15576

Dated: August 12, 1994

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

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

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

INTERVENOR'S REPLY TO THE BOARD'S MEMORANDUM AND ORDER OF JULY 28, 1994 CONCERNING INTERVENOR'S MOTION TO ACCEPT ADDITIONAL FACTUAL BASIS

I. INTRODUCTION

On July 21, 1994, Licensee filed "Georgia Power Company's Answer to Intervenor's Motion to Accept Additional Factual Bases in Support of the Amended Contention" (hereinafter "GPC's Answer"). In response to this and NRC's Staff's response, this Honorable Board requested Intervenor, Allen Mosbaugh, to respond. The Board's Memorandum and Order, dated July 28, 1994, requested that Intervenor address two issues:

(1) that he understands the answers that have been filed and that (despite those answers) there is an important, genuine issue of fact that Georgia Power has materially misled the Staff of the Commission concerning the public safety and health, and

(2) that he did not unnecessarily delay the filing of this new basis for its contention.

M&O at pp. 4-5.

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Below Intervenor documents that there is a very important factual dispute concerning Licensee's misleading NRC Staff about matters directly related to public health and safety; that the Licensee violated the intent of technical specification when it opened the containment hatch; and that Intervenor has not unnecessarily delayed raising a factual basis related to the opening of the containment hatch.

II. A GENUINE FACTUAL DISPUTE EXISTS

1. GPC's Argument entitled "Alleged Violations of Technical Specifications" is flawed and Misleading.

At the heart of Intervenor's factual basis is the assertion that a commitment was made to NRC Staff after the Site Area Emergency to the effect that the equipment containment hatch would not be opened until such time as a diesel generator was determined to be fully operable. On the basis of this commitment, an actual violation of Technical Specifications ("TS") is not required. Nonetheless, the opening of the containment hatch constitutes a violation of plant Vogtle Technical Specifications.

Technical Specifications related to AC power sources address the operability of onsite emergency diesel generators and offsite power supplied through the Reserve Auxiliary Transformer ("RAT"). When the plant is in Mode 6 with RCS water level less than 23 feet above the top of the reactor vessel flange (i.e., during refueling outages). TS 3.8.1.2 states that the absolute minimum electrical requirements include no less than one source of offsite power feeding both safety buses with at least one diesel

generator fully operable. TS 3.9.8.2 addresses the operability of the plant's residual heat removal ("RHR") system while the plant is at Mode 6 and the water level above the top of the reactor vessel is less than 23 feet. Pursuant to TS 3.9.8.2, there must be two independent RHR electrical trains operable with no less than one train operating.

GPC's Answer at pages 6-7 misstates RHR system AC power operability requirements during Mode 6. Although GPC correctly points out the applicability of Definition 1.20 to the meaning of "operable" and "operability," GPC is seriously in error when it asserts that Definition 1.20, as it relates to TS 3.9.8.2, does not require one fully operable emergency diesel generator available to supply both trains of the RHR system. This assertion is false for the following reasons:

1) Definition 1.20 specifically states that for a system to be operable "all...attendant...electrical power...required for the system...are also capable of performing their related support function(s)" (emphasis added). The safety-related onsite and offsite power supplied to the RHR system is described in the FSAR. When Definition 1.20 refers to "all" "electrical power" it necessarily refers back to all electrical power supplying the RHR system that is described in the FSAR (i.e., Technical Specifications are included in the FSAR and relate back to the FSAR).

2) Plant Vogtle's Safety Analysis and its Technical Specifications are based on the assumption that offsite power is lost and a single component failure occurs (i.e., an accident taking out all offsite power, such as the failure of a transmission line feeding both offsite trains). Applying this basic assumption to the Technical Specifications in question, it is impossible to declare a train of the RHR operable when both diesel generators are determined to be inoperable. GPC's assertion is tantamount to asserting that it did not have an operational emergency diesel available to supply the RHR system when the Site Area Emergency occurred. This represents a continuing disregard to conservatively interpret Technical Specifications when significant safety issues are directly implicated.[1/]

3) The August 16, 1991 Memorandum from C. Rossi to W. Russell[2/] (Exhibit "A" to GPC's Answer) states at page 2 that: "A plant could meet its TS requirements for operation with reduced RCS inventory with one operable offsite power source and one operable diesel generator as long as power was supplied to

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1/ The Site Area Emergency occurred while the plant was at Mode 6. The failure of Diesel Generator 1A to run (Diesel 1A was considered to be fully operable and Diesel 1B was out of service) disrupted the operation of the RHR system and the core proceeded to heat.

2/ GPC asserts that Intervenor's failure to reference the August 16, 1991 memorandum represents a deficiency on the part of Intervenor because Intervenor must have known of the existence of this document. GPC's assertion is flawed. Mr. Mosbaugh was removed from plant Vogtle in September of 1990 and never received a copy of the memo and was unaware of its existence.

both safety buses. Both trains of the RHR would be operable, receiving power from their respective safety electrical buses" (emphasis added). This interpretation is consistent with the interpretation of Intervenor (i.e., TS requires at least "one operable diesel" capable of supplying both buses).

4) It is incredible that the Licensee would even assert that a system is operable with only offsite power. It is obvious that a single accident or event can totally disrupt all offsite power (Licensee should be more aware of this than anyone else as this fact caused the Site Area Emergency). In September of 1990, GPC made a presentation to NRC and further provided NRC documentation demonstrating that loss of electrical power during shut down can result in core boiling in as little as 8.3 minutes, with core uncovery commencing in 57 minutes. See Analysis Performed in Response to GL 88-017, attached hereto as Exhibit 1. Without backup emergency electrical power Plant Vogtle is vulnerable to a catastrophe.

As such, GPC's Answer at pages 6-7 wrongly asserts that both trains of the RHR are operable when both diesel generators are declared inoperable.

2. GPC Violated Technical Specifications

As outlined in the NRC August 16, 1991 Memorandum at pp. 2-3 (Exhibit "A" to GIC's Answer), at the time of the Site Area Emergency, GPC met its TS requirements with respect to RHR operability because at the time of the event an offsite power

source was operable and Diesel 1A was operable.[3] But, compliance with the TS 3.8.1.2 and TS 3.9.8.2 terminated at 17:20 CST, when plant operations issued a Limiting Condition of Operability ("LCO") against the remaining operable diesel, Diesel 1A.[4]

With both diesels inoperable, plant operations knowingly proceeded to open the containment hatch simply because keeping it closed would interfere with outage-related activities.[5] The act of opening the containment hatch constitutes a violation of the immediate action statements of TS 3.8.1.2 and TS 3.9.8.2.[6] Entering an immediate action statement means that the plant is at

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[3] At the time of the Site Area Emergency, Diesel 1B was under an LCO while undergoing maintenance overhaul. See LCO 1-90-310i. Diesel 1B's LCO was not removed until 3-28-90 at 15:27 CST.

[4] Diesel 1A was first declared inoperable at 17:20 CST on March 20, 1990 -- after the equipment containment hatch had been closed in response to the Site Area Emergency. See LCO 1-90-353i. Diesel 1A remained inoperable until April 1, 1990 at 11:54 CST. Id.

[5] The outage schedule was disrupted, inter alia, because the hatch needed to be opened to remove heavy equipment from containment so integrated leak rate testing ("ILRT") could commence.

[6] The immediate action statements of TS 3.8.1.2 states that plant operations will "immediately initiate corrective action to restore the required sources of OPERABLE status as soon as possible." The immediate action statement of TS 3.9.8.2 requires plant operations to "immediately initiate corrective action to return the required RHR trains to OPERABLE status, or to establish greater than or equal to 23 feet of water above the reactor vessel flange, as soon as possible."

its last echelon of defense before core damage.1/ Logic and reason demand that plant operations not engage in non-conservative activity which further degrades safety. Specifically, the hatch represented the last barrier of defense to a radiation release to the public. As such, intentionally taking non-conservative action that absolutely and knowingly degrades existing safety barriers after entering a Technical Specification "immediate" action statement constitutes a violation of the intent, meaning and purpose of that Technical Specification.

3. GPC Intentionally Breached an Oral Commitment made to NRC that it would not Open the Equipment Containment Hatch Until a Diesel Generator and RAT were Fully Operable

GPC's argument concerning the alleged breach of commitments made to NRC concerning the opening of the containment equipment hatch is flawed. First, GPC asserts that the statement of Mr. Frederick constitutes "double hearsay." GPC Response at p. 8. This assertion is false. Mr. Frederick was present when the statement was made during the regular course of business and his statement constitutes an admission of a party opponent.

1/ Once an immediate action statement is entered, plant operations must take the required immediate action to restore a safe configuration. Taking non-conservative action in response to an immediate action statement diverts resources and impacts on the immediate ability to respond. To take non-conservative action merely to improve scheduling, quicken restart or to improve earnings violates the most profound principle of nuclear safety and represents an unwarranted and invasion of the public's right to the conservative and safe operation of a nuclear facility.

Intervenor is not relying on Mr. Mosbaugh's testimony of what Mr. Frederick stated, but is rather directly relying on Mr. Frederick's statement itself. By definition, an admission by a party opponent does not constitute "hearsay." See Fed. R. Civ. Pro. 801(d)(2). Mr. Frederick's statement constitutes a manifestation of a belief and was made by an employee of a party opponent concerning a matter within the scope of his work. As such, Mr. Frederick's testimony does not constitute hearsay under the Federal Rules of Evidence.[8/] GPC further states that Mr. Frederick's statement does not indicate that he was referring to "a 'commitment' to the NRC." GPC Answer at p. 9. But, GPC fails to mention that the partial Tape 25 transcript clearly indicates Mr. Frederick's reference to a briefing between management and NRC and that reference is made repeatedly during the interchange between Frederick and Intervenor.[9/] Moreover, Mr. Frederick is a very experienced manager at the site who held the position of Site Quality Assurance Manager. Mr. Frederick certainly knows

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8/ GPC fails to assert that it did not make the commitment to the NRC, but rather argues that if it did, the fact that four years have elapsed makes Intervenor's raising this issue prejudicial. Sufficient evidence exists to demonstrate that a commitment was made, i.e., the statement of Mr. Frederick and which was corroborated as a result of Mr. Mosbaugh's refreshed recollection of the events.

9/ Frederick states that management "had the big brief[ing] with the NRC" and thereafter again states that he asked management how the hatch could be opened after "management briefed the NRC" about the diesel operability. See Partial Transcript of NRC Tape No. 25 (appended as Attachment 1 to Intervenor's opening brief).

what it means to make a commitment to the NRC and his statement to Mr. Mosbaugh clearly indicate that that is what occurred.

Moreover, additional evidence corroborates Mr. Frederick's statement. The "War Room Unit 1 Refueling Outage Log" mirrors Mr. Frederick's understanding that the equipment hatch could not be opened until a diesel was declared fully operable. The War Room Log entry made by Thomas V. Green[10/] following the Site Area Emergency states:

> Outage work is slowly getting back to normal after emerg. termination. Before mid loop work can continue or equip. hatch be opened, AA02 and BA03 must be in normal alignment from respective RATS and A diesel be fully operable with questions about low jacket [water] pressure trips having been answered.

War Room Log, 3/20/90 day entry, at p. 51 (copy attached as Exhibit 2).

Mr. Green's statement is consistent with Mr. Frederick's and corroborates the fact that management knew that the opening of the equipment hatch was improper until such time as a diesel was fully operable.

Finally, the fact that both the control log and the shift supervisor log exclude mentioning the opening and closing of the equipment containment hatch represents such a radical departure from normal operating procedure as to constitute evidence of

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[10/] The quoted segment appears to be the handwriting of Mr. Green (whose initials also appear at the bottom of the page 51). At the time in question Mr. Green was assigned as the day shift senior outage manager, reporting directly to the plant manager. The night shift senior outage manager at the time was Barney Beasily (reference to "Barney" in the tape 25 transcript refers to Mr. Beasily).

intent (i.e., deleting reference served to impede NRC from readily determining the timing of the opening and closing of the hatch).

4. GPC's Argument that Its Motivation for Opening the Hatch Was to Enhance Safety is False

GPC falsely alleges that its motivation for opening the hatch was motivated by a desire to increase the plant's margin of safety: "opening the hatch was important to support expeditious work to tension the reactor vessel head, fill and vent the RCS system to increase inventory, and make the steam generators available for heat removal should they be required" and that the opening of the hatch "improved the plant's margin of safety." GPC Answer at p. 11.

GPC's assertion that the hatch needed to be opened to tension the reactor vessel head is false. All the equipment needed to accomplish this task was already inside the containment area when the hatch was closed. Moreover, before the Site Area Emergency began the reactor head was already tensioned and was awaiting the final pass.

GPC's assertion that the hatch had to be opened for filling and venting the RCS if also false. These tasks are accomplished via valve manipulation and in no way require the opening of the hatch. Indeed, most valves are located outside the containment area, and to the extent a valve was located within the containment area access was available through the personnel access hatch.

GPC's assertion that the hatch had to be opened to make the steam generators available for heat removal is likewise false, because this too is accomplished through valve manipulation, which would not require the opening of the hatch.

Thus, all the alleged reasons the hatch had to be opened to "improve the plant's margin of safety" represent misstatements to the Board and a continuing coverup of GPC's true motivation -- outage scheduling demands required that the hatch be opened.

5. GPC's Waiver of Technical Specifications Was False by Omission and Commission

On March 22, 1990 Licensee, under the signature of Executive Vice President R. P. McDonald, submitted a written request for a waiver of TS 3.0.4 as it applies to TS 3.8.1.2 requirements of AC emergency power trains. The stated reason was that the waiver would allow GPC to place the plant in a safer condition by allowing "tensioning of the Reactor Pressure Vessel head which also allows filling and venting of the Reactor Coolant System" and that "[f]illing and venting of the RCS will result in an increase water inventory and make the steam generators available for heat removal should they be required" which "improves the margin of safety." See Attachment B to GPC's Answer. This request is false by omission and commission.

First, the waiver falsely states that it was needed to fill and vent the RCS to improve the margin of safety. In a taped March 22, 1990 conversation between the Plant Vogtle General Manager, Mr. William Shipman and Intervenor, Mr. Shipman stated

that the RCS could be filled and vented without the waiver, and that the tensioning of the head could also commence without the issuance of the waiver.

Second, it is false by omission because the request did not portray the actual plant conditions, i.e., that the containment hatch had already been opened.

Third, the waiver only referenced TS 3.8.1.2 and did not address TS 3.9.8.2. This omission prevented NRC from considering the prohibited action under TS 3.9.8.2 and prohibited NRC from considering whether the waiver represented unsafe or non-conservative action under this TS. Indeed, to have obtained a waiver of TS 3.9.8.2 GPC could not state that there was no increase in the probability of occurrence or consequence of an accident and that there was no significant safety hazard for a TS 3.0.4 waiver to the RHR TS 3.9.8.2. Thus, the waiver materially failed to mention TS 3.9.8.2 and failed to advise NRC that there would be an increased risk to safety.

III. INTERVENOR DID NOT UNNECESSARILY DELAY FILING THE NEW BASIS

Intervenor did not unnecessarily delay the filing of the new factual basis to support its admitted contention. Intervenor and his counsel filed a motion to accept additional factual basis as soon as possible after determining that a factual issue existed.

Intervenor had no independent recollection of events contained on Tape 25. Licensee filed a request for stipulations in February of 1994 and referenced this tape. In reviewing Tape

25, he uncovered in an untranscribed segment Mr. Frederick's statements. Tape 25 was given to the NRC by Mr. Mosbaugh in 1990 along with his other tape recordings as evidence related to allegations (including the allegation that Licensee would violate technical specifications to enhance outage scheduling). NRC supposedly reviewed the tape for evidence related to Mr. Mosbaugh's allegations and returned tape 25 to Mr. Mosbaugh. Mr. Mosbaugh immediately provided GPC with a full and complete copy of tape 25. NRC's return of the tape was premised on the fact that it did not contain evidence related to Mr. Mosbaugh's allegations. From 1990 until 1994, Mr. Mosbaugh did re-listen to Tape 25, and did so for the first time when its relevance to the proceeding was identified by GPC in a request for stipulations concerning the diesel generator issue. At that point in time Mr. Mosbaugh began gathering necessary documents (including the relevant TS and information concerning the timing the hatch was opened). At that point Intervenor's counsel advised the parties of the issue and attempted to begin discovery on this matter. GPC objected and Intervenor filed a motion seeking to admit the issue as part of the factual basis of the contention.

Finally, there is no reason why Intervenor would unnecessarily delay the filing of a new factual basis that supports his contention. The delay is solely attributable to time and resources that are needed to review hundreds of tape recordings. Unlike Licensee, who could and did utilize numerous individuals to review tape recordings, Intervenor was the only

individual available to review the tapes (his counsel could not identify voices and does not possess engineering expertise necessary to detect Technical Specification violations). The fact remains that all of the documentation Intervenor relies upon to support his factual basis was in the possession of the Licensee before this proceeding even commenced. Based on the current scheduling of this proceeding, Intervenor is certain that all discovery could be completed during the current illegal license transfer phase and well before the next phase of the proceeding commenced.

In sum, intervenor only became reacquainted with the factual basis while conducting and responding to discovery in this proceeding and he and his counsel took steps to commence litigating this new factual basis in an expeditious manner. Intervenor's counsel is not aware of a single effort done on the part of Intervenor or his counsel that would unnecessarily delay the filing of the factual basis once the underlying facts surfaced.

This Board should admit the new factual basis because, regardless of past delay. The allegations contained in the factual basis has a direct bearing on the ultimate issue of the character, competence, candor and credibility of the Licensee. The alleged facts would demonstrate a continuing pattern of willful misconduct and/or incompetence on the part of Licensee and its officials. This additional factual basis presents important information regarding significant issues on which the

Board should receive evidence to create a sound record in this proceeding.

IV. CONCLUSION

For the foregoing reasons, this Honorable Board should admit the factual basis as there exists a genuine issue of fact and law.

Respectfully submitted,

Michael D. Kohn
Kohn, Kohn & Colapinto, P.C.
517 Florida Ave., N.W.
Washington, D.C. 20001
(202) 1316X234-4663

Dated: August 12, 1994

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EXHIBIT 1

AGENDA

OPENING . . . . . R. P. MCDONALD

INTRODUCTION . . . . . C. K. MCCOY

A. EMERGENCY NOTIFICATION . . . . . KEN HOLMES

1. STATEMENT OF WHAT OCCURRED (TIME LINE), EQUIPMENT
2. ROOT CAUSE
3. CORRECTIVE ACTION
4. SIGNIFICANCE

B. EQUIPMENT HATCH CLOSURE . . . . . PAUL RUSHTON

1. DISCUSSION OF HATCH CLOSURE
2. ANALYSIS OF LOSS OF RHR
3. ACTIONS FOR UPCOMING OUTAGE AND FUTURE CONSIDERATION
4. SIGNIFICANCE OF MARCH 20 EVENT

C. D/G FAILURE . . . . . LEWIS WARD

1. STATEMENT OF FACTS
2. ROOT CAUSE
3. CORRECTIVE ACTION
4. SIGNIFICANCE

ANALYSIS PERFORMED IN RESPONSE TO GL88-017

TIME TO BOIL/TIME TO CORE UNCOVERY

ANALYSIS ASSUMPTIONS:

- 48 HOURS AFTER SHUTDOWN
- UPRATED CORE (3565 MWTH)
- NO CREDIT TAKEN FOR S/G'S AS A HEAT SINK
- NO CREDIT TAKEN FOR OTHER WATER SOURCES SUCH AS ACCUMULATORS, RWST, OR OTHER CHARGING SOURCES

RESULTS

- RCS HEATUP RATE OF 8.6°F./MINUTES
- ESTIMATED TIME TO BOIL OF 8.3 MINUTES
- ESTIMATED TIME TO CORE UNCOVERY OF 57 MINUTES

EXHIBIT 2

3/20/[illegible] Day

Outage work is slowly getting back to normal after [illegible] termination.
Before midloop work can continue & equip. hatch be opened, AA02 and BA03 must be in normal alignment from respective RATS and A diesel be fully operable with questions about low jacket H_2O pressure trips having been answered.

[illegible] [illegible] [illegible] [illegible] identified
3 [illegible] and [illegible]

[illegible]
- GSU [illegible] [illegible] was good
- [illegible] Phase Angle T-one was [illegible] [illegible]
[illegible] [illegible] a [illegible]
- 587 M1 relay checked good on C φ. B+A phases were off and were replaced
- Circ Water pump lift measured @ .056. The [illegible] data was .129

[illegible]
- 56 2 × 3 [illegible] [illegible] [illegible]. Gasket [illegible] be replaced on #2 56
- D. [illegible] B controls logic problems required replacing a check valve and solenoid
- [illegible] hatch [illegible]

[illegible]

page 1 of 2

3/21/90
Day

Questions Concerning Diesel A performance during yesterdays LOSP still being pursued as well as sequencer problems.
Finally got security, H/P, outage coord and Westinghouse working to a good game plan for moving "things" out the equip hatch such that the process is as smooth and efficient as possible.

Received waiver of Compliance from NRC on diesel specs for going into Mode 5. This will allow us to tension head and connect cavity and fill and vent RCS. We still have to resolve sequencer question related to the A diesel problems during yesterdays emergency.

Got the go ahead at 1750 to begin last pass on Rx studs.

B diesel should run tonite for 8 hour run and the Rx Stroke functional test.

Unit 2 is in startup, mode 2.

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CERTIFICATE OF SERVICE

I hereby certify that Intervenor's Reply to the Board's Memorandum and Order of July 28, 1994, Concerning Intervenor's Motion to Accept Additional Factual Basis has been served this 12th day of August 1994, by facsimile upon the persons listed in the attached Service List, with the exception that it was served by first class mail 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

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SERVICE LIST

Administrative Judge
Peter B. Bloch, 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

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