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

April 23, 1993

Docket Nos. 50-321 and 50-366
50-424 and 50-425
(10 CFR Section 2.206)

Michael D. Kohn, Esquire
Kohn, Kohn & Colapinto, P.C.
517 Florida Avenue, NW.
Washington, DC 20001

Dear Mr. Kohn:

This is in response to the September 11, 1990, "Request t[illegible]roceedings and Imposition of Civil Penalties for Improperly Transferring C[illegible]rol of Georgia Power Company's Licenses to the SONOPCO Project and for the Unsafe and Improper Operation of Georgia Power Company Licensed Facilities," (Petition) that you filed with the U.S. Nuclear Regulatory Commission (NRC) on behalf of Messrs. Marvin Hobby and Allen Mosbaugh (Petitioners), pursuant to Section 2.206 of Title 10 of the Code of Federal Regulations (10 CFR 2.206). You supplemented the Petition with submittals made on September 21 and October 1, 1990, and July 8, 1991.

The Petition contained allegations regarding: the management of the Georgia Power Company (GPC) nuclear facilities; illegal transfer of GPC operating licenses to Southern Nuclear Operating Company (SONOPCO); intentional false statements to the NRC regarding GPC's organizational chain of command and the reliability of a diesel generator; perjured testimony submitted by a GPC executive during a U.S. Department of Labor (DOL) proceeding under Section 210 of the Energy Reorganization Act; repeated abuse at the Vogtle facility of Technical Specification 3.0.3; repeated willful technical specification violations at the Vogtle facility; repeated concealment of safeguards problems from the NRC; operation of radioactive waste systems and facilities at Vogtle in gross nonconservative and questionable management practices; and retaliation by GPC against managers who make their regulatory concerns known to GPC or SONOPCO management. The supplements to the Petition of September 21 and October 1, 1990, forwarded exhibits and provided additional information regarding the alleged illegal transfer of operating licenses. Based on these allegations, Petitioners requested that the NRC institute proceedings and take swift and immediate action.

The July 8, 1991, supplement to the Petition repeated several of the earlier allegations, and also alleged that GPC's Executive Vice President made material false statements in GPC's April 1, 1991, submittal to the NRC that responded to allegations in the original Petition. The supplement also alleged that false statements had been made to the NRC by the same individual during a transcribed meeting on January 11, 1991, to discuss the formation and operation of SONOPCO. Based on these allegations, Petitioners requested the NRC to take immediate steps to determine if GPC's current management has the requisite character, competence, fundamental trustworthiness, and commitment to safety to continue operating a nuclear facility.

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Upon review of the Petitioners' allegations, I have determined that certain issues are capable of resolution now and that issuance of a Partial Director's Decision is appropriate. I have not made a final determination on those issues involving matters currently before the DOL; such issues are being deferred until DOL has had an opportunity to reach a decision regarding those matters. Nor have I made a final determination about Petitioners' claim that GPC made intentional false statements to the NRC about the reliability of the diesel generators. Resolution of this issue will require completion of an investigation being conducted by the Office of Investigations before I determine what action, if any, is appropriate. However, I have made a decision on those issues for which the facts are sufficiently developed as a result of NRC inspections and other reviews.

As discussed in this Partial Director's Decision, I find that certain concerns raised by the Petitioners are partially substantiated. Violations of regulatory requirements have occurred in the operation of the Vogtle facility. A number of violations were identified and one civil penalty has been issued to GPC for certain of these violations. To this extent, the Petitioners' request for action pursuant to 10 CFR 2.206 is granted.

However, I have also determined that no unauthorized transfer of the Vogtle operating licenses has occurred, and that the GPC nuclear facilities are being operated in accordance with NRC regulations and do not endanger the health and safety of the public. Additionally, based on the NRC staff's review of information available to date, I conclude that none of the issues decided in this Partial Director's Decision calls into question the licensee's character, competence, fundamental trustworthiness, or commitment to safety in the operation of its nuclear facilities. Therefore, I decline to take any further action with respect to the issues decided in this Partial Director's Decision. To this extent, the Petitioners' request for action pursuant to 10 CFR 2.206 is denied.

A copy of the Partial Director's Decision will be referred to the Secretary for the Commission's review in accordance with 10 CFR 2.206(c) of the Commission's regulations. For your information, I also have enclosed a copy of the notice regarding this Partial Director's Decision, which has been filed with the Office of the Federal Register for publication.

Sincerely,

Frank J. Miraglia

Frank J. Miraglia, Acting Director
Office of Nuclear Reactor Regulation

Enclosures:
1. Partial Director's Decision (DD-93-08)
2. Federal Register Notice

cc w/enclosures:
See next page

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DD-93-08

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF NUCLEAR REACTOR REGULATION
Dr. Thomas E. Murley, Director

In the Matter of	)	
	)	
GEORGIA POWER COMPANY, ET AL.	)	Docket Nos. 50-321,
	)	50-366,
(Vogtle Electric Generating Plant,	)	50-424,
Units 1 and 2)	)	and 50-425
	)	
(Hatch Nuclear Plant,	)	(10 CFR 2.206)
Units 1 and 2)	)	

PARTIAL DIRECTOR'S DECISION PURSUANT TO 10 CFR 2.206

I. INTRODUCTION

On September 11, 1990, Michael D. Kohn, Esquire, filed with the U.S. Nuclear Regulatory Commission (NRC) a "Request For Proceedings and Imposition of Civil Penalties for Improperly Transferring Control of Georgia Power Company's Licenses to the SONOPCO project and For the Unsafe and Improper Operation of Georgia Power Company Licensed Facilities" (Petition) on behalf of Messrs. Marvin B. Hobby and Allen L. Mosbaugh (Petitioners). The Petitioners are former employees of the Georgia Power Company (GPC or licensee), which operates and is part owner of the Vogtle Electric Generating Plant and the Hatch Nuclear Plant. The Petition was referred to the Office of Nuclear Reactor Regulation (NRR) for the Director of NRR to prepare a Director's Decision in accordance with Section 2.206 of Title 10 of the Code of Federal Regulations (10 CFR 2.206). The NRC received exhibits to support the Petition on September 21, 1990, and a supplement to the Petition on October 1, 1990.

The Petitioners made a number of allegations about the management of the GPC nuclear facilities. Specifically, the Petitioners alleged that (1) GPC illegally transferred its operating licenses to Southern Nuclear Operating Company (SONOPCO)[1]; (2) GPC knowingly included misrepresentations in its response to concerns of a Commissioner about the chain of command for the Vogtle facility; (3) GPC made intentional false statements to the NRC about the reliability of a diesel generator whose failure had resulted in a Site Area Emergency at Vogtle; (4) a GPC executive submitted perjured testimony during a U.S. Department of Labor (DOL) proceeding under Section 210 of the Energy Reorganization Act; (5) GPC repeatedly abused Technical Specification (TS) 3.0.3 at the Vogtle facility; (6) GPC repeatedly and willfully violated Technical Specifications (TSs) at the Vogtle facility; (7) GPC repeatedly concealed safeguards problems from the NRC; (8) GPC operated radioactive waste systems and facilities at Vogtle in gross violation of NRC requirements; (9) GPC routinely used nonconservative and questionable management practices at its nuclear facilities, and (10) GPC retaliated against managers who made their regulatory concerns known to GPC or SONOPCO management. The Petitioners requested the NRC to institute proceedings and take swift and immediate action based on these allegations.

On October 23, 1990, I acknowledged receiving the Petition and concluded that no immediate action was necessary regarding these matters. I made that determination based on completed and continuing NRC inspections and investigations of the licensee and particularly of the operation of the Vogtle

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[1]Southern Nuclear Operating Company is more commonly known today as "Southern Nuclear." However, to be consistent with the Petition, "SONOPCO" will be used throughout this Partial Director's Decision.

facility. I further informed the Petitioners that I would issue a Director's Decision on these matters within a reasonable time.

On February 28, 1991, the NRC requested the licensee to respond to the Petition. The licensee responded on April 1, 1991 (Response).

On July 8, 1991, the Petitioners submitted "Amendments to Petitioners Marvin Hobby's and Allen Mosbaugh's September 11, 1990, Petition; and Response to Georgia Power Company's April 1, 1991, Submission by its Executive Vice President, Mr. R. P. McDonald" (Supplement). In the Supplement the Petitioners alleged that GPC's Executive Vice President made material false statements in GPC's April 1, 1991, submittal to the NRC. The Petitioners also alleged that this same individual made false statements to the NRC at a transcribed meeting held on January 11, 1991, to discuss the formation and operation of SONOPCO. The Petitioners provided additional information about certain allegations made in the earlier Petition. The Petitioners requested a variety of relief in the Supplement, including a request that the NRC take immediate steps to determine if GPC's current management has the requisite character and competence to continue operating a nuclear facility. On August 26, 1991, I acknowledged receiving the Supplement and informed the Petitioners that no immediate action was required and that the specific issues raised in the Supplement would be addressed in my Director's Decision. On August 22, 1991, the NRC requested the licensee to respond to the Supplement. The licensee submitted its response on October 3, 1991 (Supplemental Response).

The Petitioners raise a large number of issues in their submittals. Some of the issues will require additional consideration by either the DOL or the NRC staff before a final decision is made. I do not, at this time, address

the allegations of discrimination raised by the Petitioners that are before the DOL.[2]

Nor am I prepared at this time to make a final determination about the Petitioners' claim that GPC made intentional false statements to the NRC about the reliability of a diesel generator. This issue will require further evaluation before I can determine what action, if any, is appropriate. I do address in this Partial Director's Decision the Petitioners' other issues of alleged wrongdoing because the facts are now sufficiently developed as a result of NRC inspections and other reviews.

Because the NRC staff has completed its review of a number of the issues and final conclusions have been reached, I am issuing a Partial Director's Decision with regard to those issues that are capable of final resolution now. For all issues not addressed herein, I intend to issue a supplement to this Decision when the considerations by the NRC staff and DOL are complete. My discussion and decision regarding issues for which final conclusions have been reached follow.

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[2]The NRC staff is aware of the decision by a DOL Administrative Law Judge recommending to the Secretary of Labor that the complaint of Mr. Hobby be dismissed with prejudice (Marvin B. Hobby v. Georgia Power Company, Case No. 90-ERA-30) and the decision by a DOL Administrative Law Judge recommending to the Secretary of Labor that the complaints of Mr. Mosbaugh be dismissed (Allen Mosbaugh v. Georgia Power Company, Case Nos. 91-ERA-1 and 91-ERA-11). Both recommended decisions are still pending before the Secretary of Labor.

II. DISCUSSION

A. Alleged Illegal Transfer of Licenses

(Petition Section III.1 with supplemental filing of October 1, 1990; July 8, 1991 Supplement, Section IV)

The Petitioners allege an illegal transfer to SONOPCO of the NRC licenses currently held by GPC that authorize operation of GPC nuclear facilities. Specifically, the Petitioners allege that GPC improperly transferred control of its nuclear licenses to SONOPCO. The Petitioners contend that Mr. Joseph M. Farley--who was an officer of GPC's parent company, The Southern Company, and its subsidiary, Southern Company Services,--was really the Chief Executive Officer (CEO) of SONOPCO and was, in fact, responsible for operating the GPC nuclear facilities, beginning with the first of three phases in the planned transition to SONOPCO.

A review of the history and background of the formation of SONOPCO is necessary to understand this issue.

The Southern Company is the parent firm of five electric utilities: Alabama Power Company (APC), GPC, Gulf Power, Mississippi Power, and Savannah Electric. Two of these utilities are associated with nuclear facilities at three different sites. GPC is the principal owner and the holder of licenses from the NRC to operate the Vogtle nuclear facility near Augusta, Georgia, and the Hatch nuclear facility near Baxley, Georgia. APC owns the Farley nuclear facility near Dothan, Alabama. The Southern Company also includes Southern Company Services, Incorporated, a wholly-owned service organization.

In 1988, The Southern Company established the SONOPCO project for the long-term purpose of establishing an operating company to eventually operate

the nuclear power generating plants that were then operated by GPC and APC. The establishment of a single operating company was to be accomplished in three phases. During Phase 1, SONOPCO--which had not yet received the approval of the Securities and Exchange Commission (SEC)--was formed by The Southern Company as a "project" to provide support services to the operating companies (GPC and APC). In Phase 2, which is now in effect for the Vogtle and Hatch facilities, SONOPCO continues to provide support services to the operating companies, but has become a legal entity, having obtained the approval of the SEC, and thereafter being incorporated by The Southern Company. Phase 3 will begin for the Vogtle and Hatch facilities (and is currently in effect for the Farley facility) once SONOPCO acquires NRC licenses to operate the nuclear facilities.

Because of delays, the transition occurred more slowly than first anticipated, and Phase 1 of the project lasted for approximately 2 years (1989 and 1990). During this phase, Mr. Joseph M. Farley was responsible for the administrative aspects of forming the new operating company. On February 24, 1989, Mr. Farley was elected Executive Vice President-Nuclear, of The Southern Company and Executive Vice President of Southern Company Services, Incorporated. Before this appointment, he had been President and Chief Executive Officer (CEO) of APC for almost 20 years.

Until SONOPCO acquired the NRC licenses, the GPC nuclear facilities were to remain under the direction of GPC President, Mr. A. W. Dahlberg, with a reporting chain downwards of Executive Vice President-Nuclear Operations (Mr. R. P. McDonald), Senior Vice President-Nuclear Operations (Mr. W. G. Hairston, III), and the vice presidents for the Vogtle and Hatch facilities (Messrs. C. K. McCoy and T. J. Beckham, respectively). The APC plants were to

remain under the direction of the APC President, with a similar chain downward of Mr. McDonald, Mr. Hairston, and the vice president for the Farley facility. Mr. McDonald and Mr. Hairston were officers of both APC and GPC.

During Phase 1, which began on or about November 1, 1988, technical support was provided to all three nuclear facilities by a common Technical Services group under a Vice President of Southern Company Services, Incorporated, who reported to the Executive Vice President, Mr. McDonald. Administrative support to all three facilities was provided by a common Administrative Services Group under another Vice President of Southern Company Services, Incorporated, who also reported to Mr. McDonald. This phase was to be effective until the SEC approved the creation of SONOPCO. Mr. Farley was not identified as having any responsibility for operating the GPC nuclear facilities during this phase. He was responsible for providing administrative services through Southern Company Services, Incorporated, and was also responsible for the formation of SONOPCO. Although not effective during Phase 1, Mr. Farley had been designated to become the President and CEO of SONOPCO when it was established.

Phase 2 began near the end of 1990 with the approval of SONOPCO as a legal entity by the SEC. Specifically, on December 14, 1990, the SEC approved The Southern Company's request of June 22, 1988, to form SONOPCO. SONOPCO was incorporated on December 17, 1990, and its officers were elected December 18, 1990. As part of Phase 2, GPC's Executive Vice President and Senior Vice President, Nuclear Operations (Messrs. McDonald and Hairston) became officers of SONOPCO and reported administratively to the President and CEO of SONOPCO, Mr. Farley. The Vice Presidents of each nuclear facility also became officers of SONOPCO. The Vice President of Technical Services and the Vice President

of Administrative Services, respectively, for Southern Company Services, Incorporated, became officers of SONOPCO, rather than officers of Southern Company Services, Incorporated. During this phase, GPC and APC retained their NRC licenses and the responsibility for operating their respective nuclear facilities.

Phase 3, during which SONOPCO was to have operating responsibility, was planned to begin for GPC nuclear facilities when the NRC licenses had been transferred to SONOPCO. The NRC approved license amendments on November 22, 1991, that authorized the transfer of licenses for the Farley facility from APC to SONOPCO. The amendment for the Farley facility was implemented within 90 days thereafter. GPC filed applications for similar amendments to transfer the licenses for operation of the Vogtle and Hatch facilities on September 18, 1992, and the NRC is currently reviewing these applications.

The Petitioners contend that during Phase 1 of the transition to SONOPCO, GPC, in effect, transferred control of its NRC licenses to the SONOPCO project. They base their claim, in part, on their having witnessed the daily operation of GPC's nuclear facilities at the site and at GPC's corporate offices. The Petitioners state that

> the actual chain of command was General Plant Manager George Bockhold (Vogtle) to SONOPCO Vice President McCoy; McCoy to SONOPCO's Senior Vice President, George Hairston, Hairston to SONOPCO's Executive Vice President and Chief Operations Officer, R. Patrick McDonald; McDonald to SONOPCO's Chief Executive officer, Mr. Farley.

In the supplementary filing of October 1, 1990, the Petitioners further contend that Mr. Farley, "chose the GPC Corporate Officers which would be staffing the SONOPCO project even though he is not an officer or employee of GPC." In the July 8, 1991, Supplement (page 20), the Petitioners assert that

Mr. McDonald has reported to Mr. Farley on administrative matters since the formation of the SONOPCO project.

In March 1988, GPC and APC met with NRC to discuss their plans to form a separate operating company, SONOPCO. On July 25, 1988, NRC met with GPC to discuss the corporate organization of SONOPCO and GPC, including the generic activities and initiatives involving the Vogtle and Hatch facilities. Enclosure 3 to the meeting summary prepared by NRC Region II, August 11, 1988, a Nuclear Operations-Transition Organization chart, shows the Vice President-Nuclear (Hatch), and the Vice President-Nuclear (Vogtle) reporting to Mr. W. G. Hairston, the Senior Vice President-Nuclear Operations and Mr. W. G. Hairston reporting to Mr. R. P. McDonald, the Executive Vice President-Nuclear Operations. On March 1, 1988, Mr. McDonald was elected a senior officer of GPC and named Executive Vice President-Nuclear, effective April 25, 1988. On May 4, 1988, Mr. W. G. Hairston was elected Senior Vice President-Nuclear Operations of GPC and Mr. C. K. McCoy was elected Vice President-Nuclear of GPC (GPC submittal, April 1, 1991, Attachment 1, Exhibit 4).

During December 19 through 21, 1988, with Phase 1 of the SONOPCO transition in effect, the NRC conducted an inspection of the corporate organization, responsibilities, and functions of SONOPCO at Birmingham, Alabama (Inspection Report Nos. 50-321/88-41, 50-366/88-41, 50-424/88-60, 50-425/88-77, 50-348/88-33, and 50-364/88-33). Part 3 of this report states:

> In preparation for combining the management of Vogtle, Hatch, and Farley into one organization, GPC has reorganized and moved the corporate nuclear operations to Birmingham.... Currently, the Executive Vice President and Senior Vice President for Nuclear Operations are officers of both GPC and APC.... The Vice Presidents for each of the three projects (Vogtle, Hatch, and Farley) report to the Senior Vice President of Nuclear Operations.

The transcript of the DOL proceeding[3] on the discrimination complaints of Mr. Hobby indicates that GPC President, Mr. Dahlberg, stated that the operation of GPC's nuclear facilities is his direct responsiblity; that Mr. McDonald takes his management direction from Mr. Dahlberg regarding the operation of GPC's nuclear plants; and that Mr. McDonald reports to Mr. Dalhberg for management operations dealing with GPC plants, (Proceeding Transcript at pages 305, 307, and 309). Mr. Farley stated that he does not have any responsibility for operating GPC's nuclear facilities and that Mr. McDonald does not report to him with respect to the operation of Hatch and Vogtle. (Proceeding Transcript at pages 567 and 568). Mr. McDonald stated that he reports to Mr. Dahlberg regarding the operation of GPC's nuclear facilities (Proceeding Transcript at pages 613 and 614).

In a deposition of May 5, 1990, taken in the same Hobby DOL proceeding, at pages 13 and 14, Mr. McDonald stated that he has no reporting responsibilities to Mr. Farley. In a Memorandum to Mr. H. B. Hobby of May 15, 1989, Mr. Fred D. Williams, the GPC Vice President for Bulk Power Markets, stated:

> Mr. R. P. McDonald reports to A. W. Dahlberg for operation and support activities of Plants Vogtle and Hatch. I have attached a copy of the most recent published organization chart showing the reporting. Mr. George Hairston reports to Mr. McDonald.

The Petition (pages 5 and 6) states that Mr. Hobby's claims regarding control of operating the nuclear facilities are based upon his having witnessed the day-to-day operation at GPC's corporate offices. Other than Mr. Hobby's observations of day-to-day operation, no direct evidence was offered to support the claim that Mr. McDonald reported to Mr. Farley

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[3]Marvin B. Hobby v. Georgia Power Company, Case No. 90-ERA-30.

regarding the operation of the Hatch or Vogtle nuclear facilities. Mr. Hobby acknowledged that he had no personal knowledge that Mr. McDonald received his direction from Mr. Farley (Hobby DOL Proceeding Transcript at page 239). He does, however, relate observations or assertions that he believes strongly suggest that SONOPCO was in control:

(1) In his Memorandum of April 27, 1989 (Exhibit A of the September 21, 1990, Supplement to the Petition), Mr. Hobby refers to a specific concern with regard to control that was expressed by one of the joint owners of the Vogtle facility, the Oglethorpe Power Corporation.

(2) Page 4 of Mr. Hobby's letter of June 8, 1989, to Mr. D. Wilkinson (Attachment 4 to the July 8, 1991, Supplement to the Petition) refers to coaching of the GPC corporate staff regarding the organizational reporting and control issue.

(3) Mr. Hobby states that on October 25, 1989, GPC's counsel advised him that statements in certain contractual documents should be reworded to avoid any accusation that SONOPCO was in control (October 1, 1990, Supplement to Petition, page 3).

(4) In the October 1, 1990 Supplement (pages 1 and 2), the Petitioners state that Mr. Farley was responsible for selecting GPC vice presidents associated with the SONOPCO project and also decided whether to transfer GPC employees from the SONOPCO project located in Birmingham, Alabama, to GPC Headquarters, in Atlanta, Georgia, even though he was not a GPC employee.

(5) Mr. Hobby was advised that "[I]t was Mr. Farley who would be making the call about the staffing of all GPC nuclear positions...." (October 1, 1990, Supplement to Petition, page 4).

(6) The Petitioners state that Vogtle project management assumed that Mr. Farley, and not Mr. Dahlberg, controlled Vogtle's operation, citing two reasons for this assertion: a statement by Mr. McCoy during a meeting on Vogtle Unit 1's Cycle 4 refueling outage that the outage philosophy was created by Mr. Farley and others; and a taped comment by a former SONOPCO manager stating his belief that, in case of a significant event at a GPC facility, the corporate duty manager would call Mr. Farley rather than Mr. Dahlberg (October 1, 1990, Supplement to Petition, pages 4 and 5).

(7) The Petitioners assert that Mr. McDonald has reported to Mr. Farley on administrative matters since the SONOPCO project was formed (July 8, 1991, Supplement to the Petition, page 20).

The NRC staff has reviewed the materials submitted by the Petitioners to support their claims. With regard to Items (1), (2), and (3) previously described, the Petition contains expressions of concern that, both within and outside of GPC, SONOPCO might be perceived as being in control of GPC nuclear operations. Such concerns would not necessarily be unusual during a transitional phase when, by necessity, the responsibilities of GPC and SONOPCO could closely coincide. As is discussed in the following paragraphs, the NRC staff has concluded that GPC retained control of its nuclear facilities during this transitional phase.

With regard to Items (4) and (5) above, the DOL depositions and testimony do provide some support for the contention that Mr. Farley participated to some degree in personnel decisions affecting both SONOPCO and GPC employees, including some who were elected as GPC corporate officers. Mr. Farley was Executive Vice President-Nuclear of The Southern Company (parent company of APC, GPC, and Southern Company Services) and was expected to become President

and CEO of the SONOPCO project upon its formation. Therefore, his involvement in personnel decisions for employees transferring into or out of the SONOPCO project is not unreasonable. Further, Mr. Farley's consultation with GPC on other GPC employees does not conflict with any NRC requirements. Both Mr. Farley and GPC have provided sworn statements and depositions that the ultimate responsibility regarding decisions on assignment of GPC employees rested with the authorized GPC management structure (i.e., Dahlberg, McDonald, et al.). In fact, GPC vice presidents, as officers of GPC, were approved by the GPC Board of Directors. On the basis of this information, the NRC staff concludes that the Petitioner's assertions about Mr. Farley's decisionmaking with respect to GPC employees constitute an insufficient basis for NRC action in this matter.

With regard to Items (6) and (7) above, the Petitioners express a specific concern that the Executive Vice President-Nuclear Operations was taking guidance and direction from the SONOPCO organization, as opposed to taking this guidance and direction from the GPC CEO.

The NRC staff has reviewed the Vogtle Final Safety Analysis Report, the Vogtle licenses, records of an NRC Special Inspection conducted to review the SONOPCO management organization, and testimony of key officials taken under oath. The NRC staff concludes that this information established that the responsibility for decisions affecting the operation of the GPC plants rests with the GPC's Senior Vice President-Nuclear Operations, Mr. Hairston. While Messrs. Hobby and Mosbaugh express concerns in this area, these concerns do not warrant a conclusion that SONOPCO was in control. Rather, the NRC staff finds that throughout Phases 1 and 2 of the SONOPCO project, the chain of command was from the respective vice presidents for the Vogtle and Hatch

facilities to Mr. Hairston. Mr. Hairston reported to Mr. McDonald, who reported to Mr. Dahlberg, President of GPC. Each of these individuals is an elected officer of GPC, and the reporting chain progresses up to the President of GPC. Therefore, the NRC staff concludes that there has been no illegal transfer of responsibility from GPC to SONOPCO for the Vogtle or Hatch facilities.

B. Alleged False Statements at the January 11, 1991 Meeting

(July 8, 1991 Supplement, Section IV)

The Petitioners also assert that Mr. McDonald made false statements during a transcribed meeting with the NRC staff on January 11, 1991, when he discussed the formation of SONOPCO. The Petitioners contend that Mr. McDonald's statement that "He (Mr. Farley) had no responsibilities for this Administrative Support" (Transcript, page 42) prior to December 1990 was false. The statement was false, the Petitioners claim, because Mr. Farley had been involved in administrative matters since the SONOPCO project was formed in November 1988. The Petitioners assert that deposition testimony of Mr. Farley taken in a DOL proceeding[4] on May 7, 1990 verifies that Mr. McDonald's statement was false. In his testimony, Mr. Farley describes his involvement in certain administrative matters which, the Petitioners assert, conflicts with Mr. McDonald's assertion that Mr. Farley had no responsibilities in the area of administrative support before December 1990.

The statement claimed by the Petitioners to be false was not categorical, i.e., that Mr. Farley had no administrative responsibilities during Phase 1 of the formation of SONOPCO. Mr. McDonald's statements as a whole make clear that his point was that Mr. Farley assumed new administrative duties beginning with the commencement of Phase 2 of the formation of SONOPCO.

The administrative responsibilities to support the GPC staff during Phase 1 were described in a letter of agreement between Mr. McDonald and Mr. H. A. Franklin, President and CEO of Southern Company Services,

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[4]Marvin B. Hobby v. Georgia Power Company, Case No. 90-ERA-30.

Incorporated, dated April 24, 1989 (Letter of Agreement). Item 1 of the Letter of Agreement provides for administrative services under the direction of Mr. C. D. McCrary, Vice President, Administrative Services-Nuclear. These administrative services were to support GPC's nuclear staff; and during this period, Mr. McCrary reported to Mr. McDonald with respect to these functions.

When Phase 2 began and Mr. Farley became CEO of SONOPCO, he acquired line responsibility for executive oversight of SONOPCO's Administrative Services group and the Technical Services group. Therefore, when Phase 2 began, Mr. Farley assumed significant new administrative responsibilities for the Administrative Services group. Thus, Mr. Farley's role did indeed change.

Also, prior to the January 11, 1991 meeting, it is clear that Mr. Farley had some administrative responsibilities associated with the formation of the SONOPCO project. Item 4 of the Letter of Agreement provides for services by Mr. Farley relating to the anticipated transfer of nuclear operating and support activities from GPC to SONOPCO. Such services would include some administrative services. Mr. McDonald also worked with Mr. Farley, who was the officer in charge of the SONOPCO project office, on the administrative aspects of the formation of SONOPCO (Transcript for Deposition of Joseph M. Farley, May 7, 1990, pp. 37 and 38.) Thus, Mr. Farley assumed some administrative responsibilities during Phase 1 of the formation of SONOPCO.

It is not reasonable to interpret Mr. McDonald's statement at the January 11, 1991, meeting as a categorical statement to the effect that Mr. Farley had no previous administrative duties when Mr. Franklin had specifically authorized such duties as requested by Mr. McDonald in the Letter of Agreement. The more reasonable interpretation to be given to Mr. McDonald's statement is that, when Phase 2 began and Mr. Farley became CEO

of SONOPCO, he acquired substantial additional administrative responsibilities, specifically line responsibility for executive oversight of SONOPCO's Administrative Support group and the Technical Services group. The NRC staff concludes that because it was Mr. Farley's new duties that Mr. McDonald referred to during the January 11, 1991, meeting with the NRC staff, Mr. McDonald's statement during the meeting cannot be considered false.

C. Alleged False Statements About Chain of Command

(Petition Section III.2; July 8, 1991, Supplement, Section III)

The Petitioners state that GPC misled the Commission about the chain of command from the Vogtle project's Plant Manager to its CEO before the NRC issued the operating license for the facility.

On March 30, 1989, the Commissioners met to discuss and possibly vote on the full power operating license for Vogtle Unit 2. The Commissioners present were Chairman Lando W. Zech, Jr., Kenneth M. Carr, Thomas M. Roberts, Kenneth C. Rogers, and James R. Curtiss. The transcript reflects that then Commissioner Carr expressed concern about the hierarchy between the Vogtle Plant Manager (i.e., the General Manager) and the Chief Executive Officer (CEO), noting that it "looked to me like he was a long way from the CEO." Mr. R. P. McDonald, GPC Executive Vice President-Nuclear Operations, responded that (1) he (Mr. McDonald) reported to Mr. A. William Dahlberg, the GPC CEO, (2) that Mr. Ken McCoy, Vice President of Vogtle, reported to Mr. McDonald, and (3) that Mr. George Bockhold, then Vogtle General Manager, reported directly to Mr. McCoy. At the conclusion of the meeting, the Commissioners voted unanimously in favor of the license, and the license was issued the following day.

On May 1, 1989, Mr. W. G. Hairston, III, Senior Vice President for Nuclear Operation, sent the NRC a letter of correction of the transcript, noting that Mr. McDonald had

> inadvertently left out the Senior Vice President of Nuclear Operations. The organization is as described on figures 13.1.1-1 and 13.1.1-2 of the Vogtle Final Safety Analysis Report.

The Petitioners claim that Mr. McDonald knowingly made false statements to the NRC Commissioners in the presence of Messrs. Dahlberg, McCoy, and Bockhold during his response to then Commissioner Carr in that he "eliminated one entire level of management between the plant manager and the CEO." Moreover, the Petition asserts that

> Messrs. Dahlberg, McCoy and Bockhold should have known that Mr. McDonald's statements were false and should have brought this to the immediate attention of the Commission and otherwise corrected the record before the Commission acted on the Vogtle full power license request.

In its Response to the Petition of April 1, 1991, GPC noted that the Commission had been apprised of the Company's organization before the meeting on March 30, 1989, including the Senior Vice President position, by an amendment to the Vogtle Final Safety Analysis Report (FSAR) that was submitted November 23, 1988. The amendment described the reporting chain as being from Mr. McCoy to Mr. Hairston to Mr. McDonald. GPC's Response also indicated that the NRC had reviewed the organizational structure in December 1988 and issued an inspection report.[5] In the inspection report, the NRC stated that the vice presidents of the Farley, Hatch, and Vogtle facilities reported to the Senior Vice President, who reported to the Executive Vice President, and that the organization for Vogtle was consistent with the Vogtle FSAR amendment submitted in November 1988.

In its Response, GPC noted further that, during the March 30 meeting, Commissioner Rogers stated that he had reviewed the Company's organizational chart during a visit he made to the plant site.

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[5]NRC Inspection Report Nos. 50-321/88-41, 50-366/88-41, 50-424/88-60, 50-425/88-77, 50-348/88-33, and 50-364/88-33, February 7, 1989.

Finally, GPC also noted it had submitted the letter of correction to the transcript approximately 2 weeks after receiving the NRC transcript.

The NRC staff has reviewed this issue and concludes that Mr. McDonald's reply to then Commissioner Carr was inaccurate in that the transcribed record clearly contradicted other documents of record, including the FSAR and NRC inspection reports. The inaccuracy was material in that the reply (1) was in direct response to the Commissioner's stated concern for an organizational structure in which the plant manager appeared to be "a long way from the CEO," (2) could influence the Commission's decision, and (3) could have been considered by the Commission in reaching its decision.

The licensee or its employees would probably not attempt to deliberately mislead the Commissioners since the licensee had previously provided correct information, and NRC staff members were present who presumably knew the correct information. Therefore, the NRC staff believes that Mr. McDonald's false statement or omission was not intentional.

The NRC staff also believes that, while the statement (and thus the omission) was material because it could have influenced the Commission, it was not significant because the NRC staff does not believe this one issue would have caused the Commission to reach a different decision.

On November 7, 1991, the NRC staff informed the Commission of the inaccurate information and of the staff's intent to reply to this issue on the basis that the statement omitting Mr. Hairston in the organizational structure was insignificant. The Commission has concurred in this approach (Staff Requirements Memorandum of December 2, 1991, in response to SECY-91-358).

In summary, while inaccurate information was given to the Commissioners, the NRC staff does not believe that it was deliberate or significant. Under

the NRC's Enforcement Policy (10 CFR Part 2, Appendix C), unsworn oral statements that are unintentionally inaccurate are not normally acted upon unless they involve significant information by a licensee official. In this case, no enforcement action is warranted regarding the oral statement because the information was not significant. Although we cannot be certain whether the other GPC personnel present knowingly made a material omission when they failed to correct the false statement, further action to pursue this omission is not warranted because of its lack of significance and because no information beyond the Petitioners' opinion exists to support the position that the omission was intentionally false.

D. Alleged Routine Entering Into "Motherhood"

(Petition Section III.5)

The Petitioners allege that GPC routinely threatens the safe operation of GPC's nuclear facilities by allowing them to enter TS 3.0.3, referred to in the Petition as "motherhood." Specifically, the Petitioners state that GPC repeatedly allowed the Vogtle facility to enter TS 3.0.3 by rendering both trains of safety-related load sequencers for the diesel generators inoperable. The Petitioners also allege that GPC did not make the required notifications to the NRC when TS 3.0.3 was entered.

Vogtle TS 3.0.3 requires that, when a limiting condition for operation (LCO) is not met, except as provided in the associated action requirements, action shall be taken within 1 hour to place the unit in a mode in which the TSs do not apply by placing it in hot standby within the next 6 hours, in hot shutdown within the following 6 hours, and at least in cold shutdown within the subsequent 24 hours.

The NRC established TS 3.0.3 to ensure that the reactor plant is shut down in a timely and orderly manner when the LCO in the TS for the specific component or system is exceeded or when a condition exists that is not addressed by TS requirements. The licensee has satisfied the TS if it performs the final action within the time specified in the TS. If the condition requiring entry into TS 3.0.3 is corrected before commencing or completing the shutdown, the licensee need not initiate a shutdown, or if a shutdown is already initiated, may end the shutdown and return the plant to the previous conditions.

The Commission's regulations for notifying and reporting to the NRC do not contain an explicit requirement that an entry into TS 3.0.3, in and of itself, be reported. Licensees are required by 10 CFR 50.72 to notify the NRC within 1 hour of the initiation of any plant shutdown required by the plant's TS. Thus, the NRC is promptly notified of entries into TS 3.0.3 if the plant initiates a shutdown as a result of the problem that caused entry into the TS. However, there is no requirement to notify the NRC of entries into TS 3.0.3 if a shutdown is not initiated.

The NRC staff has reviewed entry into TS 3.0.3 through various inspections conducted by region-based inspectors and the observations of the permanently assigned resident inspector and concludes that GPC does not routinely enter TS 3.0.3.

In Inspection Report 50-424,425/90-19, January 11, 1991, the NRC staff documented that GPC management had indicated that actions for an orderly shutdown would not be initiated until at least 3 hours after entry into TS 3.0.3. GPC management also indicated that it could perform an orderly, controlled shutdown within 1 hour, if need be. GPC has interpreted the action statement of TS 3.0.3 to allow 7 hours to be in hot standby, and to accomplish this, the shift crew could wait for at least 3 hours after entering the LCO before commencing a shutdown. It was also GPC's position that no notifications to the NRC were required under these circumstances. GPC's actions in this area did not differ significantly from those of other licensees, except that GPC did not immediately notify the load dispatcher[6]

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[6]The NRC confirmed that, while GPC did not follow the actions recommended in Generic Letter 87-09 (i.e., notification of the load dispatcher within the first hour and performance of a controlled shutdown throughout the next 6 hours), GPC has never exceeded the 7-hour time limit to be in hot standby. In NRC Inspection Report 50-424,425/90-19, the NRC identified as a weakness the

and did not provide written guidance to the operations personnel. In the inspection report, the NRC staff identified the lack of immediate notification as a weakness. On February 28, 1991, GPC responded to this finding by providing written guidance[7] for the operators to use upon entering TS 3.0.3. The NRC staff reviewed this guidance and, as noted in Inspection Report 50-424,425/91-14 dated July 19, 1991, found it acceptable.

The specific example identified by the Petitioners regarding this issue concerned GPC's practice in the area of safety-related load sequencers for Vogtle's emergency diesel generators. The Petitioners claim that the licensee failed to recognize that the loss of a load sequencer resulted in the entry into TS 3.0.3 and thus, required notification to the NRC.

Each unit at Vogtle has two Engineering Safety Feature Actuation Systems (ESFASs) sequencers and both must be operable during Modes 1, 2, 3, and 4. The NRC and GPC personnel determined that removing the load sequencers from service could result in entering the LCO for TS 3.0.3 or in entering TS Table 3.3-2, depending on which portion of the sequencer system was removed.

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failure to notify the load dispatcher in any of the instances that a change in plant operation had been initiated.

[7]The Licensee's written guidance for TS 3.0.3 entry was issued as TS Clarifications, which are additional pages that the Licensee maintains with the TS in the main control room. The guidance basically states the following: Upon entry in TS 3.0.3, the Unit Shift Supervisor should evaluate plant conditions and formulate a course of action, including actions to prepare for and complete a safe and controlled shutdown. In cases where a high degree of confidence exists that the technical issues can be resolved or repairs made promptly to restore component operability, an immediate power reduction is not advisable. However, actions are to be taken to ensure that an orderly shutdown will be completed within the allowable time while repairs or attempts to resolve operability are underway. Within the first hour, notifications to the load dispatcher and management should be made. If the condition still exists, power reduction should begin no later than 4 hours into the action (3 hours of the allowable time remaining). In those cases where it is apparent that resolution of the condition will not occur within the allowable time, an orderly shutdown will begin immediately.

Some of the circuits were included in Table 3.3-2, but the TS did not address the remainder of the system. The Operations Department had historically linked load sequencer outages to the emergency diesel generator LCO of TS 3.8.1.1.b (78 hours to hot standby). During the NRC's special team inspection documented in Inspection Report 50-424,425/90-19, GPC determined that TS Table 3.3-2 and TS 3.0.3 should have applied to sequencer outages. When this determination was made, GPC informed the NRC staff that it had not reviewed past work orders for load sequencers.

At that time, the NRC staff reviewed both the completed maintenance work orders that were performed on the sequencers on Units 1 and 2 and the related surveillance tests by the Instrumentation and Control Engineering and the Operations Departments. The NRC staff found several instances in which the work performed would have required the load sequencers to be de-energized. However, the associated unit was found not to have been in Modes 1, 2, 3, or 4 at the time this work was performed and thus, no TS LCO applied.

Similar to the maintenance work order review, the NRC staff reviewed related Instrumentation and Control Engineering and the Operations Departments' surveillance tests. This review did not reveal any examples of the load sequencers having been de-energized while in Modes 1 through 4 at the time the work was performed and thus, no TS LCO's applied.

Accordingly, the NRC staff has concluded that GPC does not routinely threaten the safe operation of the Vogtle facility by allowing entry into TS 3.0.3. The Petitioners' claim that NRC notification requirements were violated upon entry into TS 3.0.3 was not substantiated.

E. Alleged Ignoring of TS

(Petition Section III.6)

The Petitioners claim that GPC routinely endangers the public's safety by ignoring TS and that this is illustrated by seven cited examples:

Example (1) Opening Dilution Valves When Required to be Locked Closed

(Petition Section III.6a)

The Petitioners state that the licensee willfully and knowingly violated Vogtle Unit 1 TSs by opening dilution valves required to be locked closed by TSs. The Petitioners claim that the valves were opened while the reactor coolant system (RCS) was at mid-loop, and that this placed the plant in an unanalyzed condition and created the risk of an uncontrolled boron dilution accident and an inadvertent reactor criticality. The Petitioners allege that the valves were opened to expedite an outage so that the plant could be placed back on line according to the outage schedule. The Petitioners also assert that violating TSs to stay on schedule was due, in part, to SONOPCO's philosophy (attributed by the Petitioners to Messrs. Farley, McDonald, Hairston, and three SONOPCO Vice Presidents but not attributed to Mr. Dahlberg) that outages must be scheduled assuming that

> ... everything goes right. Everything falls into place right. That you do not put any contingency or extra time in there ... (quotation verbatim from Vice President McCoy). [Petition, page 18].

The NRC Office of Investigations (OI) has investigated this event, which occurred in October 1988 during the first refueling outage for Vogtle Unit 1.

The results of that investigation are documented in OI Report 2-90-001. The OI investigators concluded that TS 3.4.1.4.2 was knowingly and intentionally violated by Vogtle Operations shift supervisors, with the express knowledge and concurrence of the Operations Manager. In its Report, OI also concluded that a violation of the reporting requirements of 10 CFR 50.73 occurred, but that the evidence was insufficient to conclude that this was a deliberate violation of reporting requirements.

On June 3, 1991, after reviewing the OI findings, the NRC staff issued a Notice of Enforcement Conference and Demands for Information to GPC and the Operations Manager at the time of the incident. The NRC staff also issued on June 3, 1991, Demands for Information to the Operations Superintendent and the Shift Supervisor at the time of the incident. After receiving and reviewing the responses to the four Demands for Information (Demands), the NRC staff held an Enforcement Conference on September 19, 1991, with GPC and the Operations Manager.

Following the Enforcement Conference, the NRC staff sent letters to the Operations Manager, the Operations Superintendent, and the Shift Supervisor stating that no additional actions would be taken regarding their individual NRC licenses. The NRC staff also stated that, although the actions of these individuals did not meet NRC expectations, the evidence was insufficient to support a conclusion that their actions in 1988 constituted a deliberate attempt to disregard and intentionally circumvent the requirements of the TSs.

On December 31, 1991, after consultation with the Commission, the NRC staff issued to GPC a Notice of Violation And Proposed Imposition Of Civil Penalty of $100,000 (Notice). The Notice set out several violations identified during the NRC investigation conducted between February 1, 1990,

and March 19, 1991, including a violation that, contrary to the requirements of TS 3.4.1.4.2, on October 12 and 13, 1988, with Unit 1 in Mode 5, loops not filled, reactor makeup water storage tank valves 1208-U4-176 and 1208-U4-177 were opened in order to add chemicals to the RCS. On January 30, 1992, the licensee responded to the Notice, denied the violations, and protested the proposed imposition of the civil penalty. The NRC staff reviewed the GPC response and, on June 12, 1992, issued an Order Imposing Civil Monetary Penalty of $100,000 (Order). On July 9, 1992, GPC responded to the Order, submitted payment of the penalty, and noted that it did not plan to continue an appeal of this action.

On the basis of this investigation and subsequent followup, the NRC staff agrees that a violation associated with the operation of these dilution valves did, in fact, occur. To this extent, the Petitioner's claim is substantiated and the NRC has taken appropriate enforcement action. However, the NRC staff concludes, after consultation with the Commission, that the evidence does not substantiate that this action was willful. Rather, as indicated by the responses of the Operations Manager, the Operations Superintendent, the Shift Supervisor, and GPC to the NRC's Demands and during the Enforcement Conference, the action resulted from an incorrect interpretation of the TS requirement by the Operations Manager in 1988.

The Petitioners state that opening these valves while the RCS was at mid-loop placed the plant in an unanalyzed condition and resulted in risking an uncontrolled dilution accident and inadvertent reactor criticality. The NRC staff did find that this action placed the plant in an unanalyzed condition. For this reason, in part, the NRC staff issued the Notice to GPC dated December 31, 1991, and the Order dated June 12, 1992.

With respect to the placement of the plant in a condition that could have resulted in an uncontrolled dilution event and inadvertent reactor criticality, the NRC staff reviewed an analysis of this event that Westinghouse later performed for GPC. GPC provided the analysis to the NRC staff on November 21, 1989, to support proposed license amendments to change Vogtle TS 3.4.1.4.2. The change would allow the valves to be opened under administrative control to enable non-borated chemical additions to be made to the RCS during Mode 5b (cold shutdown with coolant inventory reduced to the extent that the reactor coolant loops are not filled) and Mode 6 (refueling), using a flow path via the reactor makeup water storage tank. The results of the licensee's analysis indicated that the minimum acceptable operator action times of 15 minutes for Mode 5b and 30 minutes for Mode 6, as specified in the NRC's Standard Review Plan (NUREG-0800), would be met. On the basis of this analysis, the NRC staff concluded that the opening of these valves under administrative controls with the RCS in a loops-not-filled condition, including the mid-loop condition, would not result in an unsafe condition. This conclusion was the basis for the NRC staff's approval of License Amendment Number 28 for Vogtle Unit 1 and License Amendment Number 9 for Vogtle Unit 2, each dated February 20, 1990. The responses by GPC and specific individuals indicate that precautions were taken when the valves were opened in 1988 to ensure that the valves would remain open for no more than 5 minutes. While the NRC staff is unable to conclude that these undocumented controls were in place, the NRC staff does find that the actual amount of time the valves were open was of insufficient duration to create a criticality event. Therefore, the NRC staff concludes that, although the TSs in effect at

the time were violated, the actual opening of the valves in 1988 did not endanger the health and safety of the public.

With respect to the Petitioners' claim that the valves were opened to expedite the outage so that the plant could be placed back on line according to the outage schedule, the NRC staff pursued this issue during the Enforcement Conference on September 19, 1991. The NRC staff did not conclude that this evolution had been performed to meet the outage schedule. Although chemical cleaning is a desirable process that is advantageous to maintaining radiological exposures of plant personnel to levels as low as is reasonably achievable, it is performed at the option of the utility. The NRC did not require chemical cleaning before the utility restarted the reactor in 1988. If the desire to remain on schedule had been the basis for the decision, then the more logical decision for this first refueling outage would have been to omit the chemical cleaning step and defer it for a subsequent outage.

Example (2) Failure to Secure Dilution Valves as Required by TS (Petition Section III.6b)

On February 26, 1990, the NRC staff found that dilution valves, identified in previous Example 1, were required to be locked closed, but were not locked while at mid-loop in violation of TSs. The Petitioners assert that this is another example of a willful violation of TSs by Vogtle senior management.

On February 26, 1990, while Unit 1 was in Mode 5 with reactor coolant loops not filled (mid-loop), the NRC staff found that discharge valve 1-1208-U4-176 of the refueling makeup water storage tank was closed but was not secured in position as required by Action Statement c of TS 3.4.1.4.2.

Instead of installing a mechanism to mechanically secure this valve, the licensee placed a "hold tag"[8] on the valve, which provided only administrative control to preclude valve operation. When the NRC staff described this condition to the licensee, Vogtle personnel contended that the administrative controls were acceptable to fulfill the requirements of the TS that the valve be secured in position. GPC later agreed that this method was unacceptable and took action to install a mechanical locking device. On April 26, 1990, the NRC staff issued Notice of Violation, 50-424,425/90-05-01, "Failure to Mechanically Secure Valve 1-1208-U4-176 During Mode 5 As Required By TS 3.4.1.4.2.C."

During a subsequent NRC inspection (Inspection Report 50-424,425/91-14), the NRC staff reviewed the licensee's associated actions and closed this violation. The inspectors reviewed the locked valve procedure, 10019-C, which had been revised to eliminate using a "hold tag" on valves that are required by TSs to be secured in position. To secure the valve involved in this violation, the licensee routed a steel cable through drilled holes in the valve handle and then mechanically secured the cable to prevent personnel from operating the valve. GPC conducted a comprehensive review of all remaining valves required by TSs to be secured to ensure that each had a locking mechanism in place. GPC committed to provide an appropriate locking mechanism for any valve secured by a hold tag and required to be secured by TSs. However, GPC found no other valves in that category.

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[8]A "hold tag" is a 3 inch by 5 inch red tag that is attached to a piece of equipment to indicate that it is not to be operated. The intent of the "hold tag" is indicated by Vogtle's Administrative Procedure 304-C, "Equipment Clearance and Tagging Procedure," which states that "A hold tag, when attached to a piece of equipment, prohibits the operation of that equipment in all circumstances."

The NRC staff concludes that, although a violation occurred, it was an error based upon interpretation and was not an example of a willful violation of TSs by Vogtle senior management.

Example (3) Miscalculation of Shutdown Margin (Petition Section III.6c)

In January 1989, two shifts of licensed operators miscalculated, because of procedural errors, the shutdown margin for Vogtle Unit 1, which was shut down at the time. The Petitioners allege that the RCS boron concentration thus became "dangerously low" and that the licensee did not write a deficiency report, conduct a critique, review their actions for conformance to TSs, or submit a report to the NRC.

Vogtle TS 3.1.1.2 requires that a specified minimum shutdown margin be maintained when the reactor is in Modes 3 (Hot Standby), 4 (Hot Shutdown), or 5 (Cold Shutdown). The required minimum value is specified by graphs of shutdown margin as a function of RCS boron concentration. The minimum shutdown margin specified in TS 3.1.1.2 is sufficient to ensure, as a most restrictive condition, that if a boron dilution accident were to occur during the beginning of core life, the operator would have at least 15 minutes to take corrective action after the initiation of an alarm caused by source range high flux to avoid total loss of shutdown margin. An operator reaction time of at least 15 minutes is consistent with the associated accident analyses of the boron dilution event in the FSAR. The corresponding surveillance requirement in TS 4.1.1.2 requires that the shutdown margin be determined to be greater than or equal to the required value at least once every 24 hours by

considering several factors, including RCS boron concentration, RCS average temperature, and xenon concentration.

At 5:35 p.m. on January 19, 1989, control room operators at Vogtle manually tripped the Unit 1 turbine and reactor to enter a planned outage to repair a leaking socket weld for the drain line in the loop seal downstream of the pressurizer safety relief valve. After the unit was shut down, an extra shift supervisor on shift completed Procedure 14005-1, "Shutdown Margin Calculation," which must be completed every 24 hours when the plant is in Modes 3, 4, or 5. He signed the procedure at 7:13 p.m. on January 19, 1989. However, the extra shift supervisor incorrectly completed Data Sheet 2, which applies to conditions when the average RCS temperature is equal to or greater than 557 degrees Fahrenheit. This action was incorrect because he should have completed Data Sheet 4, which applies to conditions related to entering Cold Shutdown (Mode 5). That shutdown margin calculation, which was based upon the wrong data sheet, resulted in a calculated shutdown margin of 6.6 percent reactivity (i.e., delta k/k)[9] and a required shutdown margin of 2.58 percent delta k/k. These results indicated to the operators that no boron addition to the RCS was required in order to enter Cold Shutdown.

On January 20, 1989, at approximately 9:00 a.m., a reactor engineer questioned the apparently low RCS boron concentration of 1333 parts per million (ppm). His concern prompted the licensee to stop the unit cooldown until the shutdown margin calculation was verified. At 10:22 a.m., the reactor engineer completed a shutdown margin calculation that assumed an RCS

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[9]Reactivity is defined as the fractional change in neutron population from one neutron generation to the subsequent generation. Reactivity is expressed mathematically as $(K_{effective} - 1)/K_{effective}$, or as delta k/k, where $K_{effective}$ is the multiplication factor in a nuclear system expressing the change in the fission neutron population per generation.

temperature of 68 degrees Fahrenheit and 0 percent reactivity for xenon worth. His calculation, which did not take into account xenon worth, showed that 1800 ppm boron concentration was necessary to obtain a shutdown margin of 4.015 percent delta k/k compared to a required shutdown margin of 3.47 percent delta k/k. This calculation failed to include credit for xenon worth, which would have added approximately 3.8 percent delta k/k to the shutdown margin and provided more than an adequate margin above TS requirements without further boration. Since no TS limit was exceeded, GPC was not required to submit, and did not submit, a written report to the NRC.

On January 20, 1989, at 1:38 p.m., the on-shift operations supervisor recalculated the shutdown margin that had been incorrectly calculated at 7:13 p.m. on January 19, 1989. The new calculation relied upon plant data in effect on January 19 and was based upon Data Sheet 4. The new calculation determined that the shutdown margin was 4.185 percent delta k/k while the required shutdown margin is 1.92 percent delta k/k.

The NRC resident inspectors reviewed Procedure 14005-1, Data Sheets 2 and 4, the calculations concerning the data sheets dated January 19 and 20, 1989, and control room logs for that period. The NRC staff discussed the inspection findings in Inspection Report 50-424,425/91-20, dated September 12, 1991. The inspector found that the shutdown margin calculation performed at 7:13 p.m. on January 19, 1989, was incorrect in that the wrong Data Sheet of Procedure 14005-1 was used. However, the inspector found no evidence that the TS limits on shutdown margin were ever exceeded or that an inadvertent criticality could have occurred because the wrong data sheet was used. The confusing instructions on Data Sheet 2 of Procedure 14005-1 contributed to this error. On March 26, 1989, the licensee revised this

procedure to simplify, consolidate, and clarify the data sheets. The inspectors also confirmed that GPC failed to write a deficiency card for this event which would have prompted the licensee to perform a followup review of the error. The inspectors reviewed the GPC's deficiency card program and found it to be adequate; they could find no other instances of a failure to write a deficiency card.

Thus, the NRC Resident Inspectors determined that violations occurred. The extra shift supervisor failed to follow procedures in selecting the data sheet. Additionally, a licensee individual made an error and failed to write a deficiency card.

Although not addressed in Inspection Report 50-424,425/91-20, the NRC staff has determined that these violations meet the criteria contained in Sections V.A. and V.G.1 of the then-effective General Statement of Policy and Procedure for NRC Enforcement Actions (10 CFR Part 2, Appendix C) for violations for which a Notice of Violation need not be issued. Section V.A. allows the NRC to exercise discretion in issuing a Notice of Violation for isolated Severity Level V violations, regardless of who identifies them, provided the licensee has initiated appropriate corrective actions before the end of the inspection. Under Section V.G.1, the NRC need not issue a Notice of Violation if the violation was identified by the licensee, is normally classified at a Severity Level IV or V, was reported if required, was or will be corrected (including measures to prevent recurrence) within a reasonable time, was not a willful violation, and was not a violation that could reasonably be expected to have been prevented by the licensee's corrective action for a previous violation. This practice of not requiring the issuance of a Notice of Violation when the violations meet the aforementioned criteria

was adopted by the NRC as a means of encouraging licensees to identify and correct violations and to avoid expenditure of limited resources for both the NRC and the licensee--resources that could be better used in improving safety.

In summary, the licensee identified and corrected the shutdown margin calculation error, which did not result in the violation of a TS limit and did not require a written report to the NRC. Moreover, the corrected calculations of the shutdown margin do not support the allegation that the error resulted in "dangerously low" boron concentrations in the RCS or that it endangered the health and safety of the public. The NRC inspectors determined that, even though a deficiency card was not written, the licensee's followup review of the error was prompt and had been completed before the end of the inspection.

Example (4) "Taking" LERs (Petition Section III.6d)

The Petitioners claim that GPC employees were told, on March 22, 1990, to keep planned shutdowns on schedule by "taking" LERs. The Petitioners also contend that pressure to remain on schedule would necessarily result in an intentional violation of TS and "taking" LERs in order to remain on schedule.

"Taking" LERs implies that personnel intentionally do not perform actions required by a TS at the specified time required by the TS action. At a later time, they subsequently acknowledge this action was not performed and then write a written report (LER) to address this TS violation. This action would require a written report to the NRC as specified in 10 CFR 50.73. The Petitioners allege that this would be done in order to forgo performing the activity required by a TS at a time that would cause a schedule delay.

This issue was reviewed as part of OI's investigation of an alleged intentional TS violation with regard to a mode change with an inoperable neutron source range monitor (see Example 6 hereinafter). OI's review and findings in this area are documented in OI Report 2-90-012. The OI investigation did not substantiate the alleged "taking" of LERs. The personnel interviewed stated they had never been instructed to do whatever it takes to stay on schedule.

On the basis of this investigation, the NRC staff can not conclude that Vogtle personnel either had a deliberate practice to, or were instructed to, "take" LERs to stay on schedule. Similarly, the statements made by the Petitioners that SONOPCO's philosophy would necessar ly result in managers intentionally violating TS and "taking" LERs to remain on schedule were not substantiated by the NRC staff's review.

Example (5) Surveillance Testing of Containment Isolation Valves (Petition Section III.6.e.i)

The Petitioners claim that the licensee knowingly concealed a technical violation which, if uncovered, would have resulted in a safety-related shutdown of Vogtle Unit 1. This technical violation allegedly concerned the failure to properly test approximately 39 containment isolation valves in violation of TS surveillance requirement 4.6.1.1.a.

In February 1990, after operations personnel performed a monthly TS surveillance on containment isolation valves and turned in their paperwork, the Shift Supervisor recognized an error in that only 2 of 39 valves had been checked. The Shift Supervisor directed that all necessary surveillances be

performed immediately. The Shift Supervisor then examined previous records and found that the same error had also been made the previous month. Accordingly, a violation of TS 4.6.1.1.a had occurred. The Shift Supervisor then informed the Work Planning Group of the error and this group prepared and delivered a Deficiency Card to the control room. Since the missed surveillances had already been completed by this time, no action was initiated under the TS's LCO (shut down within 1 hour). The Petitioners state that the Deficiency Card should have been initiated earlier by the individual discovering the deficiency and that the event was mishandled to conceal the discovery time and to avoid the shutdown requirement of the LCO.

GPC reported this issue in a timely LER 50-425/90-01 dated March 27, 1990, and NRC resident inspectors reviewed it as discussed in Inspection Report 50-424,425/90-10. The inspection report notes that the task sheet contained in the procedure for performing this task was inadequate. The format of the task sheet resulted in cognitive personnel errors because the task sheet was unclear as to the number of valves required to be tested. The NRC staff did not issue a Notice of Violation for this event because the aforementioned criteria specified in Section V.G.1 of the then-effective General Statement of Policy and Procedure for NRC Enforcement Actions (10 CFR Part 2, Appendix C) were met.

OI investigated the willfullness aspect of this issue and found that willfullness was not substantiated. OI reported the results of this investigation in OI Report 2-90-012. In this report, OI concluded that the missed surveillance had been reported in an LER and resulted from an inadequate Surveillance Task Sheet that had listed equipment identification numbers of only two valves for the monthly containment integrity check. OI

noted that the NRC resident inspectors had reviewed the LER and documented the event without issuing a Notice of Violation. OI also noted that the circumstances of this event were reviewed during the NRC's special team inspection at Vogtle in August 1990, which found that the Shift Supervisor did not conceal the true discovery time of the missed surveillance in order to avoid a unit shutdown and that the Shift Supervisor's actions to initiate an investigation into the adequacy of the previous monthly surveillance and to concurrently perform the missed surveillances were appropriate. The special team inspection determined that the supervisor who identified this potential problem took action to determine if a previous surveillance test had been conducted and, at the same time, initiated action to perform the missed surveillance tests. Since the surveillance test is of short duration, it was completed before the determination was made that the previous test had not been completed correctly. Since the surveillance test had already been repeated once the inadequacy of the previous test became known, a shutdown of the unit at that point was not required.

On the basis of the NRC staff's inspections and investigation, the Petitioners' claim that the licensee knowingly concealed a technical violation is not substantiated.

Example (6) Changing Modes With Required Equipment Inoperable (Petition Section III.6.e.ii)

The Petitioners claim that the licensee knowingly concealed another technical violation on March 1, 1990, when a change from Mode 5 to Mode 6 occurred even though required equipment was not operable. The failure to

comply with the TS, the Petitioners claim, translated into a 12-hour schedule enhancement at a critical juncture. The Petitioners allege this is an example of a willful violation.

The NRC resident inspectors, an NRC special inspection team, and OI investigators reviewed this issue. Results of these efforts are documented in NRC Inspection Report 50-424/90-10 dated June 14, 1990 and OI Report 2-90-012. GPC also documented this event in LER 424/90-004 dated May 11, 1990. This LER described the violation of TS 3.0.4 on March 1, 1990, when Unit 1 entered Mode 6 from Mode 5 with an LCO in effect for a neutron source range channel. The LER attributed the root cause to cognitive personnel error by the Shift Superintendent who failed to review the back side of the relevant LCO Status Sheet that noted the mode change was prohibited while the source range monitor was inoperable. Moreover, the Shift Superintendent had not otherwise recognized the prohibition before authorizing the mode entry.

The NRC staff interviewed various personnel involved in the review of plant conditions and involved with documentation necessary to change modes. The interviews indicated that the Shift Superintendent and the Unit Shift Supervisor were aware of an active LCO at the time of the mode change, but neither had connected the LCO to a mode restriction. Both of these individuals indicated that there had been no unreasonable emphasis on the critical path schedule. Both denied that they had ever been given any indication or instruction to do whatever it takes to stay on schedule. They also indicated that they did not feel undue pressure to stay on schedule, particularly not if it meant compromising plant safety. The mode change did result in a reduction of the critical path outage time.

The NRC staff did express a concern associated with the format of the LCO status sheet that contributed to this problem. The status sheet is a two-sided form with the remarks section on the back side of the form. A cursory review of these forms would result in a possible omission of the review of any remarks that may be entered on the form. On the basis of the NRC resident inspectors' review, the NRC determined that a violation occurred as discussed in Inspection Report 50-424/90-10. A Notice of Violation was not issued however, because the aforementioned criteria specified in Section V.G.1 of the then-effective General Statement of Policy and Procedure for NRC Enforcement Actions (10 CFR Part 2, Appendix C) were satisfied.

On the basis of evidence developed during the NRC inspections and OI investigation, the allegation of an intentional violation was not substantiated.

Example (7) Failure to Declare RHR Pump Inoperable And Enter LCO (Petition Section III.6.e.iii)

The Petitioners allege that GPC knowingly concealed a TS violation when the "B" residual heat removal (RHR) pump was not declared inoperable after cracking of the nuclear service cooling water (NSCW) line. The "A" RHR pump was inoperable at the time because of outage work.

The Petitioners allege that, during the second refueling outage at Unit 1, (1R2), with RHR train "A" out of service for maintenance, the RHR train "B" pump experienced excessive vibration and the NSCW motor cooler experienced a leak at its outlet. TS 3.9.8.1, "RHR and Coolant Circulation," was allegedly

violated because the Operations Department chose not to declare RHR pump "1B" inoperable in an effort to mitigate the effect on the critical work path.

The NRC staff included this item in the Special Team Inspection discussed in Supplement 1 to NRC Inspection Report 50-424,425/90-19, dated November 1, 1991. In Section 2.2 of the Inspection Report, the NRC staff concluded that the Vogtle Operations Department had an adequate engineering basis for accepting the operability of the RHR pump even with the pump's high vibration and the NSCW leak.

The inspection team also concluded that declaring the pump inoperable would not have affected the critical work path; the LCO actions would not have been restricted because the containment, except for ventilation, had been isolated as required by TS 3.9.4. The LCO actions would not have prevented the licensee from continuing refueling activities because the actions to close all containment penetrations providing direct access from the containment atmosphere to the outside atmosphere would have required only closing the containment ventilation purge valve, which has an automatic closure signal. Thus, schedule considerations could not have motivated the licensee in this matter.

F. Alleged Concealment of Safeguards Problems

(Petition Sections III.7a and III.7b)

The Petitioners allege that GPC personnel, including a Vice President and General Manager, and a Southern Company Services Manager, knowingly and repeatedly hid safeguards problems from the NRC and willfully refused to comply with mandatory reporting requirements. The Petitioners further allege that the GPC Vice President made false statements to the NRC during an Enforcement Conference about the status of safeguards materials in Birmingham, Alabama, and that the alleged false statements probably influenced a subsequent civil penalty action taken by the NRC. The Petitioners claim that the false and misleading information presented at the Enforcement Conference and other information withheld from the NRC were highly significant. The Petitioners believe that, if the NRC had had the benefit of complete, factual information, the NRC would likely have increased the Notice of Violation and Proposed Imposition of Civil Penalty in the amount of $50,000 issued to the licensee on June 27, 1990, into the hundreds of thousands of dollars.

The Petitioners also allege that on July 23, 1990, plant and SONOPCO senior management prevented the Site Security Manager from making a Red Phone[10] notification within 1 hour as required by 10 CFR 73.71. The Petitioners allege that the manager was prevented from making the call in order to delay or defuse the NRC's knowledge of programmatic problems on the part of the licensee regarding the handling of safeguards documents.

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[10]A Red Phone refers to a Licensee's Emergency Notification System and is used for immediate telephone notifications to the NRC's Operation Center in accordance with 10 CFR 50.72 and 10 CFR 73.71.

OI has investigated the allegation that GPC knowingly and repeatedly hid safeguards problems from the NRC and willfully refused to comply with mandatory reporting requirements. OI also investigated the allegation that the GPC Vice President made false statements to the NRC in an Enforcement Conference concerning the status of safeguards material in Birmingham, Alabama. The results of these investigations are documented in OI Report 2-91-003. The OI investigations did not substantiate that GPC withheld pertinent information from the NRC at the time of the Enforcement Conference on May 22, 1990, or that GPC management impeded the reporting of safeguards events. On the basis of the OI investigations, the NRC staff concludes that the Notice of Violation and Proposed Imposition of Civil Penalty of $50,000 were appropriate.

OI also investigated the allegation that on July 23, 1990, plant and SONOPCO senior management prevented the Site Security Manager from making a Red Phone notification within 1 hour as required by 10 CFR 73.71. The results of the investigation are also documented in OI Report 2-91-003. Specifically, the concern was that the Site Security Manager was allegedly prevented from making a Red Phone notification for two events. The first event was that a safeguards container had been found open and uncontrolled for half an hour in Birmingham, Alabama, in November 1989. The second event was that 14 safeguards documents had been found uncontrolled in the SONOPCO offices on June 15, 1990.

For the first event, a violation of the reporting requirements of 10 CFR 73.71 occurred in 1989 when the uncontrolled container was discovered and not reported to the NRC within 1 hour. In 1990, as part of its corrective actions

in response to an NRC enforcement action, GPC identified the fact that a required report for this event might not have been made in 1989.

GPC's corrective actions in response to the NRC enforcement action also identified the second event. GPC's consideration of the reporting requirements for the first event was subsequently combined with a similar consideration of the need to report the second event. The second event was also not reported within 1 hour as required by 10 CFR 73.71.

After reviewing OI's investigation results, the NRC staff concluded that the failure to make a timely report on the second event, and the delay in informing the NRC staff of the discovery of the failure to report the first event, were due to the GPC's cumbersome system for evaluating corporate security findings through the site security organization, rather than being due to any willful attempt to impede the reporting process.

The NRC staff decided to take no additional enforcement action for these two issues. The decision to issue no Notice of Violation for the delay in reporting the first event was based upon Section V.G.5 of the then-effective General Statement of Policy and Procedure for NRC Enforcement Actions (10 CFR Part 2, Appendix C). This provision of the policy allows the NRC staff to forego a Notice of Violation when a violation is discovered as the result of corrective action for a previous enforcement action. Similarly, the NRC staff considered the violation for the delay in reporting the second event to be an additional example of a violation for which the licensee had identified and was, at the time, taking corrective actions. Therefore, as provided by the aforementioned Section V.G.5, the NRC staff issued no Notice of Violation.

G. Alleged Operation of Radioactive Waste Systems and Intimidation of Plant Review Board Members

(Petition Section III.8)

The Petitioners assert that GPC has endangered the public's health and safety by operating radioactive waste systems and facilities known to be in gross violation of NRC requirements. The Petitioners also state that Vogtle's General Manager intimidated members of the Plant Review Board (PRB) when they attempted to consider if the use of the waste system should be resumed.

The NRC's Special Inspection Team reviewed this item and discussed its findings in Supplement 1 to Inspection Report 50-424,425/90-19, dated November 1, 1991. The first assertion regarding improper installation and operation of the radioactive waste system is discussed in Section 2.1 of the Inspection Report. The second part regarding intimidation of PRB members is discussed in Section 2.7 of the Inspection Report.

The Petitioners allege that GPC installed and operated a radioactive waste micro-filtration system without performing an adequate engineering and safety evaluation in accordance with 10 CFR 50.59.[11] This specific system is known as the FAVA system because it is supplied by FAVA Control Systems (FAVA).

The Petitioners further allege that the material configuration, fabrication, and quality of the system did not meet the guidance of Regulatory Guide (RG) 1.143, "Control of Stainless Steel Weld Cladding of Low-Allow Steel

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[11]Title 10 of The Code of Federal Regulations, Section 50.59, allows licenees to make changes in the facility, procedures, or conduct tests or experiments as described in the safety analysis report without prior Commission approval, unless the proposed changes involve a change in the Technical Specifications or an unreviewed safety question.

Components," and the requirements of the American Society of Mechanical Engineers (ASME) Code.

In late 1987, GPC had temporarily installed and operated a system at Vogtle for removing Niobium-95. GPC planned to replace this temporary modification with a permanent, high-quality system in the future.

In February 1988, GPC experienced difficulty with the temporary system in removing colloidal Niobium-95 following a reactor shutdown for maintenance work. GPC contracted FAVA to help rectify this problem. The licensee corrected the situation by installing a 0.35-micron filter system downstream of the existing pre-filters. However, a large volume of radioactive waste was generated because the 0.35-micron filters rapidly exhibited high differential pressure and had to be changed frequently. The need to change filters frequently also resulted in radwaste department personnel receiving additional radiation exposure.

Upon evaluating the performance of the 0.35-micron filter system, the Radwaste Department determined that the best approach to the problem was to install a back-flush, pre-coat filter system. However, no operational data was available for a system of this type in this specific application. FAVA supplied a proprietary Ultra Filtration System (Model No. 5FD/E) for testing to evaluate whether this was a practical and effective solution to the problem. GPC installed the temporary FAVA system before the Unit 1 refueling outage and operated it under Test Procedure T-OPER-8801. The test system kept liquid effluent releases well below the TS limits. The Radwaste, Chemistry, and Engineering Departments evaluated the test results, and GPC issued a general work order to purchase a permanent system.

In the early part of 1989, the Quality Assurance (QA) Department performed an audit and identified a significant audit finding involving a programmatic breakdown in the procurement of the temporary FAVA system and a failure to meet commitments of the FSAR. That finding prompted the licensee to remove the temporary FAVA system from service.

In late 1989, the licensee sought to reinstall the FAVA system under a temporary modification because colloidal Cobalt-59 and Cobalt-60 had to be removed. The PRB reviewed this temporary modification and several members expressed strong objections to it based on the previous QA audit finding.

These objections prompted the licensee to submit a Request for Engineering Assistance (REA) and perform a safety evaluation in accordance with 10 CFR 50.59 in November 1989. The licensee's engineering staff subsequently reviewed the November 1989 safety evaluation and found it to be adequate, except that it did not properly address the guidance of Regulatory Guide (RG) 1.143 regarding the use of polyvinyl chloride (PVC) piping. GPC performed another safety evaluation in February 1990 to address this issue and the vulnerability of the PVC pipes to radiation degradation. In the February 1990 safety evaluation, the licensee specifically stated that the FAVA system did not conform to the criteria of RG 1.143. However, this deviation was found to be technically acceptable for several reasons: (1) The design of the FAVA system had been previously evaluated and found to be adequate in the REA response of November 1989, except for the PVC pipes; (2) The location of the FAVA system was inside a shielded watertight vault, which provided adequate assurance that any system failures would be contained and would not create the potential for offsite releases; and (3) The presence of PVC pipe in the FAVA system, although prohibited by RG 1.143, was acceptable

based on subsequent design reviews because the radiation exposure of the plastic was found to be within acceptable limits.

Although the testimony of one of the PRB members indicated that the temperature effects on the use of PVC in the FAVA system were not adequately evaluated before the system was installed, the testimony of the corporate system engineer indicated that GPC had considered this before installing the system although not specifically documented in the safety evaluation.

Vogtle management subsequently consulted the NRC resident inspector to seek an NRC position on placing the FAVA system back in service. This was supplemented with additional information provided by other Vogtle management personnel documenting reasons that it should not be placed in service. The licensee forwarded this package to Region II and NRR for review. In March 1990, following Region II and NRR concurrence during a telephone conference, the licensee placed the FAVA system in service with the following NRC stipulations:

(1) That procedures for operating the FAVA system require that an operator be present any time the system is in operation;

(2) That all hoses to and from the FAVA system be verified to conform to RG 1.143;

(3) That the cover over the FAVA system be securely fastened when the system is in operation to ensure that, if a spraying leak developed, it would be contained in the concrete vault; and

(4) That the design of the walls of the auxiliary radwaste building be evaluated to determine if a design change was needed to reduce the possibility of wall leakage if a hose develops a leak and sprays its contents on the walls.

The licensee complied with these stipulations upon returning the system to operation.

The review by the NRC indicated that the FAVA system was originally installed and operated by the licensee without an adequate safety evaluation and did not meet the guidance in RG 1.143 in that PVC piping was used in this system. However, this deficiency was of limited duration and the licensee, upon performing subsequent safety evaluations that were forwarded to and accepted by the NRC staff, concluded that the system was acceptable for use. Given the NRC's extensive review, the facts of this matter do not support a conclusion that the licensee willfully violated NRC requirements or willfully operated the facility in a manner to endanger public health or safety.

The Petitioners also contend that Vogtle's General Manager intimidated and pressured PRB members during a PRB meeting. The meeting occurred in February 1990 to determine the acceptability of the safety analysis for installing the FAVA micro-filtration system.

As previously discussed, the licensee performed several safety evaluations for the temporary modification to install the FAVA micro-filtration system. The NRC Special Inspection Team found through its discussions with PRB members that, while reviewing these safety evaluations, various PRB members had expressed reservations on several occasions concerning the acceptability of the FAVA system.

Although various PRB members may have expressed reservations, the inspection team, in reviewing the PRB meeting minutes regarding this temporary modification, identified few instances of the PRB members documenting their dissenting opinions. Specifically, the minutes of PRB meeting 90-15, on February 8, 1990, documented one PRB member's negative vote and dissenting

opinions regarding the acceptability of exempting the temporary modification from regulatory requirements and the adequacy of the system's safety evaluation. The only other example of a dissenting opinion was in the minutes for PRB Meeting 90-32, on March 6, 1990. This dissenting opinion related to the acceptability of voting on the FAVA system installation when the PRB member who raised the initial questions and concerns on the operation of the FAVA system was not present.

During discussions with NRC inspectors, PRB members indicated that, during the various PRB meetings concerning installing the FAVA system, they did feel intimidated and pressured by the presence of the General Manager at the PRB meeting. On one occasion, an alternate voting member felt intimidated and feared retribution or retaliation because the General Manager was present at the meeting and the PRB member knew the General Manager wanted to have the temporary modification approved. However, the PRB member stated that he did not alter his vote and felt comfortable with how he had voted. This PRB member also stated that he was not aware of any occasions on which he or any other PRB member had succumbed to intimidation or any other occasions where he or they feared retribution.

The PRB members informed the General Manager following the meeting (PRB 90-15) that several of them viewed his presence as intimidating. On March 1, 1990, the General Manager addressed this concern by meeting with all PRB members to reiterate each member's duties and responsibilities. He specifically told the members that his presence at PRB meetings must not influence them and that alternates should be selected who would feel comfortable with this responsibility. He also addressed the difference

between professional differences of opinion and safety or quality concerns, and methods for resolving each.

Thus, the NRC staff has found that, in one case, a PRB voting member felt intimidated and feared retribution because the General Manager was present at the PRB meeting. However, this member stated that he did not change his vote in response to the General Manager's presence. He stated that the General Manager was informed of this issue and met with the PRB to allay fears. The information obtained by the NRC staff indicated that retribution did not occur. The instance involving a member fearing retribution was confirmed, and the absence of dissenting opinions in the PRB meeting minutes calls into question the openness of discussions at PRB meetings. However, further discussions with PRB members indicated the reason for the lack of dissenting opinions was that items are discussed and reviewed until all members were comfortable with their decisions.

NRC resident inspectors at Vogtle frequently attend PRB meetings and have found that the subjects are candidly discussed and the issues resolved without intimidation or fear of retribution. Consequently, the allegation that Vogtle's General Manager intimidated members of the PRB when they attempted to determine whether the use of the waste system should be resumed, could not be substantiated.

III. CONCLUSION

As discussed above, certain concerns raised by the Petitioners were partially substantiated. Violations of regulatory requirements have occurred in the operations of the Vogtle and Hatch facilities. Notices of Violation and civil penalty have been issued to the licensee for certain of these violations. To this extent, the Petitioners' request for action pursuant to 10 CFR 2.206 is granted.

However, on the basis of the NRC staff's review, I conclude that no unauthorized transfer of the Vogtle operating licenses occurred, and that the GPC nuclear facilities are now being operated in accordance with NRC regulations and do not endanger the health and safety of the public. Additionally, based on the NRC staff's review of information available to date, I conclude that none of the issues decided in this Partial Director's Decision call into question the licensee's character, competence, fundamental trustworthiness, and commitment to safety with respect to the operation of its nuclear facilities.

The institution of proceedings in accordance with 10 CFR 2.206, as requested by the Petitioners, is appropriate only where substantial health and safety issues have been raised. See Consolidated Edison Company of New York (Indian Point Units 1, 2 and 3), CLI-75-8, 2 NRC 173, 175 (1975), and Washington Public Power System (WPPS Nuclear Project No. 2), DD-84-7, 19 NRC 899, 923 (1984). As previously discussed, there is reasonable assurance that the Vogtle and Hatch facilities now operate with adequate protection of the public health and safety. Therefore, I decline to take any further action

with respect to the issues decided in this Partial Director's Decision. To this extent, the Petitioners' request for action pursuant to 10 CFR 2.206 is denied. As provided in 10 CFR 2.206(c), a copy of this Partial Director's Decision will be filed with the Secretary for the Commission to review.

FOR THE NUCLEAR REGULATORY COMMISSION

Frank J. Miraglia

Frank J. Miraglia, Acting Director
Office of Nuclear Reactor Regulation

Dated at Rockville, Maryland,
this 23rd day of April, 1993.