

15511

DOCKETED  
USNRC

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

'94 AUG -2 P4:12

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

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

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

INTERVENOR'S MOTION TO COMPEL RESPONSE FROM NRC STAFF TO  
INTERVENOR'S SECOND SET OF INTERROGATORIES AND REQUEST FOR  
DOCUMENTS FROM STAFF OF THE U.S. NUCLEAR REGULATORY COMMISSION

Allen L. Mosbaugh, Intervenor in the above captioned case, pursuant to 10 C.F.R. § 2.720(h)(2)(ii), moves this Honorable Licensing Board to compel the Nuclear Regulatory Commission ("NRC") Staff to respond to Intervenor's Second Set of Interrogatories and Request For Documents To NRC Staff, filed on May 17, 1994.

I. ARGUMENT

NRC Staff stating objections to each and every request, failed to adequately responded to Intervenor's Second Set of Interrogatories and Request for Documents. Essentially the Staff asserted that the diesel generator issue, reduced to its "bare essentials" requires Intervenor to demonstrate that "Georgia Power Company personnel deliberately and intentionally lied in correspondence and reports to the NRC about the number of diesel

9408090322 940801  
PDR ADOCK 05000424  
G PDR

DS03

generator starts" after the March 20, 1990 site area emergency. NRC Staff's Response, p. 2. Intervenor strongly opposes this narrow characterization. The issues relevant to the admitted contention are more comprehensive than the Staff's current comprehension; they include facts and evidence concerning the character, competence, integrity, candor, truthfulness and willingness to abide by regulatory requirements of Southern Nuclear and its employees. See LBP-93-5, at pp. 9 and 14, 37 NRC 96, \_\_\_ (1993).

The Staff also objects to interrogatories and document requests that it believes seeks disclosure of information that "is not relevant to the issues admitted in this proceeding or reasonably calculated to lead to information that is relevant to admitted issues", citing to Federal Rule of Evidence 401. NRC Staff's Response, p. 2. It is well settled law that the interpretation of relevance for discovery purposes is "much broader than for evidentiary purposes." Cohn v. Taco Bell Corp., 147 F.R.D. 154, 157 (N.D. Ill. 1993) (Comparing Fed.R.Civ.P. 26(b)(1) with Fed.R.Evid. 401); see also, Stabilus v. Haysworth, Baldwin, Johnson & Greaves, 144 F.R.D. 258, 265 (E.D.Pa. 1992). The instruments of discovery under Rule 26 serve to "unearth facts or information pertaining to the existence and whereabouts of relevant facts." Mead Corp. v. Riverwood Natural Resources Corp., 145 F.R.D. 512, 516 (D. Minn. 1992). Rule 26 "contemplates the discovery of not only admissible evidence, but also material which is 'reasonably calculated to lead to the

discovery of admissible evidence.'" Schaap v. Executive Industries, Inc., 130 F.R.D. 384, 386 (N.D.Ill. 1990). "A clear distinction must be made between the right to obtain information in discovery and the right to use it at trial." Leksi, Inc. v. Federal Ins. Co., 129 F.R.D. 99, 104 (D.N.J. 1989). The federal rules contemplate liberal discovery to preserve the interest of just and complete resolutions of disputes. Katz v. Batavia Marine and Sporting Supplies, Inc., 984 F.2d 422, 424 (Fed. Cir. 1993). Therefore, relevance is not to be measured by the precise issues set out in the petition or what the Staff believes to be the "bare essential" issue but by the "general relevance to the subject matter and the legal issues present in the case." Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 351 (1978); See also Transcontinental Fertilizer Co. v. Samsung Co. LTD., 108 F.R.D. 650, 652 (E.D. Pa. 1985) and Marker v. Union Fidelity Life Ins. Co., 125 F.R.D. 121, 124 (M.D.N.C. 1989). Rule 26 "encompasses any matter that bears on, or that reasonably could lead to other matters that would bear on, any issue that is or may be in the case." Golden Valley Microwave Foods v. Weaver Popcorn, 132 F.R.D. 204, 212 (N.D. Ind. 1990) (citing Oppenheimer).

Mutual knowledge of all the relevant facts gathered by all the parties is essential and necessary to a proper decision in this proceeding. Hickman v. Taylor, 329 U.S. 495, 507 (1946) ("No longer can the time-honored cry of 'fishing expedition' serve to preclude a party from inquiring into the facts underlying his

opponent's case." ). Accordingly, the Staff should be compelled to respond to Intervenor's interrogatories as they are relevant and necessary to a proper decision in this proceeding.

Intervenor responds to the Staff's objections to each interrogatory. Intervenor sets forth the interrogatory question in its entirety, followed by an analysis of NRC Staff's stated objection.

#### INTERROGATORY 1

1. While Ken McCoy was stationed at the Grand Gulf facility, state whether Mr. McCoy (or as a result of anything attributed to Mr. McCoy, the licensee of the Grand Gulf facility) has ever been the subject of a NRC investigation for any act or omission involving Mr. McCoy that in any way relates or related to a potential or actual incident that in any way indicated that Mr. McCoy did not or may not have the requisite character, competence, integrity or honesty to continue in a management role at the Grand Gulf facility. If the answer is yes:

- a. Identify all past or current NRC employees involved with the incident(s);
- b. Provide a written statement of all material and pertinent facts surrounding any such incident(s);
- c. state whether the investigation or inquiry was terminated as a result of Mr. McCoy's voluntary departure from that facility, or otherwise explain the current status and the reason for not commencing, terminating or concluding any such investigation.
- d. produce all documents that in any way relate to this inquiry or investigation, including any and drafts of any memorandum, investigative notes, personal records, investigative summaries, compilation of materials, letters from individuals or any other documents of any sort related to Ken McCoy or NRC's investigation/inquiry of Mr. McCoy (on the licensee of the Grand Gulf facility).

#### ANALYSIS OF STAFF'S RESPONSE TO INTERROGATORY NO. 1

The Staff objects to this interrogatory on the basis that it is beyond the scope of the admitted issues, not relevant and not

necessary to a proper decision in this proceeding. The Staff also states that the investigation at Grand Gulf is not relevant to Mr. Mosbaugh's allegations.

Intervenor contends that this interrogatory is not beyond the scope of the admitted issues. Any information the Staff may have about Mr. McCoy's character, competence, integrity or honesty from a previous investigation will have a bearing on this case especially in regard to Licensee's decision to hire him and continue his employment after the site area emergency. Therefore this information is relevant and is necessary to a proper decision to this proceeding.

The Staff also objects to revealing the names of the NRC employees involved in the 1983 investigation of Grand Gulf because they believe it would not be relevant to this proceeding. However, the identity and location of persons having knowledge of any discoverable matter is discoverable. 10 C.F.R. §2.740(b)(1).

The Staff objects to Interrogatory 1.d by stating that the specific and stringent requirements of § 2.744(a), requires a statement of reasonable particularity as to why the document requested is relevant to the proceeding. This however misstates §2.744(a) which requires that the request "shall describe each item or category with reasonable particularity and shall state why that record or document is relevant to the proceeding." Intervenor contends that the description of documents requested in 1.d is more than sufficient to meet this requirement. Additionally, any documents meeting this request are highly

relevant to this proceeding as they may have a bearing on Mr. McCoy's character and his history of willingness to comply with NRC regulations.

INTERROGATORY 2

2. Answer in detail the following pertaining to the Vogtle Coordinating Group:

- a. the purpose of the Vogtle Coordinating Group;
- b. name all persons who are or have been members of the Vogtle Coordinating Group;
- c. when was the need for the Vogtle Coordinating Group determined and why;
- d. when was it created;
- e. produce the following documents and all documents, directly or indirectly, related to them:
  - i) all documents pertaining to the January 4, 1994 Vogtle Coordinating Group presentation to the NRC management;
  - ii) all documents pertaining to the February 2, 1994 meeting with the EDO;
  - iii) the Group Charter of September 16, 1993;
  - iv) the Group's Memorandum of December 17, 1993;
  - v) all drafts of the February 9, 1994 Vogtle Coordinating Group Analysis;
  - vi) all drafts of the documents listed in i-v.

ANALYSIS OF STAFF'S RESPONSE TO INTERROGATORY NO. 2

The Staff objects to this interrogatory on the basis that it seeks information that is not relevant to the admitted basis for Intervenor's contention and is not necessary for a proper decision in this proceeding. The Staff also states that the Vogtle Coordinating Group is not at issue in this proceeding. Intervenor contends that information pertaining to the Vogtle Coordinating Group is at issue in this proceeding. The integrity of the Coordinating Group is an essential issue in this case. Intervenor's ability to impeach Staff's position is as important as its ability to impeach Licensee's position. Intervenor will litigate as vigorously against the Staff as it will against

Licensee. The Staff has stated that the Coordinating Group Analysis is the Staff's position and not the OI Report.<sup>1</sup> Therefore information relating to the creation and purpose of the Coordinating Group is extremely relevant to this proceeding. If the NRC had no authority to create such an entity or its authority was misused in any way Intervenor as well as Licensee should be informed as it bears on the weight that should be given to any evidence the Staff plans to introduce based on the Coordinating Group Analysis.

The Staff also objects to identifying the persons on the Coordinating Group. As stated above, the identity and location of persons having knowledge of any discoverable matter is discoverable. 10 C.F.R. §2.740(b)(1).

All requested documents are absolutely significant because Intervenor believes certain findings of the Coordinating Group may not be accurate. This assertion is based on developments occurring the during the course of deposing GPC and Southern Nuclear managers and employees during the last month.

#### INTERROGATORY 3

Interrogatory 3 is withdrawn.

#### INTERROGATORY 4

4. Answer in detail the following pertaining to the OI Report, Case No. 2-90-020R:
  - a. list all persons involved in its creation and the extent of their involvement:

---

<sup>1</sup> At the July 29, 1994 Staff clarified this to mean that the Coordinating Group Analysis is the Staff's position on the OI Investigation. This does not effect the relevancy of the essential information this interrogatory seeks to elicit.



- b. produce all documents used in its creation or which resulted from its creation.

#### ANALYSIS OF STAFF'S RESPONSE TO INTERROGATORY NO. 4

The Staff objects to providing a list of persons involved in the creation of the OI Report and to states that all documents used in the creation of the OI report are cited in the document and those exhibits have already been provided to Intervenor. Once again, the identity and location of persons having knowledge of any discoverable matter is discoverable. 10 C.F.R.

§2.740(b)(1). Persons involved in the creation of the OI Report made analysis of the evidence, conducted interviews of key witnesses, and have or had access to information which is directly relevant or reasonably calculated to lead to relevant information. Additionally, if any documents exist that were used in the creation of the OI Report and were not cited in the document Intervenor request they be produced as they are clearly relevant and significant to this proceeding and well as necessary for a proper decision.

#### INTERROGATORY 5

5. Answer in detail the following pertaining to the Notice of Violation:

- a. list all persons involved in its creation and the extent of their involvement;
- b. produce all documents used in its creation or which resulted from its creation;
- c. produce all information reviewed by any member of the Commission or the Commission's staff prior to the issuance of the of the Notice of Violation;
- d. list every contact made pertaining to the Notice of Violation, the subject of each such contact(s) and produce all documents, including drafts, pertaining to such contact(s).



ANALYSIS OF STAFF'S RESPONSE TO INTERROGATORY NO. 5

The Staff objects to identifying the persons involved in the creation of the Notice of Violation. Information pertaining to the NOV is relevant to Intervenor's admitted contention, necessary to a proper decision in this proceeding and therefore discoverable. Again without question persons involved in creation of the NOV were in a position to review all the evidence. Hence, the identity and location of persons having knowledge of any discoverable matter is discoverable. 10 C.F.R. §2.740(b)(1). This information is important because it will enable Intervenor to either support or impeach the Staff's position. Every document directly or indirectly related to the NOV is unquestionably relevant and it is necessary to a proper decision that they be produced to Intervenor.

INTERROGATORY 6

6. State what regulatory authority or authorities the NRC relied on to create the Vogtle Coordinating Group.

ANALYSIS OF STAFF'S RESPONSE TO INTERROGATORY NO. 6

The Staff objects to this interrogatory on several grounds. The Staff argues that the authority to used to create the Vogtle Coordinating Group is not an issue in this proceeding, that this information is not necessary to a proper decision or relevant to Intervenor's admitted contention. Intervenor contends that this information is sought for the purpose of determining if the NRC acted within its authority in creating the Vogtle Coordinating Group. This bears on the weight and credibility of the

Coordinating Group's Analysis and is therefore relevant and necessary to a proper decision in this proceeding. See also response to objection to interrogatory 2, above.

INTERROGATORY 7

Interrogatory number 7 is withdrawn.

INTERROGATORY 8

8. Provide all internal memorandum concerning the legality of creating the Vogtle Coordinating Group or any prior similar entity.

ANALYSIS OF STAFF'S RESPONSE TO INTERROGATORY NO. 8

See analysis of Staff's response to interrogatory 6, above.

INTERROGATORY 9

9. State in detail whether at the time the NRC Staff created the Vogtle Coordinating Group, the NRC Staff had been advised of the Office of Investigation findings.

ANALYSIS OF STAFF'S RESPONSE TO INTERROGATORY NO. 9

The Staff argues that the information requested by this interrogatory is not relevant or necessary to a proper decision in this proceeding. Intervenor contends that this information is relevant because of the difference in the severity of the OI Report and the Vogtle Coordinating Group Analysis. Intervenor is merely inquiring into the NRC's creation of an entity which has reached conclusions about the events of surrounding the March 20, 1990 SAE that are less critical of GPC management than the conclusions of the OI Report. This is an attempt by Intervenor to determine the Staff's version of the relevant facts and the purpose which they can serve. See Mead Corp., 145 F.R.D. at 516.

Therefore this information is discoverable and necessary to a proper decision.

INTERROGATORY 10

10. State what regulatory authority empowered the Vogtle Coordinating Group, or any other organization of the NRC Staff to negate a finding of the Office of Investigation. Identify and produce all contacts and documents used and created in answering this interrogatory.

ANALYSIS OF STAFF'S RESPONSE TO INTERROGATORY NO. 10

See analysis of Staff's response to interrogatory 9, above.

INTERROGATORY 11

Interrogatory number 11 is withdrawn.

INTERROGATORY 12

Interrogatory number 12 is withdrawn.

INTERROGATORY 13

Interrogatory number 13 is withdrawn.

INTERROGATORY 14

Interrogatory number 14 is withdrawn.

INTERROGATORY 15

Interrogatory number 15 is withdrawn.

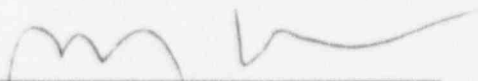
INTERROGATORY 16

Interrogatory number 16 is withdrawn.

III. CONCLUSION

For the forgoing reasons Intervenor respectfully request that this Board compel NRC Staff to respond to the request for interrogatories.

Respectfully submitted,



---

Michael D. Kohn  
Mary Jane Wilmoth  
KOHN, KOHN AND COLAPINTO  
517 Florida Avenue, N.W.  
Washington, D.C. 20001-1850  
(202) 234-4663

Attorneys for Intervenor

Dated: August 1, 1994

301\reply.nrc

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

DOCKETED  
USNRC

'94 AUG -2 P4:12

In the Matter of )

GEORGIA POWER COMPANY )  
et al., )

(Vogtle Electric Generating )  
Plant, Unit 1 and Unit 2) )

Docket Nos. 50-484-OLA-3 )  
50-485-OLA-3 )  
SECRETARY )  
SERVICE )  
BRANCH )

Re: License Amendment )  
(transfer to Southern Nuclear)

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

CERTIFICATE OF SERVICE

I hereby certify that Intervenor's Motion to Compel Response From NRC Staff to Intervenor's Second Set of Interrogatories and Request for Documents From Staff of The U.S. Nuclear Regulatory Commission has been served this 1st day of August 1994, by first class mail upon the persons listed in the attached Service List, with a curtesy copy by facsimile as indicated by "\*".

By:

*Mary Jane Wilmoth*  
Mary Jane Wilmoth  
KOHN, KOHN & COLAPINTO, P.C.  
517 Florida Ave., N.W.  
Washington, D.C. 20001  
(202) 234-4663

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

In the Matter of )  
)

GEORGIA POWER COMPANY )  
et al., )

(Vogtle Electric Generating )  
Plant, Unit 1 and Unit 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

SERVICE LIST

\*Administrative Judge  
Peter B. Block, Chair  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Administrative Judge  
James H. Carpenter  
933 Green Point Drive  
Oyster Point  
Sunset Beach, NC 28468

Administrative Judge  
Thomas D. Murphy  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

\*Charles A. Barth, Esq.  
Office of General Counsel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

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

Ernest L. Blake, Jr.  
David R. Lewis  
SHAW, PITTMAN, POTTS &  
TROWBRIDGE  
2300 N Street, N.W.  
Washington, D.C. 20037

\*Office of the Secretary  
Attn: Docketing and Service  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

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

301\cert.lis