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November 9, 1994

OFFICE OF SECRETARY  
DOCKETING SERVICE

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

SERVED NOV - 9 1994

ATOMIC SAFETY AND LICENSING BOARD

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

In the matter of  
  
GEORGIA POWER COMPANY,  
et al.  
  
(Vogtle Electric Generating  
Plant, Units 1 and 2)

Docket Nos. 50-424-OLA-3  
50-425-OLA-3

Re: License Amendment  
(Transfer to Southern  
Nuclear)

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

MEMORANDUM AND ORDER  
(Motion to Reopen Discovery)

On October 24, 1994, Mr. Allen L. Mosbaugh (Intervenor) filed a "Motion to Reopen Discovery" on the illegal license transfer issue,<sup>1</sup> which we have set for hearing on December 19. The grounds for the motion, which are summarized in Table 1 on page 2, below, are that an August 30, 1994 letter from Mr. W. G. Hairston, III, to the NRC's Office of Nuclear Reactor Regulation is that this new information has somehow

<sup>1</sup>Georgia Power Company, et al., (Georgia Power) filed its Answer to Intervenor's Motion to Reopen Discovery on November 3, 1994 (Answer). On November 8, the Staff of the Nuclear Regulatory Commission informally told the Board that it would not respond to the Motion.

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TABLE 1  
Summary of Representations Concerning On-Call Procedures

Date	Source	Procedure requires Farley Call	Farley is called.	Misc.
4/1/91	Response to Hobby/ Mosbaugh §2.206 petition (McDonald to Murley)	Yes. "Vogtle Project emergency planning procedures require the duty manager to notify senior corporate management, including Mr. Dahlberg and Mr. Farley, in the event of a significant event at Vogtle."	Yes.	McDonald said procedure required calls.
3/30/94	Lamberski to Barth letter VNS-EP-04 §4.2.1, citing the telephone list	Yes. Mr. Barth requested the procedure requiring the on-call Project Manager to notify Mr. Dahlberg and Mr. Farley. GPC provided the procedure without comment.	Yes.	
4/6/94	McCoy deposition	No. The "director of corporate response" notifies the next person up the line in management. They contact people above them. Procedure did not require a call to Farley.	I don't know. Depends on what McDonald and Hairston have agreed.	It does not relate in any way to nuclear except: a nuclear procedure is used for non-nuclear crisis management
8/30/94	Letter Hairston III to Russel (NRC)	No. Senior corporate management was required to be notified, but Mr. Dahlberg and Mr. Farley were not required.	Yes.	
9/2/94	Letter Lamberski to Barth (NRC)	No. Telephone list is used with Procedures VNS-EP-04 and 05 but did not require contact of each of the corporate management officials. Dahlberg, Farley need not be contacted.	Yes.	

prejudiced Intervenor.<sup>2</sup> Intervenor states that Georgia Power's "change in position"

directly affects evidence which Intervenor intended to rely upon in building his case. Intervenor also argues that, without further inquiry, it is impossible to determine which statement is misstated (i.e. the § 2.206 response or Mr. Hairston's letter of August 30, 1994).<sup>3</sup>

We note that we are not clear whether the "change in position" occurred at the McCoy deposition (see Table 1) or in the subsequent letters.

We conclude that Georgia Power's change in position (or the shifting nature of the testimony) appears to have been known while discovery was still in progress. Intervenor appears to have had the opportunity to pursue the reasons for these differences. Intervenor apparently feels it did not do that thoroughly enough. However, it has not specified to our satisfaction why the subsequent letters give it good cause to inquire further.

We also conclude, based on Georgia Power's Answer, Georgia Power's letter of August 30, 1994, does not provide good cause for reopening discovery on October 24, 1994. Intervenor has not shown due diligence in protecting his rights and we find that his current motion is untimely.

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<sup>2</sup>Motion at 6, 7-8.

<sup>3</sup>Motion at 8.

Adequate Record

Although we consider Intervenor's motion to be without merit, we have learned from studying it. As a result of the motion, we consider the apparent change of position by Georgia Power to be an important issue in this proceeding and we have decided to assure that our record on this issue is adequate. We therefore shall order Georgia Power to promptly serve a copy of all relevant<sup>4</sup> procedures from 1988 to the present. Georgia Power also shall be ordered to promptly serve a copy of all training materials that it used for the purpose of assuring the proper execution of the relevant procedures.

Because there has already been adequate opportunity for the parties to be briefed by their counsel<sup>1</sup> and to have conversations among themselves about this issue, we shall order the witnesses of Georgia Power and Intervenor to be sequestered.<sup>5</sup> That is, we shall order that all witnesses expected to testify on this issue (including Messrs. Hairston, McCoy, McDonald, and Mosbaugh) shall refrain from any conversations on this issue other than in their immediate family or with

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<sup>4</sup>Materials are relevant if they deal with the actions of the on-call manager or corporate manager (or any individual performing these or similar roles) in making telephone calls either in a nuclear or a non-nuclear emergency.

<sup>5</sup>We see no purpose in likewise sequestering the witnesses of the Staff of the Nuclear Regulatory Commission. However, those witnesses should respect the sequestration order by not talking with sequestered witnesses. They may address questions to those witnesses at the hearing through Staff counsel.

non-legal professional counsellors or therapists or bona fide support groups. At the hearing, we will exclude witnesses from the hearing room while the other witnesses testify on this issue.

ORDER

For all the foregoing reasons and upon consideration of the entire record in this matter, it is this 9th day of November, 1994, ORDERED, that:

Mr. Allen L. Mosbaugh's "Motion to Reopen Discovery" on the illegal license transfer issue, filed October 24, 1994, is denied.

Georgia Power shall promptly serve copies of:

- all relevant<sup>6</sup> procedures used at Vogtle from 1988 to the present.
- all training materials that Georgia Power used for the purpose of assuring the proper execution of the relevant procedures.

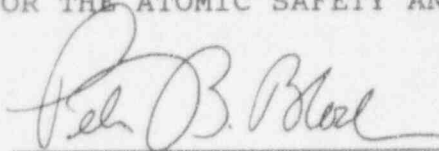
Counsel for Georgia Power Company, et al. and for Mr. Allen Mosbaugh shall inform all witnesses expected to testify on this issue (including Messrs. Hairston, McCoy,

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<sup>6</sup>Materials are relevant if they deal with the actions of the on-call manager or corporate manager (or any individual performing these or similar roles) in making telephone calls either in a nuclear or a non-nuclear emergency.

McDonald, and Mosbaugh) to refrain from any conversations about this issue other than in their immediate family or with non-legal professional counsellors or therapists or bona fide support groups.

FOR THE ATOMIC SAFETY AND LICENSING BOARD

A handwritten signature in cursive script, appearing to read "Peter B. Bloch". The signature is written in dark ink and is positioned above a horizontal line.

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Peter B. Bloch  
Chair

Rockville, Maryland

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of

GEORGIA POWER COMPANY, ET AL.

(Vogtle Electric Generating Plant,  
Units 1 and 2)

Docket No.(s) 50-424/425-OLA-3

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB M&O (MOTION TO REOPEN DISC) have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

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Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Administrative Judge  
Thomas D. Murphy  
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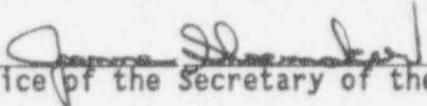
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Docket No.(s)50-424/425-OLA-3  
LB M&O (MOTION TO REOPEN DISC)

C. K. McCoy  
V. President Nuclear, Vogtle Project  
Georgia Power Company  
Post Office Box 1295  
Birmingham, AL 35201

Dated at Rockville, Md. this  
9 day of November 1994

  
Office of the Secretary of the Commission