relevant documents that I mentioned  
9 before be sent to the board in that format, and we've also  
10 discussed having disks received with motions on them so that  
11 the board can be helped in its preparation of decisions.  
12 That will not be required, but it is encouraged.

13 Is there any other business that we must complete  
14 today?

15 The board will take a brief recess because we have  
16 the matter to caucus on.

17 JUDGE BLOCH: We're off the record.

18 [Discussion off the record.]

19 JUDGE BLOCH: We're back on the record.

20 The parties agreed during the discussions about  
21 computerized records that any party that files a motion with  
22 the board that would like to provide us with a copy may do  
23 that without furnishing it to the other parties.

24 With respect to items that are going to be  
25 included in the decisional record this case and that

1 therefore we might want to search and the parties might want  
2 to search, it's been agreed that the disks containing the  
3 computerized documents will also be sent to the other  
4 parties.

5 MR. RUPERT: If they're available.

6 JUDGE BLOCH: If the disks are available, yes.  
7 We're not requiring that documents be scanned into computer  
8 form, but if they are available in computer form, they'll be  
9 made available to the parties.

10 We would like to ask at this time that the staff  
11 comment on item 8 on our agenda, what they know about the  
12 completion of discovery on the illegal transfer.

13 MR. BARTH: We have no more discovery on the  
14 illegal transfer, Your Honor, we intend to pursue. I think  
15 we are done with that, and that should close the item out.

16 JUDGE BLOCH: Then there is the need to schedule a  
17 status conference. Go off the record.

18 [Off the record.]

19 JUDGE BLOCH: We're back on the record.

20 MR. BLAKE: Is this hearing room still available  
21 into June?

22 JUDGE BLOCH: Yes. The licensing board is moving  
23 July 8th -- 9th.

24 MR. BLAKE: Judge Bloch, I wanted to make two  
25 comments. One was I take it by the board's earlier

1 observation that the board is agreeable to the extension of  
2 this schedule that parties have agreed to and we can operate  
3 on this now.

4 JUDGE BLOCH: This schedule now becomes an order  
5 of the board.

6 MR. BLAKE: And second, I wanted to alert the  
7 board that we may have additional scope issues coming and I  
8 say that because last night we received from the Intervenors  
9 their response to our third set of interrogatories and  
10 requests for documents. I don't know whether the board has  
11 seen that. It indicates that the Intervenors will want  
12 board notification items included in this proceeding. We  
13 have varying degrees of understanding of even what those are  
14 since we've not seen allegations, and they relate to  
15 allegations. I think the board is in the same boat.

16 JUDGE BLOCH: If the parties don't know what they,  
17 we don't know what they are, either.

18 MR. BLAKE: But --

19 JUDGE BLOCH: Actually, we don't know that any of  
20 the parties know what they are, either.

21 MR. BLAKE: That may well lead to additional scope  
22 arguments, for two reasons; one, simply by substance, and  
23 second, by way of trying to keep some control on the  
24 proceeding and whether or not we're ever going to get the  
25 end of this tunnel. If allegations are continued to be

1 raised --

2 JUDGE BLOCH: I share your concern but I'm not  
3 sure how we can handle that.

4 MR. BLAKE: I guess we'll have to discuss it once  
5 ones we know what the allegations are and see how they  
6 relate to what we have all come to understand as the  
7 proceeding at this point.

8 JUDGE MURPHY: Well, Mr. Blake, wouldn't you agree  
9 at the moment, you do have some finite things you can do,  
10 can work on, can create a record, can start working towards  
11 a decision, so at least we're that much ahead. I don't know  
12 where the caboose is, but at least I see the locomotive and  
13 a few cars going by now.

14 MR. BLAKE: That's correct.

15 JUDGE BLOCH: From what I think I know -- and the  
16 staff might want to look at this after I've said it -- I  
17 think there is nothing directly related to the diesel  
18 generator issue and the statements made by the company in  
19 the diesel generator area. So I think it is a discrete area  
20 can be tried separately. I don't know for sure, but if I'm  
21 wrong, I would like to know that. It seems to me there is  
22 nothing that is about to be investigated that is directly  
23 related to the diesel generators, but I don't know for sure.

24 MR. BARTH: Your Honor, at the last conference I  
25 suggested we separate the transfer of license issue



1 illegality and this was resisted by the licensee and the  
2 licensing board did not seem to feel it was separable for  
3 trial, although separable for discovery.

4 I again reiterate in our view if discovery is  
5 completed upon the illegal license transfer issue, that  
6 means the facts are in, we can try that issue and get rid of  
7 it. And this is -- I apologize for the tone of voice; maybe  
8 it's late in the day. I think we can do this and get rid of  
9 at least one part of this morass we are in.

10 JUDGE BLOCH: I'm sorry, but that seems to take  
11 issue with my belief that you could get rid of these two  
12 issues together. It seems to imply that you think maybe  
13 there is something being investigated that relates to the  
14 diesel transfer -- diesel generators.

15 MR. BARTH: No, it does not pick on Your Honor, it  
16 picks on Dr. Carpenter's words. Dr. Carpenter felt we  
17 could get rid of what we could get rid of, and I agree with  
18 that, because I think it is separable, and we could get rid  
19 of this transfer issue. I think what we can do, we should  
20 do as Dr. Carpenter suggested.

21 JUDGE BLOCH: We both agree with Dr. Carpenter  
22 about that.

23 JUDGE CARPENTER: I was very careful not to be  
24 specific.

25 JUDGE BLOCH: It seems to me it makes no sense at

1 this time to try that issue first, if we could try both of  
2 them together, because it's just going to interrupt  
3 discovery on the second issue. But far as I know, and I  
4 want the staff to correct me if this turns out to be wrong,  
5 these two issues are sufficiently discrete from anything  
6 else that might be investigated that they could be tried  
7 separately. The separate issue is whether they could be  
8 decided separately. And that is if the issues in any of the  
9 other investigations have to do with credibility of the  
10 company, I don't know we could decide it separately or we  
11 could try it separately.

12 MR. BARTH: We will take Your Honor's admonition,  
13 and we will discuss it among ourselves, and I thank you for  
14 the comment, You Honor. It has great merit.

15 MR. BLAKE: I really only wanted to raise it,  
16 Judge Bloch, to alert you that this may be another argument  
17 coming down, and now that we have their answers, we may be  
18 moving to compel to try to understand what these are. We  
19 may be back in the same argument we had before, about  
20 informants' privilege and whatnot.

21 JUDGE BLOCH: On the scope question, the scope  
22 issues are very important for making the deposition process  
23 go forward efficiently. So we want to be helpful in  
24 resolving scope issues as quickly as we can. As soon as the  
25 parties know that there is a conflict over scope, I'd

1 appreciate it if he either would handle that by telephone or  
2 by simultaneous filing of arguments so we can decide them  
3 quickly.

4 Is there any scope issue that can be concluded  
5 this week before I'm missing for three days?

6 MR. MICHAEL KOHN: From Intervenor's  
7 understanding, the witnesses who we are scheduled to depose,  
8 I don't see relating to any of the board notifications, off  
9 the top of my head. I don't think the scope issue is going  
10 to come out during that discovery phase.

11 What I would propose is that the parties make an  
12 agenda item for the June 23 conference matters relating to  
13 scope that -- because I think Intervenor believes that some  
14 of the board notifications are related to this proceeding  
15 and should go forward with this proceeding, and I think we  
16 should devote some time on June 23 to at least for the  
17 parties to start better understanding what the issues are  
18 and to discuss -- just have some preliminary discussions at  
19 that time.

20 MR. BLAKE: That may be a good suggestion, Judge  
21 Bloch, and we will take a look at their documents, and if  
22 there is a motion to compel to be filed here, we'll try to  
23 do it sooner rather than later in order to set up this  
24 argument for that week.

25 JUDGE BLOCH: Okay. And I would like to provide

1 on the record while we're here that proposed agendas for the  
2 next conference be filed so they're received by the 21st,  
3 close of business on the 21st. Why don't we say 6:00 p.m.  
4 since close of business is a little ambiguous.

5 JUDGE MURPHY: Apropos to the future in prehearing  
6 conferences when we move into our new quarters in Two White  
7 Flint North, the hearing room has three conference rooms  
8 attached to it. So they would be available to the parties  
9 for the type of discussions we are having today. The  
10 hearing room itself I don't think is going to be as  
11 conducive as this one was for that type of thing, but there  
12 are conference rooms, reasonable sized conference rooms that  
13 you could use. Presumably that facility will be available  
14 as of July 9 or July 11.

15 JUDGE BLOCH: There being no further matters to  
16 cover today, I'd like to thank the parties for their  
17 participation. Today's prehearing conference is adjourned.

18 [Whereupon, at 5:05 p.m., the prehearing  
19 conference was adjourned.]

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REPORTER'S CERTIFICATE

This is to certify that the attached proceedings  
before the United States Nuclear Regulatory  
Commission  
in the matter of:

NAME OF PROCEEDING: Georgia Power Company  
(Vogtle Electric Generating  
Station, Units 1 & 2)

DOCKET NUMBER: 50-424-OLA-3

PLACE OF PROCEEDING: Bethesda, MD

were held as herein appears, and that this is the  
original transcript thereof for the file of the  
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*Beta Shepard*  
\_\_\_\_\_  
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