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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, Unit 1 and Unit 2)	Re: License Amendment (transfer to Southern Nuclear)
	ASLBP No. 93-671-01-OLA-3

INTERVENOR'S RESPONSE TO GPC'S PROPOSED SCHEDULE TO COMPLETE PROCEEDING

I. INTRODUCTION

In accordance with the Licensing Board's instructions at the July 29, 1994, status conference Georgia Power Company provided Intervenor with its Proposed Schedule to Complete Proceeding, dated August 2, 1994. Licensee, in its proposed schedule, contends that discovery has been ongoing since April of 1993, and Intervenor has accumulated an immense amount of information through discovery and should therefore be ready to proceed to a November hearing. Licensee also contends that taking time now to reach stipulations, or any other less formal means of reaching consensus on the contents of the tape transcripts, would unduly prolong this proceeding. Licensee finally proposed a schedule that did not take into consideration the ongoing NRC Staff review of Licensee's response to the NOV and, more troubling, failed to consider many of the procedural requirements set forth in 10 C.F.R. Part 2, which governs licensing hearings.

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II. RESPONSE

Licensee's proposed schedule is an attempt to truncate the proceeding by proposing a wholly unreasonable schedule in hoping that the ASLB will try to make a compromise between the parties proposed schedules that would benefit Licensee. In this respect, Licensee's proposed schedule should be discounted in its entirety as it appears to have been filed merely for posturing (an example of this is the fact that Licensee's proposed schedule fails to take into consideration the regulations governing this proceeding -- the regulatory requirements are addressed in Intervenor's proposed schedule). Specifically, Licensee did not seriously contemplate the requirements of 10 C.F.R. §2.743(b)(1) which sets forth the requirements of prefiled testimony. Additionally, the Licensee did not even mention or allot any time whatsoever for the parties to formulate the cross examination plan required under 10 C.F.R. § 2.743(b)(2). Worse, the Licensee also did not fully take into consideration the requirements concerning marking and pre-filing exhibits. 10 C.F.R. § 2.743(f). Given the fact that over 40 depositions have been conducted, over 60,000 pages of documents exchanged, the NRC-OI has issued a 100 page single spaced report (accompanied by thousands of pages of exhibits) and given the open nature of the Notice of Violation (NOV) and the Demands for Information (DFI), the failure of GPC to properly schedule for a cross examination plan, or the exchange of exhibits demonstrates that GPC's proposed schedule cannot be

taken seriously and only represents posturing on the part of Licensee.

GPC's abandonment of any attempt to stipulate to the admissibility of exhibits, to narrow issues, and other standard prehearing processes which parties typically engage in preparation for prolonged or complex litigation, evidences a profound ignorance of the well accepted procedures for narrowing the scope of live testimony and ensuring that the ends of justice are met through an adjudicatory process. [1]

Licensee fails to take cognisance of the major reason why this proceeding was delayed -- which has nothing to do with the Intervenor. The fact of the mater is that the primary cause of delay has not been the fault of any party, but is a result of the required analysis performed by NRC Staff (and OI). For example, it was GPC which wanted to delay the depositions related to the diesel generator issue until tape recordings related to that issue were produced. This delay, directly caused by Licensee, were not caused by or the fault of the Intervenor. Similarly, the NRC OI Report, although completed in December, 1993, was not provided to the Intervenor until May of 1994. This five month

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[1] Incredibly, GPC's scheduling order does not allot time for the prehearing conference 10 C.F.R. §2.752. Among the items typically discussed at such hearings include "simplification" and "specification" of the issues and "obtaining stipulations" concerning the "authenticity of documents" See 10 C.F.R. §2.752(a)(1), (3), (4). Given the large number of documents identified by parties the failure of GPC's scheduling order even to mention attempts to reach agreement as to the authentication of documents is an invitation to a disorganized and unwieldy hearing which will not serve interests of justice and truth.

delay occurred over the strenuous objections of the Intervenor, who had requested that the report be issued immediately upon its completion.

Moreover, throughout this proceeding, GPC has requested and obtained postponement of important filings. As mentioned above, GPC's request to have access to the tape recordings prior to allowing depositions related the diesel generator issues delayed the deposition schedule by at least one year. Likewise, GPC requested a number of enlargements of time to respond to written discovery requests. Some of these delays have occurred within the last several months and were often in excess of extensions of over 30 days. Significantly, although the NRC rules require that licensee respond to NOV's and DFI's within twenty days, GPC requested a sixty (60) day enlargement of time to respond to the NOV's and DFI's. These enlargements have and will result in delays of this proceeding.[2]

The history of the discovery in this case also demonstrates the need for ample time for the parties to properly adjudicate the numerous issues relevant to this proceeding. Intervenor has submitted seven sets of interrogatory request to GPC related to diesel generators as well as those related to the illegal license transfer. Of these seven Intervenor has had to file motions to

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[2] Intervenor is not arguing that these requests for enlargement of time were improperly filed. Indeed, it is the Intervenor's position that, given the magnitude of the issues and evidence involved in this case, any attempt to steam-roll responses from any parties would raise a significant due process issue.

compel responses or complete answers for two and is awaiting the responses to the third.[3] The Intervenor has also served three request for admissions upon the Licensee. The Licensee, in negotiations with Intervenor's counsel, requested they not be made to answer Intervenor's May 17, 1994, request until June 30, 1994. Licensee then failed to meet this agreement and filed for an extension of time which resulted in the discovery period being extended by seven days. Intervenor has also served a total of four sets of interrogatories upon the NRC Staff. The First was filed on June 24, 1993 and NRC Staff responded on July 2, 1993 by uniformly objecting to each interrogatory. Intervenor was thus forced to file a motion to compel. Intervenor filed its second set of interrogatories on NRC Staff on May 17, 1994. NRC Staff also uniformly objected to each interrogatory once again forcing Intervenor to file a motion to compel. Intervenor is awaiting the Staff's response to his July 8, 1994, set of interrogatories. Intervenor has also served two requests for admissions from the NRC. The Staff's responded to Intervenor's first request for admissions dated May 17, 1994 on July 15, 1994, by objecting to answering any of the requests. Intervenor has filed a motion to

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[3] Licensee filed a motion for protective order to enable not to have to answer Intervenor's fifth set of interrogatories to which Intervenor has filed a response. The parties are awaiting a ruling from the Board in this matter. On August 8, 1994, the Board ordered Licensee to file response to Intervenor's Seventh Set of Interrogatories. Licensee's delay in filing these responses will further delay Intervenor's ability to properly prepare his case.

compel responses to this request. Intervenor is awaiting the Staff's response to his July 7, 1994 request for admissions.

The Licensee has only recently responded to the NOV and Intervenor is sifting through the information included in this response to determine if there is good cause for any further request for discovery. In submitting its proposed schedule GPC fails to consider the requirement 10 C.F.R. §2.205(d) which states that the Deputy Executive Director for Operations will issue an order stating the final position of the NRC on the Notice Of Violation and Demands For Information and the impact such a filing may have on the live hearing, prefiled testimony and cross examination plans. In accordance with 10 C.F.R. § 2.743(g) this order is to be submitted into evidence along with any report submitted by the Advisory Committee on Reactor Safeguards in the proceeding and/or any safety evaluation prepared by the Staff.

As well as conducting written discovery, Intervenor has conducted more than 40 deposition during this time period. Intervenor now has to make an analysis of the information obtained in these depositions which will include viewing it in the context of the tape recordings, written discovery responses and all other information Intervenor has obtained. Completing this task will enable Intervenor to file prehearing testimony and a cross examination plan as required by 10 C.F.R. §2.743(b) to create an adequate record to assist the Board in reaching its

final decision. This process will be time consuming not only for the Intervenor but for all the parties.

In addition to making an analysis of this extensive discovery, Intervenor has been reviewing numerous tape recordings. It was not until December, 1993 that the NRC finally returned to Mr. Mosbaugh the 76 tapes which were identified as having contained significant information related to this proceeding.

Unlike the NRC Staff, which has turned over to Intervenor all of the transcripts they have made of any taped conversation, GPC consistently refuses to release to the parties transcripts of conversations they have in their possession. The release of these transcriptions would significantly expiate these proceedings. GPC can hardly be heard complaining about delay when they refuse to voluntarily turn over transcripts which would unquestionably facilitate this proceeding.

Licensee asserts that the Staff's Coordinating Group Analysis states the Staff's position on the diesel generator issues in great detail. GPC's Proposed Schedule at p. 2. The Staff stated at the July 29, 1994, status conference that the Coordinating Group Analysis was only the Staff's position on the OI investigation and Report. Staff has objected to Intervenor's discovery request related to this Analysis and has thus left several unanswered questions for Intervenor. Intervenor therefore does not and cannot have a clear view of Staff's position on the diesel generator issues until the Staff has filed

its final order after its reviewing the Licensee's response to the Notice of Violation as required by 10 C.F.R. §2.205(d).

More significantly, GPC ignores the requirement that NRC Staff provide the ASLB with their safety analysis related to this proceeding prior to the hearing. 10 C.F.R. § 2.743(g). The NRC Staff's final disposition of the NOV and DFI issues is critical to the manner in which Intervenor will present his case.

Licensee is correct in stating that Intervenor has received an enormous amount of information in this proceeding. However, this brings up two important points. The first being that much of this information is still being digested. It takes an tremendous amount of time to carefully sort through the information Intervenor has collected to enable him to present a well defined case. The second point is that Intervenor is awaiting responses to much of its discovery request. The responses to these requests as well as the Licensee's response to the NOV, and the NRC's final order regarding the NOV may, if good cause is shown, lead to further discovery.

It is in the interest of the public that a full and adequate record be established. Therefore, the parties should not be railroaded into a hearing until such time as they have collected and analyzed all available information on these issues which would enable them to create a full and adequate record.

Licensee asserts that Intervenor is trying to extend discovery several months to reach stipulations on tape transcripts. This argument is misplaced. The Intervenor timely

filed discovery requests which would require Licensee to, in effect, stipulate to their interpretation of all of the tape recordings. Thus, Intervenor timely filed a request on the Licensee to interpret the contents of all of the tape recordings.

The Licensee has objected to this discovery on the grounds that answering the questions would be burdensome. In the alternative to this method of discovery, the Intervenor is requesting a simplified and less burdensome manner of reaching consensus on the contents of the tape recordings. This procedure, which is spelled out in Intervenor's Proposed Schedule, consists of the following steps:

1) The parties exchange all transcripts which are in their possession;

2) The parties meet to determine which transcripts are potentially relevant to the proceeding and work out a method to review tapes for which no transcript has been made;

3) The parties jointly submit to each other their interpretation of the relevant tape transcripts;

4) The parties meet to work out differences in the respective interpretations of the tapes;

5) A final version of each tape, which includes the agreed upon portions of each tape, and each parties interpretation of the non-agreed to portions, is prepared and filed with the ASLB.

Licensee is mistaken in its belief that the discovery period will have to be extended to accomplish this task. First, parties may stipulate to any relevant fact or the contents or

authenticity of any document at any stage of the proceeding. 10 C.F.R. § 2.753. Stipulations are not and never have been limited to the discovery process. Second, the contents of the tapes have been fully produced in discovery. An agreement as to the contents of the tapes is not at all part of discovery. It is part of the process to make the final hearing manageable. Finally, if GPC should reject this proposal, they should be required to respond, in full, the Intervenors timely filed and clearly relevant discovery requests concerning the contents of the tapes. Specifically, Licensee should embrace this process of reaching stipulations as it is far less burdensome than having to respond to Intervenor' discovery concerning the contents of the tapes.

The failure of GPC to take significant factors into consideration when developing their schedule and their attempt to have this Board completely ignore any effort to have the parties reach a consensus as to the contents of the tapes demonstrates that GPC's proposed schedule is unrealistic.

III. CONCLUSION

For the foregoing reasons Licensee's Proposed Schedule to Complete Proceeding should be discounted in its entirety as it is a mere attempt to bring an atmosphere of horse-trading into this process. Licensee's proposed schedule fails to take into account the required prehearing preparations and therefore it is inconsequential and should be disregarded.

Respectfully submitted,

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(Vogtle Electric Generating Plant, Unit 1 and Unit 2)	Re: License Amendment (transfer to Southern Nuclear)
	ASLBP No. 93-671-01-OLA-3

CERTIFICATE OF SERVICE

I hereby certify that Intervenor's Response to Georgia Power Company's Proposed Schedule to Complete Proceeding and Intervenor's Proposed Schedule have been served this 8th day of August 1994, by facsimile upon the persons listed in the attached Service List, except that it was filed by first class mail as indicated by "*".

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et al.,	)	
	)	Re: License Amendment
(Vogtle Electric Generating	)	(transfer to Southern Nuclear)
Plant, Unit 1 and Unit 2)	)	
	)	ASLBP No. 93-671-01-OLA-3

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