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NUCLEAR REGULATORY COMMISSION

ORIGINAL

Title: GEORGIA POWER COMPANY, ET AL.
(Vogtle Electric Generating
Plant, Unit 1 and Unit 2)

Docket Numbers: 50-424-OLA-3 and 50-425-OLA-3

Location: Rockville, Maryland

Date: December 14, 1994

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NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD

PREHEARING CONFERENCE

In the matter of:	:	50-424-OLA-3
GEORGIA POWER COMPANY, et al.	:	50-425-OLA-3
	:	Re: License Amendment
(Vogtle Electric Generating	:	(transfer to
Plant, Unit 1 and Unit 2)	:	Southern Nuclear)
	:	ASLBP No.
		93-671-01-OLA-3

Wednesday, December 14, 1994

Hearing Room T 3B45

Two White Flint North

11545 Rockville Pike

Rockville, Maryland

The above-entitled matter came on for a prehearing conference, pursuant to notice, at 9:30 a.m.

BEFORE:

PETER B. BLOCH	Chairman
JAMES H. CARPENTER	Administrative Judge
THOMAS D. MURPHY	Administrative Judge

APPEARANCES:

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Agenda for 12/14

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9. GPC's December 6, 1994 production of documents (Int)
10. New business not scheduled (if there is no objection)

P-R-O-C-E-E-D-I-N-G-S

11:02 a.m.

CHAIRMAN BLOCH: Good morning.

I'm Peter Bloch and on my left is Judge Carpenter, James Carpenter. And on my right, Judge Tom Murphy.

Would the parties who are here please identify themselves for the record beginning at my left?

MR. BARTH: I am Charles A. Barth. I'm the attorney for Office of General Counsel for the Nuclear Regulatory Commission. To my immediate right is Mitzi Young, also an attorney with the General Counsel's Office. To my immediate left is John Hull who also an attorney with the Office of General Counsel.

MR. BLAKE: Judge Bloch, my name is Ernest Blake. I'm with the law firm of Shaw, Pittman, Potts & Trowbridge in Washington, D.C., and I'm here representing Licensee. With me today are David Lewis also from Shaw, Pittman, James Joiner and John Lamberski, both of the law firm of Troutman Sanders in Atlanta, Georgia.

Thank you.

CHAIRMAN BLOCH: Mr. Kohn is approaching the bench.

We've begun identifying ourselves for the record.

Everyone else has identified themselves for the record. It's up to Mr. Mosbaugh's counsel.

MR. KOHN: Thank you, Your Honor.

Michael D. Kohn and Mary Jane Wilmoth representing Intervener from the law firm of Kohn, Kohn, and Colapinto.

CHAIRMAN BLOCH: The licensing board would like to express its sympathy for the loss that Ms. Wilmoth suffered recently.

We have distributed our proposed agenda for today. Are there any suggestions for amendment of the agenda that we distributed? We made an attempt to include all of the issues that all the parties have proposed.

I'd like to direct that the agenda be bound into the record at this point.

So, our first item is the status of settlement negotiations and this was on the agenda proposed by Georgia Power so I would prefer that they start on this issue.

MR. BLAKE: Judge Bloch, the reason that we put this on our agenda was because at the last pre-hearing conference I had reported to the Board that there were ongoing settlement discussions. We're no longer having settlement discussions between the Intervenor and Georgia Power. I just didn't want the Board to go thinking that there were ongoing discussions of settlement.

Agenda for 12/14

1. Status of settlement negotiations (GPC)
2. Georgia Power's oral motion to strike
   a. Issues
   b. Witness list, portion
3. Subpoenas for witnesses and documents (Int)
4. Estimates of time for direct cases (all)
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CHAIRMAN BLOCH: And do any of the parties have any comments on how those discussions could be resumed in a fruitful way? Or shall we assume that there won't be any for a while?

MR. BLAKE: We certainly entered into these with a confidential overlay and therefore I'm not in the position to discuss it. I'd be prepared to if the Intervenor wanted to go into more detail with the Board, but I'm really not bound to.

CHAIRMAN BLOCH: No, I'm really not interested of learning the details of confidential settlement negotiations but I was interested if anyone had any proposals that might break the deadlock that we could somehow assist with?

MR. BLAKE: I guess we could say we could if we knew what Georgia Power's proposal was. So, until we know that, the Intervenor has no information to give. We've never received a proposal from Georgia Power, basically, so I don't think there's much the Intervenor can do on this matter.

CHAIRMAN BLOCH: So that -- Okay.

Unless the parties both want to seek some kind of help from the Board, there's no way that we can proceed on this matter.

The second item on the agenda is what we've

interpreted to be Georgia Power's oral motion to strike and they're interested in striking some of the issues and also some of the portions of the witness list.

And let me call on Georgia Power to state what it is they would like to accomplish. There are two questions here for us. One is whether you're right and the other one is whether we really can do it orally. So, we'll have to look at both of those parts of that.

MR. LAMBERSKI: Your Honor, I'm prepared to discuss a number of the issues that Intervenor raised in his statement of issues. We are interested in getting a ruling today if possible so that it will allow us to prepare our testimony and stick to the schedule that we've discussed previously.

The first item, I'm going to do this not in numerical order because some were more obvious places where in our view things could be narrowed or eliminated all together. So I'd like to start with issue 19 which is at page 41 of the statement of issue.

MR. KOHN: Your Honor, if I might. I think maybe the parties should determine whether this is appropriate for oral resolution. We believe that the motion should be in writing and that Intervenor should have the opportunity to review it carefully and respond. I believe under 10 CFR 2.730 motions are to be in writing

unless presented at the hearing.

CHAIRMAN BLOCH: Where is the authority in 2.730 for the proposition? It seems to me the very first section anticipates that written motions are filed with the Secretary which suggests that there are other motions as well.

On the merits of what you're saying, Mr. Kohn, we already raised the question you're raising. If in fact there are difficulties in responding and you really can't have an adequate response, we'd want you to tell us that when it's your chance to answer.

MR. KOHN: I think under 2.730(b), form and content, "unless made orally on the record during a hearing," and I do not believe this is actually a hearing. I would consider this as a pre-hearing conference. And I believe at this stage of the proceeding the motion should be made in writing.

CHAIRMAN BLOCH: I guess I believe from my practice here that we've traditionally allowed motions during a pre-hearing conference or a special pre-hearing conference. Do you have any precedent for that interpretation?

MR. KOHN: A motion that I recall discussing before was NRC Staff indicated that they wanted to raise a motion rather than respond. We raised our motion in

writing and NRC Staff requested to respond orally and Intervenor did not object. But the motion itself was made in writing.

Basically on an important motion such as this, which is not just procedural and may be very time consuming, I think it's -- and it's also very important to Intervenor's case. I think it's something that the parties and the Board should consider in writing to preserve appeal. And otherwise I don't think Intervenor could necessarily adequately put forth his case and rationale without having access to the documentation he may need to review before responding. That documentation, of course, is all in my office or in Mr. Mosbaugh's possession.

CHAIRMAN BLOCH: We'll want to keep that under consideration. We do want to hear what the motion is. If there is a difficulty in resolving it orally, we'll probably decide to do it in writing. But I think we'd like you to go forward to see whether that difficulty presents itself.

I would think that this is within our prerogative as a presiding officer, although I'm not finding the particular section on the presiding officer's powers.

ADMINISTRATIVE JUDGE MURPHY: 718.

CHAIRMAN BLOCH: 718.

MR. KOHN: I believe it's right also in the section I was citing, Your Honor. I think 2.730 indicates that the Board may. On 2.730(b) it says, "Form and content, unless made orally on the record during a hearing or the presiding officer directs otherwise." So I believe under the section I cited, Your Honor, you have the right to do that.

CHAIRMAN BLOCH: Thank you.

So let's continue with the argument of Mr. Lamberski on 19.

MR. LAMBERSKI: Intervenor's issue 19 takes issue with the statement that Georgia Power in October 3rd, 1991 response to Intervenor's 2.206 petition with respect to prior statements Mr. McDonald had made in a Department of Labor proceeding. Georgia Power doesn't believe that this issue has any relevance to the issue of whether Mr. Dahlberg versus Mr. Farley was in control of license activities at Plant Vogtle and therefore should not be admitted.

CHAIRMAN BLOCH: What is the relevance of this particular issue, Mr. Kohn?

MR. KOHN: It indicates that Georgia Power in response to 2.206 petition filed by Intervenor, Mr. Hobby was arguing that the method used to select the SONOPCO project was not at issue and that we believe the arguments

were invalid. And it has a tendency -- and in fact, relates on -- materially to whether license transfer occurred. If the selection process was different than normally accomplished in a Georgia Power reorganization then I believe it is relevant.

CHAIRMAN BLOCH: Would the Staff like to comment on whether or not this issue is germane?

MR. BARTH: If I may, Your Honor, I would like to reserve the Staff's comments until the end of argument by Mr. Lamberski. Have a view on his motion in total would, I think, be easier for you to handle rather than tidbit by tidbit.

But to answer the specific question in response to your question, Your Honor, is I do not think this is relevant. That really does not bother me. I would prefer to make a slightly different argument at the end of the motion to strike to resolve what I think is a problem.

CHAIRMAN BLOCH: If you really have an argument that goes to the whole motion, it seems to me it would be kind of foolish for us to rule section by section and then wait for this bomb to be dropped afterwards.

MR. BARTH: Thank you kindly, Your Honor, for the offer and for the bomb description.

We have had simply an enormous amount of paper flowing between lawyers and arguants. I think it is time

to come to grips with the issue. On behalf of the Staff, I am opposed to Mr. Lamberski's motion to strike. I think we should continue with the schedule you have, Your Honor, to go to hearing on January 4 on these alleged issues.

I have been through them. None of them relate to license or activities. None of them are relevant. But if we argue as lawyers, we will argue interminably. The licensee has wanted to go to hearing. I am prepared to go to hearing.

This goes to another matter, too. There's not been a proper proffer as you required in your offer. So it is difficult to understand how to have a hearing wondering what the witnesses will say.

I would suggest that we go to hearing. Mr. Kohn put on his case. We take these people cold without the proffer, otherwise we'll have more lawyer argument. And then Your Honor give a 10 working day recess for the Staff and the Licensee to prepare their case having heard Mr. Kohn's. This will bring us to hearing and bring this matter to a conclusion. And stop the arguance and the bitter bickering, and the flow of paper between counsel.

I think we should simply take the alleged issues of Mr. Kohn, let him go first and prove his case, and bring his witnesses up here, and introduce his documents. And I think that a proper time, since this will

be cold for the Licensee and the Staff, give us five working days, ten working days, to prepare to rejoin this.

CHAIRMAN BLOCH: We're going to take a brief decisional break.

(Whereupon, at 9:44 a.m. a brief recess until 9:49 a.m.)

CHAIRMAN BLOCH: The Board is prepared to rule on the first two motions presented to us. On the Staff's motion, we find that we do not need further argument. We will rule on whether the motion is meritorious. We don't see any basis for putting aside a decision on whether matters are relevant to this case and whether they've met the criteria that we've established for admission.

With respect to issue 19, we've decided that it does meet the criteria for admission in this case. First, because it alleged a misstatement. And second, because it relates to the way in which the SONOPCO project was run and controlled. So, the Licensee's motion to strike number 19 is denied.

Mr. Lamberski.

MR. LAMBERSKI: The next item I'd like to address, Your Honor, is issue 27.

Intervenor here takes issue with a statement by Georgia Power in its 2.206 response with respect to prior testimony of Mr. McDonald concerning the selection of

Messrs. McCrary and Long. This testimony was given in a Department of Labor proceeding. Whether or not the statement and the 2.206 response accurately describes Mr. McDonald's involvement in the selection of Messrs. McCrary and Long, believes is not relevant to the issue of whether Mr. Dahlberg versus Mr. Farley was in control of license activities at Vogtle, and therefore believe it's not admissible.

CHAIRMAN BLOCH: Basically your argument is that it's not a misstatement about the control of the nuclear operations?

MR. LAMBERSKI: It's an alleged misstatement about Mr. McDonald's involvement in the selection of these individuals, yes, Your Honor.

CHAIRMAN BLOCH: And Mr. Kohn?

MR. KOHN: Those selected and method used to select the highest ranking vice presidents in the organization is very germane. The fact that Mr. McDonald made false statements in the Department of Labor proceeding and later defended those false statements to the NRC in a response to a 2.206 petition evidences that the method used to select the SONOPCO project was not proper and that the licensee had something to hide, and was not being truthful and candid with the NRC.

CHAIRMAN BLOCH: Is this issue relating to the

original organization and the appointment of executives, or was it a later time?

MR. KOHN: The original 1988.

CHAIRMAN BLOCH: So it's on the same general subject as the issue we just admitted?

MR. KOHN: Yes.

CHAIRMAN BLOCH: Does the Staff want to reconsider and comment on the relevance of this issue?

MR. BARTH: We do, Your Honor. We do not feel it is relevant. It does not relate to the activities licensed on March 31, 1989 in PF-81 which is a license for the Vogtle facility. This is not a matter of the operation of the plant. This is our view of much of these things.

CHAIRMAN BLOCH: What were the duties of Fuchko and Yunker?

MR. KOHN: It does not deal with Mr. Fuchko and Yunker. That's the name of the proceeding where the statement was made. It deals with Mr. McCrary and Mr. Long, Vice President of Administrative Services and Vice President of Technical Services. Yunker and Fuchko is the section 210 proceeding in which one of the statements was made. And another statement was made in the Hobby 210 proceeding.

MR. BARTH: Your Honor, you are here talking about credibility and I must emphasize that the way in

which SONOPCO factory people were selected is not a matter over which the Nuclear Regulatory Commission has control. It is not a licensed activity.

CHAIRMAN BLOCH: Was Mr. Long's responsibility in technical services related to the nuclear operations of Georgia Power?

MR. KOHN: Yes, as was, we believe, Mr. McCrary's with respect to emergency planning. He had responsibilities. And it's also relevant to the fact that their positions were not originally identified to the NRC in their November 23, 1988 FSAR when they had already been selected and were serving these functions.

MR. LAMBERSKI: Your Honor, that's not what Intervenor is raising here in this issue.

MR. KOHN: It is indirectly, Your Honor. Basically we're stating that Mr. McDonald made false statements about his knowledge of the role Mr. McCrary and Mr. Long were going to play because he wasn't involved in their selection, or he didn't know how they were ultimately selected. And we believe that Mr. McDonald along with Mr. Farley personally selected these individuals. And to testify in the proceeding that he had no knowledge how they were selected I think is highly relevant to the issues of who was in charge and what was going on. And specifically relates to the credibility of Licensee's witnesses and

their truthfulness and candor.

CHAIRMAN BLOCH: Based on the proffer that McCrary and Long are directly involved in nuclear matters, we also find this issue relevant to this case. So the motion to strike is denied.

MR. LAMBERSKI: Your Honor, the next item I'd like to discuss is -- I'm going to jump from the statement of issues now to the pre-filed testimony of Intervenor. This is the only occasion which I'm going to do that.

And I'd like to address the pre-filed testimony of Tom McHenry. It is the last set of testimony in Intervenor's package of pre-filed testimony.

CHAIRMAN BLOCH: We'll try to go along with this. I wasn't prepared for a motion to strike this but let's see what happens.

MR. LAMBERSKI: Your Honor, Intervenor has simply attached two historic affidavits of Tom McHenry to his pre-filed testimony. When we saw that, we contacted Mr. McHenry to ask if he was aware that pre-filed testimony had been submitted on his behalf and he said he was not. The issues that Intervenor raises by these affidavits are issues similar to staffing, methods, selections, statements by Mr. McDonald in the Yunker and Fuchko proceeding or with respect to meetings prior to that proceeding, statements by Georgia Power attorneys, and these matters are not relevant

to the issue of who was in control of licensed activities. Therefore, we would move that Mr. McHenry's pre-filed testimony be stricken.

CHAIRMAN BLOCH: Mr. Kohn, do you need some time to respond to that?

MR. KOHN: No, I think I can respond, Your Honor.

Well, I should say to respond in detail, I would probably have to read his testimony over carefully because it certainly -- I believe it is relevant. To respond at this point and generally give the understandings to why we believe it's relevant, I can certainly do that, Your Honor.

Mr. McHenry participated in the issue that we had just discussed concerning Mr. McHenry -- concerning the selection of use -- the process used to staff the SONOPCO project. Mr. McHenry participated in that meeting. He was called into it and witnessed what occurred. So, with the affidavit of Mr. McHenry is completely germane to that.

There's two affidavits and that is the first affidavit.

CHAIRMAN BLOCH: Where is this statement about being present at the meeting?

MR. KOHN: If you look at paragraph 14. Well, let me try to find the exact one. I may be misstating

that.

Paragraph 12.

CHAIRMAN BLOCH: Is this affidavit being challenged, Mr. Lamberski, or just the second one?

MR. LAMBERSKI: Both of them, Your Honor.

CHAIRMAN BLOCH: Both. I opened to the other one not knowing there were two.

MR. LAMBERSKI: I'm sorry, I should have made that clear.

MR. KOHN: Paragraphs 12 and 13. Mr. McHenry is -- to put this in perspective, what occurred in the Yunker-Fuchko proceeding was that in preparing for the proceeding to go forward, Mr. Hobby was called into a large conference room attended by Mr. McDonald, Mr. Scherer, and 20 or 30 other people. At that point Mr. McDonald gave an overview of what the case would be including how the people were selected to staff the SONOPCO project.

Mr. Hobby disagreed and believed that the statements given by Mr. McDonald in preparing for the proceeding were false. He advised Georgia Power Company's attorneys that he believed it was false. And then went forward and told Mr. McHenry that he thought Mr. McDonald's statement was also false and wanted to basically check his recollection with Mr. McHenry. And Mr. McHenry agreed that from his understanding that the process used was not as

described by Mr. McDonald.

And it goes to the issue we had been discussing as to the process used to select -- to staff the SONOPCO project and whether Mr. McDonald made false statements, and those statements were then incorporated into responses to 2.206 petitions.

CHAIRMAN BLOCH: And is Mr. McHenry aware of this filing?

MR. KOHN: Mr. McHenry is aware that he's going to be called as a witness and when we attempted to -- he had been contacted by Mr. Hobby and we had tried to arrange times and what not but he could not make himself available due to personal commitments and was at a location where there are no telephones. He's, I believe, building a house somewhere and all his time was there. So, he is aware that the affidavits have been submitted in legal proceedings before and he testified in Mr. Hobby's 210 proceeding.

CHAIRMAN BLOCH: Do you understand the nature of pre-filed testimony in our proceeding? Do you know how it's actually entered into the record?

MR. KOHN: My understanding would be entered into the record when the witness is called.

CHAIRMAN BLOCH: Right. And he would have to swear that the statement is true and correct to the best of his believe at that time and then it becomes just as if he

had testified to that.

MR. KOHN: That is correct, Your Honor.

CHAIRMAN BLOCH: And he'll have a chance to correct it as well.

MR. KOHN: Yes.

CHAIRMAN BLOCH: Well, subject to the understanding that of course the witness is going to have to appear to adopt this as his testimony, we do find that the portion of the testimony pointed to by Mr. Kohn is relevant to the issues that we've been discussing.

MR. LAMBERSKI: Your Honor, if I may, there's one other complication. When I spoke to Mr. McHenry, he indicated that he had a conflict in that he has jury duty beginning on January 3rd and expects to be in federal court for two weeks from -- beginning on January 3rd. So I think that further complicates the scheduled for this hearing.

CHAIRMAN BLOCH: Well, I assume that Mr. Kohn will somehow handle that in terms of a motion to either have him out of order or -- and also if I recall -- He's actually on a jury?

MR. LAMBERSKI: No, not yet, Your Honor.

CHAIRMAN BLOCH: Well, he also could be called and not be on a jury, in which case he'll be available easily.

Does Staff want to comment on what we've just

ruled? You didn't have a chance to argue before we ruled.

MR. BARTH: Thank you, Your Honor. As you look at page 4 of the first affidavit --

CHAIRMAN BLOCH: Which paragraph?

MR. BARTH: If you give me a moment to relocate it.

CHAIRMAN BLOCH: I hope you're going to argue relevance and not the merits of the case.

MR. BARTH: On the relevance, Your Honor, I would again point out that how SONOPCO was staffed is not a licensable activity, an activity which NRC regulates.

CHAIRMAN BLOCH: We already ruled it was so you don't have to raise that issue again. That was in the other things that we've already ruled on. Once we rule, it establishes a principle for the case.

MR. BARTH: Thank you, Your Honor. It appears then that we will relitigate the Department of Labor case.

Page 4 points out that McHenry states that Hobby says that McDonald said, you have triple hearsay. But I guess that may go to its weight more than anything else.

Thank you, Your Honor.

CHAIRMAN BLOCH: Mr. Lamberski.

MR. LAMBERSKI: The next item, Your Honor, is issue 25 at page 50 of Intervenor's statement of issues.

Here Intervenor asserts that he intends to demonstrate that Southern Company management intentionally created Southern Nuclear Division, the creation of which violated 10 CFR 50.54(c) which I believe is the prohibition against alienation. Our position, Your Honor, this is the very matter that the Board ruled that would not be heard in this hearing in its November 8 order.

CHAIRMAN BLOCH: Mr. Kohn, that appears to be correct. Is there something you want to say about that?

MR. KOHN: Well, I will not take issue if the Board finds that, Your Honor. I do not believe in our initial filings that we indicated an intent and willfulness to violate, and to that extent, if the Board found that there was an intent and willfulness to violate, that we believe it may be an admissible issue.

CHAIRMAN BLOCH: But unlike all of your other findings, this one has no evidence to support that claim.

MR. KOHN: I think it ultimately goes to the evidence and findings on all the other matters in totality. Again, with intent and motivation, it's usually proven through circumstantial evidence. And to the matter at the end of the proceeding whether we put forward enough circumstantial evidence to draw that conclusion by the Board is what we were looking for.

CHAIRMAN BLOCH: Well, if I hear you correctly,

you're not going to separately litigate this issue.

MR. KOHN: That is correct.

CHAIRMAN BLOCH: And if you in fact demonstrate that there's been misrepresentation with respect to a legal transfer, and that is what's considered relevant, it seems to me that other findings that you might want to suggest on the record that are relevant to the contention would be acceptable.

But as a separately litigable issue, we'll strike 25.

Mr. Lamberski.

MR. LAMBERSKI: The next issue is 13 on page 29. Here Intervenor asserts about the company inaccurately identified the members of the Georgia Power management council. Specifically about Mr. Hairston was identified in Georgia Power's description and not a member of the management council. This allegation in Georgia Power's opinion is not relevant to the issue of licensed activities at Plant Vogtle and therefore should be stricken.

CHAIRMAN BLOCH: That would appear to be correct, wouldn't it, Mr. Kohn?

MR. KOHN: No, Your Honor. Georgia Power has contended in its 2.206 response, or elsewhere, that the management council was a body that was employed to oversee operations, including nuclear operations. And the fact

that if Mr. Hairston was a member of the management council, it would certainly make that body a more viable oversight. If he was not, it would make it a less viable oversight organization.

And we should also note that with respect to the people who were members of the management council, there was also in another proceeding sworn responses to interrogatories filed stating that Mr. McDonald wasn't a member of the management council as well. So with respect to --

CHAIRMAN BLOCH: I'm sorry, was or was not?

MR. KOHN: Was not. So, with respect to who was or was not a member of the management council and how it was functioning, we believe it is in fact a viable issue.

CHAIRMAN BLOCH: Staff?

MR. BARTH: I think that the Licensee has correctly described the relevance to a proceeding which is not there, Your Honor. I just do not see that this is relevant to activities at the facility itself by other than Georgia Power.

CHAIRMAN BLOCH: Is that the Staff's interpretation of control of nuclear operations, the activities in the facility itself?

MR. BARTH: Your Honor, if the activities of a

facility are never controlled by anyone but Georgia Power, there is no issue. We license the activities of the nuclear power plant. We do not license how Mr. Hairston was selected to be a vice president of Georgia Power. We do not license how Mr. Dahlberg became president of the Southern Company.

The activities in the plant are our responsibility for public health and safety. If there is some force outside of Georgia Power employees which we license to operate that facility, it comes into that facility and has decisions made which are contrary to those authorized to make the decisions, that is our prime concern. We are concerned with the safe operation of the plant, not who introduced Mr. Hairston to Mr. Dahlberg or introduced Mr. Dahlberg to Mr. Hairston, or who hired either one of them.

CHAIRMAN BLOCH: Now, Mr. Barth, what I understand to be the argument here is that Georgia Power is asserting as part of its argument that it controlled nuclear operations, that it had a management council with top people on it. And the allegation is that it's stated that those top people included Mr. Hairston. And this allegation is that that was a lie.

MR. BARTH: I think we would have to show how that oversight committee had some activity which related to

the operation of the facility. Not simply that they reviewed reports submitted by the plant management or that they consulted with the vice presidents. There is no showing of any relevance to the operation of the plant, in my view.

CHAIRMAN BLOCH: If I'm hearing you correctly, the CEO of the plant would never have any relevance to the operation because all he would do is consult with other people and hear reports, and direct other people below him. But he would never be in the plant.

MR. BARTH: I think you are both accurate and hyperbolizing slightly. But I think you are correct. I think that the president of Georgia Power Company, I would be very surprised if he were in the plant. He is not a qualified nuclear engineer.

MR. LAMBERSKI: Your Honor, may I add one other thing?

CHAIRMAN BLOCH: Please.

MR. LAMBERSKI: This is not a matter of whether Georgia Power said that the Georgia management council did not include Mr. Farley. This is an issue of whether Georgia Power said it included one Georgia Power person versus another Georgia Power person. I don't see how this gets to the issue in this case over the fact that Georgia Power has improperly represented that Georgia Power was in

control of nuclear operations.

CHAIRMAN BLOCH: Thank you.

We'll take a brief recess, turning around here.

(Whereupon, at 10:15 a.m. a brief recess until 10:16 a.m.)

CHAIRMAN BLOCH: The Board finds that this allegation is relevant to the contention, that it has to do with who was or was not managing the activities that are relevant to the nuclear power plant.

Next matter, Mr. Lamberski?

MR. LAMBERSKI: Issue 8, Your Honor, page 19. Here, Intervenor asserts that the company has inaccurately responded to the Board's questions in this case in a filing made on August 24th. Intervenor, I believe, mischaracterizes the December 27, 1988 letter of Mr. Dahlberg. Mischaracterizes deposition testimony that he cites on page 20 of his brief. And we believe that the response is accurate. Don't believe that there's anything here that relates to the issue in this case.

CHAIRMAN BLOCH: I'm sorry, are you saying that if we were to accept 8A as it is, it wouldn't be relevant? Or are you saying that there's a deficiency of supporting citations?

MR. LAMBERSKI: I guess I'm saying both, Your Honor.

CHAIRMAN BLOCH: The allegation really is more one of omission that's stated in 8B. It's saying that if you say what's in 8A without saying what's in 8B, that it's misleading? That seems to me to be very similar to the core of what they've been alleging generally.

I'm not saying it's true. I'm just saying it's right there in the core of the case.

MR. LAMBERSKI: Your Honor, I believe they've taken liberties in supporting that assertion in their bases.

CHAIRMAN BLOCH: Would you like to go into that some?

MR. LAMBERSKI: I don't have the actual testimony in a Department of Labor transcripts that Mr. Kohn cites here with me today, Your Honor, so I can't. I can't read from it.

CHAIRMAN BLOCH: We'll reserve this for decision on a written motion since --

MR. BARTH: Your Honor, before you decide, may we comment on this?

CHAIRMAN BLOCH: Sure. I'm not sure why you want this since we're going to wait for a written motion.

MR. BARTH: I do not think a written motion really is necessary. Take a look at the allegation on page 20. This NOCA acronym is a contract administration group

which had nothing to do with the operation of the nuclear facility. Basically, they gathered information and submitted it to public service commissions and looked at contracts and other contract administration. It is not related to an activity licensed by us nor does it influence an activity licensed by the NRC. It just is not relevant. We have been through this many times and the Department of Labor proceedings have seen this story, of course, in Mr. Hobby's deposition. But this--

CHAIRMAN BLOCH: Well, as I recall in the motion for summary disposition, there was a statement by Mr. Dahlberg about the purpose of NOCA and it seemed to be oversight. So, based on my strong recollection of that, it seems to me that there's at least some evidence to suggest that NOCA was intended to have an oversight capability.

And based on that, we'll await the written motion concerning the alleged inadequacy of the bases in D, 8D, on page 20.

MR. BARTH: Thank you, Your Honor.

CHAIRMAN BLOCH: May I ask if it might help, since we've now made a stream of rulings, whether you want to take a brief recess to review the other matters to see if you want to raise in exactly the same form or a different form?

MR. LAMBERSKI: That was our thought, Your

Honor.

CHAIRMAN BLOCH: We'll take a 10 minute recess. It's 10:22. We'll be back at 10:32.

(Whereupon, at 10:22 a.m. a brief recess until 10:32 a.m.)

CHAIRMAN BLOCH: While we were off the record, the Board requested disks from Intervenor for their direct testimony as well as for the issues. And we also agreed that in Intervenor's issues on pages 30 and 31, the number 14 on 30 will be called 14A and the number 14 on 31 will be called 14B.

Mr. Lamberski, we recessed probably so that you could be reviewing your motions. It's your turn to continue.

MR. BLAKE: Judge Bloch, we appreciated the opportunity and listened carefully to the Board's rulings on the issues.

There are a number of items, really subparts of some of the other issues that we think are probably better left to the evidentiary hearing. And there will be some arguments about whether or not there is an adequate basis to allow evidence to be put in. Even on those where the Board's already ruled we will have a problem with the introduction or attempted introduction of some evidence at that point.

But we understand the Board's rulings today with regard to relevance and we don't propose to go further in arguments about the issues.

CHAIRMAN BLOCH: I'm not sure exactly what the procedural position is that you're describing at the hearing.

MR. BLAKE: Well, I'll give you an example.

If we were to look at issue 1 today in some more detail, you would find some subportions where the Intervenor has substantiated issue 1 as being appropriate. But where I think the Board has even itself ruled out and has regarded as mischaracterizations of the existing evidence, some of the statements which the Intervenor said in their response to our motion for summary judgment and have repeated simply in this document.

So, we'll run into some problems of that kind which I think rather than taking the time today will be better left to the evidentiary portion.

CHAIRMAN BLOCH: If so, what you are saying is that there may be motions that certain evidence is irrelevant?

MR. BLAKE: Yes. Irrelevant, immaterial, no basis for it, et cetera. There will be, I think, a number of those.

CHAIRMAN BLOCH: But you're also saying, I

think, that you don't think that ruling will be bound by the list of issues, if I hear you correctly?

MR. BLAKE: Well, that's right. Because in the case of issue 1, for example, it's subparts of it and wouldn't necessarily eliminate the entire issue.

CHAIRMAN BLOCH: I think what I'd prefer to do is to follow the procedure I suggested to Mr. Lamberski in the one place where he thought that the basis for the contentions was improper. Which is, I think it would probably much more efficient to do that in terms of a motion to strike in writing rather than waiting at the hearing to hear that orally at the time that we're going to introduce evidence.

MR. BLAKE: We certainly can try to do that. At the end of the day today we'll all have a better feel for what the issues are, who the witnesses are, what the exhibits are, and know how much of those need to be the subject of a motion to strike.

But I'm really just warning the Board that I think at the hearing there will be some additional arguments of the kind with regard to the materiality or relevance that we tried to make today, at least on subparts of these same issues.

CHAIRMAN BLOCH: But what I was suggesting is--

MR. BLAKE: I understand.

CHAIRMAN BLOCH: -- is an available motion to strike and you don't make it, you may lose on the motion of relevance.

MR. BLAKE: I understand that as well.

We also will be looking more closely at issue 8 in view of the Board's rulings today and will alert you whether or not we need to take you up on the offer to file a written motion.

CHAIRMAN BLOCH: I think we want to progress to the witness list? You had some motion or motions about the witness list.

MR. BLAKE: Please.

The witness list presents us with a real dilemma. I don't even know how many individuals. There are 69 categories, some of whom are named people and others are just categories of people that the Intervenor plans to call for what's been identified as a three week hearing to start in less than a month from now.

I think if what is being asked here is that the company provide these people voluntarily, then we will need to hear what is it that each of these people is being called to testify to, what is the purpose, what is the basis, Before we are in a position to make that determination. Certainly a number of these people are not Georgia Power employees. Some are identified as NRC

personnel. Some are ex-Georgia Power or Southern Company system individuals over whom we don't have that kind of control. And I don't know how we get from here to there.

Obviously the Intervenor has anticipated this and probably why they put the possible need for subpoenas on their agenda for today's conference. But hopefully we could avoid at least a large number of subpoenas if they were simply to tell us what each of these people is being--is going to be called to testified to. We ought to be able to at least reduce the numbers of problems. I'm pretty confident we'll have some problems.

CHAIRMAN BLOCH: Right. And on 67, it can be reduced if as soon as possible you could notify them as to which of the documents you'll be contesting authenticity.

MR. BLAKE: We attempted to reach them yesterday. Mr. Lewis placed a call to the Intervenor at 10:00 yesterday morning hopeful that we would find out more and be able to talk more about documents, but we didn't get a return. But hopefully we'll still be able to do that.

CHAIRMAN BLOCH: Could the parties establish a time schedule for that discussion on documents?

MR. BLAKE: We'd like to do it, obviously, as soon as possible. There are some obvious problems. Some of the transcripts that are referred to, for example, in their exhibit list don't exist. You may recall the dispute

that the Intervenor had with the Court Reporter. A number of those depositions were never transcribed. So that one's going to be real tough.

CHAIRMAN BLOCH: Are you planning to have them transcribed, Mr. Kohn?

MR. KOHN: We are considering making arrangements to have them transcribed, Your Honor. And --

CHAIRMAN BLOCH: Well, we'll want to know the time at which that will be ready because it affects the fairness of the proceeding.

MR. KOHN: I will communicate that. I have to talk to the Court Reporters. I don't really have a handle on that at this point.

CHAIRMAN BLOCH: So, let's see, within a week we'd like to have formal notice of the date by which the transcriptions will be available.

MR. BLAKE: In addition to that, would you set a date by which all the exhibits that they proposed would be available to the other parties so that we can prepare for the hearing, Judge Bloch?

CHAIRMAN BLOCH: What is the problem about availability of exhibits? There's some of these that you don't have?

MR. BLAKE: That's correct. And some where we need additional identification to determine whether or not

we have it or we don't.

MR. KOHN: We can sit down with -- If I might, Your Honor, with counsel for Licensee and they're in Washington, D.C. so it shouldn't be too hard for us -- if they tell me the ones that they're having problems with, we can fine tune those for them. We could probably accomplish that by the end of this week, I would think.

CHAIRMAN BLOCH: When you say you'll accomplish it by the end of this week, what kinds of time are you prepared to put into that?

MR. KOHN: Well, if they're list is limited to a few items, which I would anticipate that it would be, then it probably could be accomplished by a few phone calls and faxing a few documents to them. That would be my hope. If it's --

CHAIRMAN BLOCH: Is it that kind of list or is it an extensive list? How much time do you think this negotiation will take in order to clarify the exhibits?

MR. BLAKE: I don't think too long if we can simply -- I'll have a better feel once we work our way through. Our list of problems is not so long.

CHAIRMAN BLOCH: So we'll expect this to be resolved by the end of this week. If the parties have a problem, we expect to be notified.

MR. BLAKE: Yes, and will you set a date? When

I just think about the transcripts, understand that they haven't yet been transcribed. Mr. Kohn has said he's considering asking the Court Reporter to transcribe them. Once they've been transcribed, they have to be run by the witness for the witness to determine whether or not they're accurate. We're really in a box, at least on those, Judge Bloch.

CHAIRMAN BLOCH: The time for transcription of a transcript -- of a reporter's notes at which the lowest rate is available is generally, what, five days?

MR. KOHN: I don't know. It could be, Your Honor. I don't really -- No, it's usually two weeks. For the lowest rates it's two weeks turn around, two working weeks. Ten days or -- ten working days.

CHAIRMAN BLOCH: Does Licensee have experience with what the time is for the lowest rate for a reporting service?

MR. BLAKE: I can't speak to it, Your Honor.

CHAIRMAN BLOCH: Mr. Blake?

MR. BLAKE: Yes sir.

CHAIRMAN BLOCH: We'd love your comments on what date you'd like this to be and we'll have each of the parties comment briefly on what's fair in terms of the transcription deadline.

MR. BLAKE: One moment.

CHAIRMAN BLOCH: We could conceivably set a transcription deadline based on when the witness is expected to testify. That's a possibility. Or we could have a fixed one for them all.

MR. BLAKE: The difficulty with setting a late date for this is that it doesn't allow our witnesses, and while you haven't set a date for our pre-filed testimony, I'm anticipating it'll be like the 28th.

CHAIRMAN BLOCH: I can assure you we won't set a late date. It will be a timely one.

MR. BLAKE: If it's the 28th, you would want them to be able to review these transcripts before you required them to put in their testimony. So, it's got to be some time in order to allow that sort of discipline to take place.

CHAIRMAN BLOCH: Would it work if we required them to be transcribed before Christmas?

MR. BLAKE: That -- I'm thinking like the 22nd would be the latest. If I had my druthers, I'd say given the schedule that we've been on with identification of exhibits and everybody knowing where we were heading on this hearing the date has come and the date has gone, and to the extent they don't have them now, they can't identify them, and they can't give to the other parties or share them with the Board, then they ought to be foreclosed from

doing so.

I'm willing to set another date. But that clearly is not out the question, I think, Judge Bloch, given the history of this proceeding and the schedule we've been operating on for a long period of time.

MR. KOHN: Your Honor, I'd like to respond to two points. First, to the extent Georgia Power needs the transcripts to prepare their testimony, they are at liberty to order them expedited and to assist them, that's Georgia Power's prerogative. We also -- A good portion of the transcripts would be a part of, in effect, Intervenor's rebuttal case. We're cross examining hostile witnesses and we don't know what their testimony is going to be. Whether-it's -- if it's as they stated in their deposition as we understand it, then we don't even necessarily have a need for the depcsition. And we would be much -- I think the Intervenor should have the opportunity to submit the depositions as part of its rebuttal case and -- because that is in fact what it is.

MR. BARTH: Your Honor, could the Staff comment on this?

CHAIRMAN BLOCH: Yes. But I want you to comment before we finish, but the comment makes me wonder whether if the purpose of the transcripts is solely for cross examination, whether they need to be exhibits at all?

MR. KOHN: I think Your Honor has a good point. And they do not need to be exhibits.

CHAIRMAN BLOCH: Would Georgia Power's attorney like to comment on that? Do they need to be exhibits if the only purpose is to use them in cross examination of Georgia Power witnesses?

MR. BLAKE: No. They don't. But that isn't the sole -- that's what Mr. Kohn says at the moment, but it's not what he said in his pleading. There are a number of places in the discussion of the issues in here, Judge Bloch, where there are direct references to what people said in their depositions.

CHAIRMAN BLOCH: Well, I assume --

MR. BLAKE: And these depositions have yet to be transcribed. This is the kind of thing I indicated earlier we're going to get into when we get to the hearing.

CHAIRMAN BLOCH: We would interpret that as an assertion that they expect these witnesses, when called, to say those things. The fact that whether or not he introduces the specific deposition. If he believes they said that, that's enough of a basis for an issue to say they're going to say that. So I wouldn't worry about that.

I'm a little concerned whether you're going to use them only on cross or are you going to use them when you called these witnesses on direct?

MR. KOHN: Well, I would say to the extent we are going to use them when we call the witnesses on direct, then they -- and to the extent they would then be considered an exhibit, those exhibits might be considered separately from the remainder of the depositions.

CHAIRMAN BLOCH: Well, maybe. If the only purpose you're going to use them for was to impeach a hostile witness whom you'd called, I'm not sure that needs to be an exhibit either. I'm really saying I'm not sure. I'm not saying it doesn't have to be.

MR. KOHN: That is the only reason on the untranscribed depositions why we would be having them transcribed would be to impeach the testimony. If we believed that the testimony was inaccurate.

CHAIRMAN BLOCH: Mr. Barth.

MR. BARTH: Let me first address the untranscribed depositions because it is a small matter. They simply are not available to the government until Mr. Kohn pays his bill. That is just the way things are. The bill is not in the hundreds. It is a large bill. So we have a very real problem with these untranscribed depositions.

I would appreciate Your Honors indulging me by looking at page 5 of the exhibit list which Mr. Kohn has given. We have given considerable thought to his witness

list and exhibits, and how this matter can be handled and finally brought to a conclusion. If you will look at Exhibit 58, 59, 60, 61, 62, 63, and 67, those are documents from a proceeding in the Department of Labor and Staff does not have these. They do not intend to go buy them. We can put that aside for just a very brief moment.

If you look at Exhibit 71 --

CHAIRMAN BLOCH: But how is that relevant that you don't have them and don't plan to buy them? What would you like us to do?

MR. BARTH: If you give me a moment, Your Honor, I shall explain.

If you will look at Exhibit 71, that is the Hobby proceeding record which is the Department of Labor. It is my thought these were proposed as exhibits by Mr. Kohn that if we go to hearing, you bring three copies of these for the reporter, a copy for counsel, a copy for each of the judges. And we go ahead with the hearing. And since we have no idea what these people testified to or what is in these documents, I would suggest that you then at the conclusion of Mr. Kohn's presentation take a five to eight day working day recess to let the power company and the Staff review the testimony and these documents, and then submit their case. Although this will avoid the bickering of lawyers back and forth, I would like to point

out that you are talking about eight copies of the Hobby proceeding record. Mr. Kohn has proposed this as an exhibit, you are talking of thousands and thousands of pages in the eight copies. That is all right with me. It will take us a while to look through it.

But when he puts these witnesses on and puts these documents in, he has got to provide the proper number of copies to everybody which is his problem. That will solve the problem of the availability of transcripts. Those transcripts he does not have. He will not put it in. We will pay no attention to them as part of his affirmative case.

But if it should somehow precipitate this to hearing, take his witnesses he is listed, let Mr. Kohn offer the documents that he has stated that he will offer such as Exhibit 71, the Hobby proceeding record, and bring in the eight copies with fair notice and time before the hearing so we can look at these.

CHAIRMAN BLOCH: I'm not sure where you got the eight from. For exhibits, don't we usually require three copies?

MR. BARTH: The reporter gets three. There is a copy for each counsel. That is five. There are three judges, six, seven, eight. Given a little time, I could probably improve on my arithmetic and find some more.

Maybe the secretary. I have not really gone through the regulations that carefully to find out absolutely must be filed.

I have no problem in my own mind with not getting the exhibits today, but --

CHAIRMAN BLOCH: Let's handle the --

MR. BARTH: -- eight copies of Exhibit 71. The entire Department of Labor proceeding in adequate time for Your Honor to prepare, I mean, the judges have to be informed. You cannot expect the judges to --

CHAIRMAN BLOCH: Let's handle that matter next. The one we're handling right now is a date on which there should be a transcript of the transcripts that are going to be used apparently on the cross examination of witnesses by Intervenor. What date are you going to suggest?

MR. BARTH: He proposed these as part of his affirmative case. I would simply take these when he brings them into Your Honor and submits them for your consideration as exhibits. Insofar as he might do it on cross examination, I just cannot address that. That is just factless at this time. I don't know what he will cross examine on.

You have offered him a way to avoid presenting this for his affirmative case. Until I know what these witnesses will testify to, there is no way that I can tell

what will be done.

He has also spoken of using these not only in cross examination but for rebuttal. If he has an affirmative rebuttal case, he knows what his documents will be. He has got to submit them to evidence in this proceeding. Which again is the problem of bringing adequate copies.

I think we can get rid of the copy problem by simply going to hearing. And as any other place does, you require the copies of these things to be submitted in proper time for the judges and the parties to consider them.

CHAIRMAN BLOCH: So what's the proper time?

MR. BARTH: The Hobby proceeding page 71, is thousands of pages. That will take a little bit longer than some of the other depositions. Ten days, ten working days prior to the hearing, or, to the date which the witnesses who will use is expected to be put on. Because they won't all go on on January 4, I realize that, Your Honor.

CHAIRMAN BLOCH: So you would suggest a date of ten days prior to the testimony of the individual for which the document might be used?

MR. BARTH: Yes, Your Honor.

CHAIRMAN BLOCH: Mr. Kohn, would you like to

comment on whether that's feasible?

MR. KOHN: Your Honor, it is not really feasible because what -- we don't necessarily know the order of the witnesses at this point. In fact, I have no concept of -- I know who I want in the order I want, and Georgia Power in the past has indicated that certain people may not be available at certain times. And to the extent the parties can resolve these, and hopefully we can resolve them shortly.

CHAIRMAN BLOCH: Is the suggestion of 10 days prior to the testimony that's related to the exhibit, is that adequate for you?

MR. KOHN: No, we would propose that the exhibits we intend to introduce in our case be proffered at the commencement of the hearing.

CHAIRMAN BLOCH: Doesn't that strike you as creating some difficulty for witnesses who want to refresh their memory about things that have happened so long ago?

MR. KOHN: Almost all the -- Well, in the next few days all the documents will be known to Georgia Power Company and they will have their own working copies of them. So, to the extent that Georgia Power wants to refresh their--

CHAIRMAN BLOCH: Well, they won't have the working copies of untranscribed transcripts.

MR. KOHN: I thought we were talking about all the exhibits, not just the --

CHAIRMAN BLOCH: Well right now we're just talking about -- I know that Mr. Barth expanded the scope of that.

MR. BARTH: I have spoken to Mr. Bull. We will not have the depositions transcribed by Bull that have not yet been described in a week, Your Honor. It just will not be.

CHAIRMAN BLOCH: What did they tell you about the timing?

MR. BARTH: They are arguing about money. And no time was suggested.

CHAIRMAN BLOCH: Well, they're going to have to be paid. The question is how much time is fair if they're paid. We can't handle the payment question.

MR. BARTH: I did not ask them that question, Your Honor.

CHAIRMAN BLOCH: I assume you're planning to pay them.

MR. KOHN: Your Honor, we are planning also to use other court reporters to transcribe the notes as they were prepared.

CHAIRMAN BLOCH: You're going to have notes prepared by one reporter transcribed by another reporter?

MR. KOHN: On some of the witnesses, yes.

HAIRMAN BLOCH: That could create enormous difficulties as to the accuracy, couldn't it?

MR. KOHN: Not really. The notes, as I understand how the court reporters work, the notes are given to the office and the office transcribes them often. And if you look at the depositions that were submitted in this case, the court reporter signing for the accuracy is not the court reporter who took them in almost every single instance.

CHAIRMAN BLOCH: And the notes are in what form?

MR. KOHN: The notes are the stenographic notes.

CHAIRMAN BLOCH: They're machine?

MR. KOHN: Yes, machine stenographic notes that were in a sealed envelope were then provided to another court reporter to unseal them and then to reseal them. So, I guess I still don't know what's feasible in terms of time.

MR. KOHN: I put a call into the court reporter and I hadn't had a chance to get back before this hearing. I can find out in the -- when I get back to my office, I can call and find out where we stand on those.

MR. BLAKE: Judge Bloch, given that, and given

the schedule that we've been on, and given the fact that these depositions were taken months ago, I urge the Board to set a firm date by which we will either have the deposition transcripts which the Intervenor intends to use or not. And I urge that date be December 22nd. And I understand the bind that puts the Intervenor in and I take into account all that has gone before us in setting that date.

MR. BARTH: There are, if I may rejoin Mr. Kohn, the 10 CFR 2.740(e) does not authorize the procedure he suggests for having these things turned into writing. And at this stage I simply must agree with Mr. Blake and the Licensee that the time to have this has long past.

CHAIRMAN BLOCH: So you'd like it either to be ruled that it's too much time already or that he could do it 10 days before the hearing?

MR. BARTH: Yes, Your Honor.

CHAIRMAN BLOCH: We'll take a brief decisional recess.

(Whereupon, at 11:00 a.m. a brief recess until 11:01 a.m.)

CHAIRMAN BLOCH: The Board notes that the request of depositions are primarily for the purpose of impeaching the testimony of witnesses and that the consequence if they're not available is that the testimony

would have to be elicited from the witnesses rather from the transcribed depos'tions. In that light, we consider it fair to impose a deadline of the 23rd of December and to require that the transcripts be received by the -- I just realized that I'm not sure how many copies you're required to make available. Are these transcripts going to be made available to all the parties or do they have to be purchased by the other parties?

MR. KOHN: I believe it would be as -- I'm --

CHAIRMAN BLOCH: I guess the usual case with court transcriptions is that he's going to have to have the right to have his by the 23rd and the other parties are going to be able to purchase theirs by the 23rd. Isn't that the usual way it's done?

All right. So that the arrangement will be made for you to have yours on the 23rd and also that the other parties can purchase them by the 23rd.

Mr. Barth, let's go further into the suggestion you were making about the availability of depositions in other proceedings. And you're point of view is that the Intervenor will have to provide eight copies of those? Well, he can serve the parties prior to the hearing, right?

MR. BARTH: Your Honor is correct about the second. He can serve the parties prior to the hearing.

CHAIRMAN BLOCH: And the other copies would

have to be -- Well, I guess when he serves the parties, he serves the Board?

MR. BARTH: But he does not serve the reporter.

CHAIRMAN BLOCH: Of course. Right. The three copies for the reporter are saved.

Are there any comments on this position of the Staff?

MR. BLAKE: I have one. I think that Mr. Barth is correct in raising this question today. I fear otherwise we will arrive at the hearing and if you take Exhibit 71 as an example, there will not be the requisite number of copies. And I just think the Intervenor needs to note today that he's going to be held to provide the right numbers of copies of all the documents he plans to put in as exhibits. I think Mr. Barth's right in raising that today.

CHAIRMAN BLOCH: Mr. Kohn, do you have any comments on that?

MR. KOHN: No, we will prepare however many we are legally required to prepare. And I'm not absolutely certain how many I've just committed to. Is that --

CHAIRMAN BLOCH: Well, we think it's the service list and then three copies at the hearing for the reporter.

I'll change that slightly because it's my

practice that if the transcript being used is relatively short in length and highly germane to the proceeding, we will order it to be bound into the transcript. In which case, only one copy will be necessary for the reporter. The problem is that we won't bind in bulky matters. Those we will need -- So the ones that are the most costly are the ones you're going to have to have three copies of.

ADMINISTRATIVE JUDGE CARPENTER: May I just jump in. This Exhibit 71 I'm told is thousands of pages?

MR. KOHN: I think that technically it is and I think it should have actually said excerpts and not the entire document. We did not intend to submit the entire document.

ADMINISTRATIVE JUDGE CARPENTER: Thank you. Because if you hand me thousands of pages, I'm going to hand them back.

MR. KOHN: And I think you would be right in doing that because I think only a few that would be relevant at this proceeding.

CHAIRMAN BLOCH: We're going to continue with the motions about witnesses and exhibits.

MR. BARTH: Your Honor, if there are going to be any more amendments to the description of the witnesses provided by Mr. Kohn, we should know now so we have some kind of certainty with this thing. This amendment day

after day after day is not something with which we can deal. I can deal with the statement that he will submit the Hobby proceeding record. He's offered that. Fine. Do so. Now he offers excerpts. We don't know what extracts. This is just a morass which must be stopped. I would like to go to hearing with some kind of definite list so we all know what we're dealing with and what we're doing.

MR. BLAKE: I agree, Judge Bloch. If now we're talking about a list of exhibits other than the one which has been provided and if that list is something less or something different, we're simply now not on notice. If -- Just take this one as an example. If it's only pages 19 and 4,000, it sure would be nice, in fact necessary, for us to know that now in order to know what it is we're going to be required to address at the hearing.

So, I would join Mr. Barth's problem that he has expressed and would require that the Intervenors provide the other parties by the December 23rd date with those exhibits which they plan to use at the hearing. Then at least by the 23rd we'll know what the exhibits are which they plan. We now know it's going to be the transcripts, or at least portions of the transcripts of some of the depositions. It's going to be portions or excerpts from the Hobby DOL proceeding. I think the easiest way to accomplish that is let's just get our copies distributed on

the 23rd and the other parties and the Board know what the items are.

CHAIRMAN BLOCH: Mr. Kohn?

MR. KOHN: Thank you, Your Honor.

In preparing our exhibit list and witness list, I think we received some indication that the Board wanted to be as inclusive as possible. To include potential rebuttal documents, rebuttal witnesses. And we have done that. We do not believe that all these documents will be in our case in chief when we put it together. And we wanted to put the Licensee and NRC Staff on notice as to how we really saw our case and the full picture as best we could at the time that the list was prepared.

Now so I don't think that, for instance on 71, if we look at it as excerpts of the Hobby proceeding record, if you look at half the other exhibits in this document or a good portion of them are already excerpts of the Hobby proceeding record. So, it's basically saying that if there's a few extra pages or a transcript that we didn't particularly identify, we may want to include that into the record as well. That it's a potentiality. We haven't particularly identified another exact excerpt that we're planning to call but I haven't read through those thousands of pages in five years or however long. So there may be a few extra pages that we'll want to put in. So

we're putting the parties on notice that there may be some more. I have not to date identified any additional excerpts from the Hobby proceeding. They're not identified as other exhibits.

CHAIRMAN BLOCH: You know, a problem that I'm hearing, though, is that you've made an inclusive list of exhibits and you state that there are thousands of pages for you to review. That does create some problem in preparing an opposing case. There really is a need for you to specify the portions that you're going to introduce as exhibits. And when can that be done by?

MR. KOHN: That can be done. Well, Your Honor, I suggest that the Intervenor file on December 28th with the other parties. The other parties are supposed to be providing their witness list and exhibits at that time. Or in fact I should also note that based on the filings made on the 28th Intervenor may want to amend or shorten their list. So I think that Intervenor has provided the parties with notice of all the documents it intends to rely on, all the witnesses it intends to call, and that the parties, NRC and Georgia Power, are now in a position to make their filing on December 28th.

We're still in the dark as to what our rebuttal case is going to be. And to that extent we find it very difficult to really include all the pages that we are going

to want.

MR. BARTH: Your Honor, this simply does not comport with the order which you have given which extended Mr. Kohn's time to file his exhibit list, which extended the time for him to file the exhibit list. This is the day you asked for.

CHAIRMAN BLOCH: Which portion of the order does it not comply with?

MR. BARTH: He now states that this is not his exhibit list. Give us a moment, Your Honor, and we will look up the order. Your order stated by noon, 12/12. On page two of your order of December 7, 1994 at the top of the page, Your Honor, you state "Intervenor to provide a list of all witnesses Intervenor intends to call at evidentiary hearing and "a list of all exhibits Intervenors intend to introduce at the evidentiary hearing," with enough specificity to permit the other parties to be able to identify and find the documents." And then this order or your's, I would call attention to Exhibit 103 "Speech outline for administrative services VP, Charles Matrary." That really does not tell the NRC what we're talking about. It's a rather femoral type of identification. I just do not think that this exhibit list complies with your order of --

CHAIRMAN BLOCH: Let's take the speech outline,

what exhibit number is that?

MR. BARTH: Exhibit 103. That was just picked as an example, Your Honor. They're all the same cloth.

MR. KOHN: Your Honor, that particular document was turned over by Georgia Power a day or two before our witness list was -- our exhibit list was due. And in fact Georgia Power has turned over some 20 or 30 documents, all of which were exceedingly relevant to this case, all of which, or I should say 90 percent of which, the witnesses were examined on during their deposition, and let me say the contents of which the deponents were examined on, but the documents were not made available for the course of their deposition. I can only identify it as a copy were provided to NRC, counsel, and to me. So to the extent that that particular document, Exhibit 103, it is already in the hands of NRC counsel and it was given to them two or three days ago.

CHAIRMAN BLOCH: It sounds like the NRC counsel has to be in on the discussions with licensee about greater specificity about some of the exhibits and where they can be found. But we have a separate problem which is that, as I see it, subject to comment by the parties, we specified pretty clearly what the issues description was going to be, and we didn't specify greatly what the witness list and the exhibits were going to be.

MR. BLAKE: Judge Bloch, the rule that I apply is the same one that asked for it before, enough so that we know what we're talking about so that we know how to prepare, so that we know how to assist the witnesses in preparing testimony.

CHAIRMAN BLOCH: I agree.

MR. BLAKE: That's all I'm asking for.

CHAIRMAN BLOCH: Agreed, but what I would like to do is to see when we can have that done by, because I don't think that I find it in violation of the orders since we didn't extend it to those. I think we could have, but I don't think we did in the order that we issued as to --

MR. BLAKE: I think you're being remarkably lenient given what is done in every proceeding and what we all need in order to prepare for the case. We know when we have an identification of things so that we can understand them and we know when we don't. And if you take a look at what the Intervenor has said today for example on Exhibit Number 71, we don't. And all I'm saying is --

CHAIRMAN BLOCH: Well, in fact that's true on all the depositions. It really is not fair to the other parties to have them read all of the depositions when you know portions that you're going to be relying on.

MR. BLAKE: That's why I proposed minimal length of time before we're required to file our testimony

on the 28th. And I gave the 23rd as a time when he simply ought to hand out to the other parties and to the Board what he intends as exhibits.

MR. KOHN: Your Honor, with respect to the deposition exhibits, they were all copied and marked and cited to in our response summary disposition.

CHAIRMAN BLOCH: Okay, that helps. It's exactly the same ones?

MR. KOHN: I do not believe that we added any additional depositions other than the untranscribed one. But they were also cited to in our motion for summary disposition.

CHAIRMAN BLOCH: That handles that then. All of these are references to the exhibits already submitted in summary disposition and no more is to be added unless something surprising happens in the testimony and needing it on rebuttal. But unless there is an element of surprise, what I interpret your list to be is an identification of the same excerpts that you used on summary disposition. Is that correct?

MR. KOHN: Yes. Your Honor, I would like to also say that we would like an opportunity to go through and potentially supplement that.

CHAIRMAN BLOCH: Okay, finish that by the 23rd, the same time.

Now, you also mentioned while we were talking about witnesses that some of these witnesses may not be called as part of your direct case. Can you by the 23rd check off the ones that you're planning for your direct case?

MR. KOHN: Yes, Your Honor. I mean I guess we don't want it written in stone that these are actually all the ones that are going to be on our direct case because when we receive Georgia Power's list of witnesses and their case, our case could change. We may delete some, we may add some. So there is a --

CHAIRMAN BLOCH: I think that effects the rebuttal case. I'm not sure how it affects the direct case.

MR. KOHN: Okay. I understand what you're saying, Your Honor, and we can do that also by the 23rd.

CHAIRMAN BLOCH: Now, are there other questions about witnesses or exhibits that we should handle?

MR. BLAKE: Judge Bloch, I simply don't know where we are on witnesses. I think that I understand that by the 23rd we're now going to have a distribution of all the Intervenor's exhibits that he intends, with the exception that where he has already given excerpts from documents as exhibits to his response to the motion for summary disposition. We're also on notice that if we can

match one of those with one of the numbers in this list, he isn't going to have to make another copy to distribute. Is that correct on exhibits?

CHAIRMAN BLOCH: Well, I didn't say anything about copies. I think we should have copies of the exhibits for the trial that are different for the ones that he submitted on summary disposition so that we have an orderly set of exhibits.

MR. BLAKE: I see.

CHAIRMAN BLOCH: It's a question of his not having to specify further because you can connect up these things to what he already used in summary disposition. But he's also being bound to that, that unless he specifies more on the 23rd, he's using only the portions that were used in summary disposition.

MR. BLAKE: I see. So on the 23rd will we see, for example, with respect to each of the numbered exhibits that is a deposition that excerpt from summary disposition motion, or that kind of identification so we'll all know, is that what you expect?

CHAIRMAN BLOCH: There is one matter that I take it we still need to handle on that, which is with the ones that are going to be transcribed for the first time on the 23rd --

MR. KOHN: Yes, Your Honor.

CHAIRMAN BLOCH: -- you're going to have to within a week of that time, you're going to have to, specify the portions of those transcripts that you're going to be using as exhibits because you won't obviously be able to do that on the day that they are transcribed.

MR. BLAKE: I think he will. And I'll tell you why.

CHAIRMAN BLOCH: Why is that?

MR. BLAKE: Because he will have had to get them in one form and then submit them to the witness for verification or correction or accuracy before he can give them to us as the transcript of the deposition. And during that same period of time he's capable of identifying which excerpts he really intends to use. I'm putting him behind the eight ball, but I mean to given the schedule and where we've been.

CHAIRMAN BLOCH: Is Mr. Blake correct on that, Mr. Kohn?

MR. KOHN: I can say that with respect to these particular depositions they are more likely to be used in cross examinations, so the entire content is going to be important to our case. So the witness is obviously going to have to read and sign for the entire deposition. If we intend the use -- the specific portions we intend to use as part of our case in chief I think have already essentially

been identified, the areas in our original --

CHAIRMAN BLOCH: Okay, but once they're transcribed you'll have to re-identify them by transcript page.

MR. KOHN: Yes.

CHAIRMAN BLOCH: Okay. So on the 23rd you'll also do that.

MR. KOHN: Yes.

CHAIRMAN BLOCH: Now, am I correct in stating that you will be able to actually be submitting, or verified, that the transcript will be verified by the 23rd, not just transcribed but verified by the witnesses?

MR. KOHN: I think they can be transcribed by the 23rd, Your Honor. I don't think they could be verified.

CHAIRMAN BLOCH: When we had ordered that I guess I hadn't anticipated that they would also be verified by that date. So by what date can the verification occur?

MR. KOHN: I think if we give them to Georgia Power on the 23rd, how much time does it take them to turn around to have their witnesses verify them?

MR. BLAKE: We will take reasonable steps to turn it around as quickly as we can.

CHAIRMAN BLOCH: That's acceptable --

MR. BLAKE: That's acceptable to licensee. I

would think that providing the verified copies are marked up and made available Georgia Power prior to the start of the hearing, we'll be okay with that.

CHAIRMAN BLOCH: You also I think were suggesting that there is a need for greater specificity as to the subject matter to which the witnesses will testify?

MR. BLAKE: That's a separate matter. I think we're done with the exhibits. I would like to turn now to the witness list. A large, virtually all of the people on this list, licensee had no intention of calling. And as I earlier indicated we need to know what's involved with these people, should we be cooperating, should we be volunteering. We're not going to volunteer 90 people for this proceeding. I'm starting right there, I'm not going to volunteer --

CHAIRMAN BLOCH: You say you won't?

MR. BLAKE: I'm saying, do we pay for it, do we try to get up, do we avoid the need for a subpoena, do we somehow just try to make the process work more quickly.

CHAIRMAN BLOCH: So you're going to need to negotiate with Intervenor about how much you can voluntarily do?

MR. BLAKE: We've tried this process before with regard to who do you want, who are the witnesses you anticipate, this is a bigger list than we've ever seen,

ever. I think we need the Board's involvement in it. And what I suggest is, with respect to each of these you require the Intervenor to say what do you want this person for, what do you plan to use him for. How in the world can we talk about what the schedule is going to be for any of these without even knowing what they're going to testify to.

CHAIRMAN BLOCH: Let me ask, is that somehow responsive to a pending interrogatory that should be updated? Where does the requirement come from that he should do that?

MR. BLAKE: I'm certain that we asked, who are your witnesses. I can come up with a number for you.

CHAIRMAN BLOCH: Well, he's told you who are the witnesses, have you also asked them what are they going to testify about?

MR. BLAKE: I suspect we have asked that as well. But I would need to check. But even if it hadn't, even if it hadn't been a discovery request, at this point with the Board's obligations under 1718 to identify the issues, get ready for the proceeding, we're only three weeks away from starting the hearing. Now, I don't think it's unreasonable for each of the parties to say who their witnesses are going to be and what the topic is.

CHAIRMAN BLOCH: How much more specification

might you be able to provide say by the 23rd?

MR. KOHN: Your Honor, I agree with Mr. Blake that the parties should be in a position to do that. I think it's unfair to have the burden always on Intervenor to do it first. At this point they know what our issues are. We have the right to know what their witnesses are going to testify to at the same time they know what our witnesses are going to testify to. There is -- and I just am --

CHAIRMAN BLOCH: So you want to do it on the same date that they file, which is when?

MR. KOHN: The 28th.

CHAIRMAN BLOCH: Mr. Blake, does that seem fair?

MR. BLAKE: Well, it is and it isn't. There's an element of fairness saying we'll all learn at the same time, but there's no -- I think that in this case we having put in our motion for summary disposition, having identified previously who our witnesses are, I don't think Mr. Kohn and Mr. Masba are going to be surprised one iota by the testimony of these people.

A number of the people on his list have never been deposed to my knowledge, never been identified before as potential witnesses --

CHAIRMAN BLOCH: Yes, and there's a real

question in my mind, if there are outstanding discovery requests that should be supplemented promptly, we really need to know that. Because I can't think of any other basis for providing that one party would give notice of what their witnesses will say before the other. We have the issues, which are defined certainly a lot better than they were before. If there is an outstanding discovery request, I'd like a motion that says it should be promptly supplemented.

MR. BARTH: Your Honor, our rules require pre-filed testimony, and of course everybody knows what it is before the hearing. That is just old hat, that is nothing new. And as you recall, Your Honor, we discussed this very thoroughly in the conference telephone call on December 6th 1994.

CHAIRMAN BLOCH: That's correct. These have to therefore, since you had to file direct testimony for all of your witnesses, so these people must all be rebuttal witnesses.

MR. KOHN: They are essentially rebuttal witnesses because they're all Georgia Power employees, or therefore they are not within our control.

MR. BLAKE: No, they're not rebuttal witnesses.

MR. KOHN: They are adverse witnesses.

MR. BLAKE: Right. They are adverse witnesses

which he intends to use in his direct case, and Mr. Barth is right.

MR. BARTH: This is on page 10027, Your Honor, of the conference call in which I suggested strongly that a proffer be made in detail as to what the expected witness will testify to, so we put the licensee and the government on notice and we can handle this. This is nothing unusual.

CHAIRMAN BLOCH: I think given the fact that the pre-filed testimony date has passed, they're correct that you should specify at the very least for adverse witnesses precisely the area that you're going to question them on. So we'll also expect that by the 23rd. Now, that's the areas that you're going to question about and the kinds of things you expect that they know.

Now, given that they are adverse witnesses, we would permit you to file with us on an in-camera basis, things that amount to a cross examination plan because it's necessary to surprise a witness, but we'd expect that to be limited.

We would welcome comments by the parties on what I just said about the possibility that a portion of the cross examination plan might be filed with us rather than as a description of the area for the witness.

MR. BARTH: I would like to say, Your Honor, Mr. Kohn has a case to put on. The case concerns

documents, and I think that it is unfair to provide an in camera direct testimony, direct case, which he now knows he has, without providing it to the parties. I think it might run contrary to the regulations.

CHAIRMAN BLOCH: Well, he won't be doing that. He's not going to give us testimony. What he might do is give us an outline of certain matters that he thinks will be best elicited on the stand where he thinks that there's a strong reason not to put the witness on advanced notice. The same way as might occur in rebuttal testimony or cross examination of an adverse witness called by another party. We don't always disclose everything we're going to ask of every witness.

MR. BARTH: Rebuttal is a word which I am not certain applies here because there is no surprise. We know what people are going to testify to. And to the extent that the word "rebuttal" is used, that is his direct case. So I think the word may not --

CHAIRMAN BLOCH: Well, let me ask, maybe I'm just made something up. Is any of the testimony, is any of your -- are any of the areas ones in which an element of surprise is going to be important?

MR. KOHN: Yes. And I think Georgia Power said that they filed their motion for summary judgment, there's going to be no surprise in what they're going to say. The

motion for summary judgement doesn't address the issues we have identified, it addresses a more generic concern as to license transfer. So we do not necessarily know what they are going to testify to. I really do not know what -- and the fact is that Intervenor is getting their information so late it fundamentally interferes with our ability to prepare. And if the parties believe that Intervenor is now in a position to go forward and identify what their witnesses are going to be and everything with such specificity on the 23rd, I think that all the parties should have the same burden and all the parties should go forward on the 23rd, explain what Georgia Power's testimony is going to be with respect to the specific issues.

CHAIRMAN BLOCH: I'm having trouble because you agreed to a date to file direct testimony, and they are arguing that you didn't do it. Now, what we're discussing is some flexibility for adverse witnesses whose direct testimony you didn't manage to get by the date. That's really what we're talking about.

MR. KOHN: With respect to adverse witnesses, we can do as the Board has requested.

CHAIRMAN BLOCH: Because you understand you could have done that if you had subpoenaed these witnesses and required them to testify as a deposition matter, and then you could have submitted that as direct testimony.

MR. KOHN: Well, the fact is that the issues and the proceeding was fundamentally changed with the ruling on summary disposition, so we were not on notice as to who we would necessarily want to call and have not been able to do the depositions of those individuals.

I would suggest that if there was two days of depositions where the parties could sit down, we could go over with each witness what we intend to question them on at that time. It would be the most efficient manner, and both parties would know exactly where we stand.

CHAIRMAN BLOCH: When would that be?

MR. KOHN: We would be prepared to do it next Monday. That doesn't fall on a holiday.

CHAIRMAN BLOCH: Okay, so you're willing to go over with the other parties the ground that will be covered in this testimony?

MR. KOHN: Your Honor, what I'm suggesting is that we do not necessarily know what each of these witnesses is going to testify to.

CHAIRMAN BLOCH: No, but you know the subject matters you're going to talk to them about?

MR. KOHN: Yes.

CHAIRMAN BLOCH: And what you expect --

MR. KOHN: I don't know what their answers are going to be.

CHAIRMAN BLOCH: Right. So you can specify clearly what the subject matters are, their knowledge of (X) meeting or their knowledge of a telephone call, or their participation in a memorandum that was drafted, that kind of thing?

MR. KOHN: I can identify what, at this point, we know. We do intend to ask questions that I do not know the answer to, to be perfectly frank. Because I think some of the information will be very germane to this proceeding. And I can't speculate what they're going to say, I have --

CHAIRMAN BLOCH: Okay, so other information related to control of nuclear operations in response to general questions?

MR. KOHN: Correct.

CHAIRMAN BLOCH: Yes, Mr. Blake, you're puzzled?

MR. BLAKE: Well, I am because we're marching closer and closer to the hearing and we're putting off until another day some really important questions about these witnesses. I still don't know whether or not there will be cooperation and they'll even turn up on the schedule that we had for a hearing. I really thought we were going to get an identification of people so we'd know what we're all facing, and we're not there for sure, I think we all agree, as of today.

And I wanted to return, just for a second, to your earlier question, giving Mr. Kohn an opportunity to provide the Board with some information about what he plans to elicit from these witnesses which the other parties would not be on notice of.

CHAIRMAN BLOCH: He doesn't seem to be relying on that right now, so I don't think it's necessary. He doesn't seem to be -- he's going to lay out the areas he's going to ask questions.

MR. BLAKE: Fine. If he's not going to take advantage of that, then you'll not hear my argument against it.

CHAIRMAN BLOCH: Mr. Barth, have you any comments that will help us as we retire to the next room for a few moments?

MR. BARTH: I would rather make comments that would help myself, Your Honor. This fast commitment to the January 4 and to these various dates was premised upon Mr. Kohn complying with the licensing board's order promptly. You made it very clear by noon Monday. Noon Monday has come and gone and we know nothing. I look to the witnesses, I don't know who Mr. Carey Adams is, I have no idea what he is going to testify to. I mean this is just a name out of phone book. That's not helpful. This is why I suggested we could nip this bad situation by letting Mr.

Kohn put on his case, call Mr. Carey Adams, put on Mr. Adams' testimony, have an adjournment of the hearing for five to ten working days and let the Staff and the power company rejoin to that.

CHAIRMAN BLOCH: Because that is --

MR. BARTH: That is the only way we are ever going to find out from Mr. Kohn what these people are going to testify to.

CHAIRMAN BLOCH: We can always do that if it's necessary. If you move for an adjournment, then you need it, we can always grant that later. But there's an effort here to try to get the specification before the hearing, so that may not be necessary.

MR. KOHN: I would just like to know --

MR. BARTH: Monday is not as good as last Monday a week. That just will not work.

CHAIRMAN BLOCH: I understand that.

MR. BLAKE: You see, on some of these witnesses, Your Honor, they are actually indicated by name in his issues document with respect to those, assuming that that's the only way in which he plans to use them, then we do know how and we're able to either take a position about whether or not we think it's right or wrong, and whether or not we're going to support and cooperate in getting and making them available, to the extent there are people. But

a large number of these there's just nothing to indicate what it is.

And if we put it off until next week, finding out for the first time, then we're in a position of saying no, we're not going to make these people available. Like for example, all the board members from the boards for a decade or something, the answer is no, we're not going to cooperate on that kind of a thing, we don't think it's necessary, we don't think it's -- I can tell you right now, I mean I haven't seen this argument, but that one is one where we're not going to. If they want to see these people, he's going to go after them with a subpoena, we're going to move to quash, and he's going to have to show why it's necessary and why it's a necessary ingredient for this proceeding. And, you know, the longer we put off that, the closer we are to the hearing and the more prospect we stand of goobering up the schedule.

MR. KOHN: I think -- I don't necessarily disagree with licensee's counsel. And what I would suggest is, from what I was gathering, is that they would like to know the names of the witnesses associated with each issue, and maybe that is the easy way of providing the information they're looking for, is supplementing the issues list with the witnesses who are associated with each issue, and that way --

CHAIRMAN BLOCH: Would that be helpful, Mr. Blake?

MR. BLAKE: That's a start.

CHAIRMAN BLOCH: And in addition to that, what do you want?

MR. BLAKE: Some of the issues are very broad as stated here.

CHAIRMAN BLOCH: Okay, so for the narrower issues, and there may be some that you can see that, that would be adequate, but to some you will have to get more specific as to the sub part of the contention of the issue that you're going to relate to. So when could you do that by?

MR. KOHN: I guess we'll do everything on the 23rd. It seems to be the popular date.

CHAIRMAN BLOCH: Well, you were talking about doing it next Monday.

MR. KOHN: Right.

CHAIRMAN BLOCH: Why not do that? And I would suggest that if you do it next Monday, that since this will be an oral thing which could have an impact on the hearing, that at the very least there should be a tape recording made of the conversation so we know what's said.

MR. BLAKE: I'd like to think that, at least with respect to some, they could do it today, Your Honor.

And I would like to have him take his best shot with respect to the people today, and then supplement the other --

CHAIRMAN BLOCH: Why don't we -- you could do this I think, you could list the issues for each of the witnesses today, and make further specification on Monday?

MR. KOHN: We --

CHAIRMAN BLOCH: You surely have to know which issue you've listed them for.

MR. KOHN: We can do that to a large extent, Your Honor. I just --

CHAIRMAN BLOCH: So there might need to be a few changes on Monday, but basically it will be accurate?

MR. KOHN: For example, Mr. Barth indicated he doesn't know who Carey Adams is, number one. Carey Adams is identified in Mr. Hobby's direct testimony, so it's not like these people don't know. I don't think I'm responsible for doing all the homework of all the parties. And I think I have the right to believe that the parties generally know the case and what the facts are. And to the extent they don't, I think that at this stage almost every witness identified, and I can say every witness identified that we intend to call in our case in chief, was identified in our summary disposition response. I don't think there's going to be any particularly new individuals. And to the

extent there are, I can identify those.

But I think what we're doing is making a lot more work for the Intervenor when we have to go and --

CHAIRMAN BLOCH: Okay, is that true? I mean if that's true, that's going to short circuit this quite a bit. Does your summary disposition response specify for almost all the witnesses what you're planning to use them for?

MR. KOHN: For a large part, yes. To the extent --

CHAIRMAN BLOCH: What's the large part? There's 69 witnesses.

MR. KOHN: Well, I was going to say, to the extent it doesn't, I would provide that supplementation.

CHAIRMAN BLOCH: On Monday?

MR. KOHN: Yes.

CHAIRMAN BLOCH: Okay.

Can the parties manage somehow to reduce that either to a memorandum or a tape recording so that we would know what was said when we get to hearing?

MR. BLAKE: If the Board, or at least the Chairman, were willing, I would prefer a telephone conference call where you will arrange for a transcription. I think this is going to be an important issue.

CHAIRMAN BLOCH: Well, do you prefer it by

telephone or do you want to come here and do it here?

MR. BLAKE: Well, I was trying to make it as convenient as everybody --

CHAIRMAN BLOCH: If it's more convenient for the parties we can do it by telephone.

MR. BLAKE: I think that would be adequate for my purposes. Look to the other counsel.

MR. KOHN: Based on availability of documentation, it may be helpful.

CHAIRMAN BLOCH: I guess I concede though that there might be some things that you'd want to be showing which would require at the very least that counsel be in the same room. Am I right, are there certain documents you're going to be using to describe what you're doing?

MR. KOHN: I think to the extent we would be relying on documents, probably for the most part we could rely on the documents already in the record.

CHAIRMAN BLOCH: Okay.

MR. BARTH: Your Honor, if I could ask you to reconsider, I think at the barest minimum of fairness, Mr. Blake's suggestion ought to be taken. And I would certainly welcome the Board's participation, which you've offered before, to help the parties arrange this. We should go through this witness list and find out what these people are supposed to testify to.

CHAIRMAN BLOCH: All right, we'll do this next Monday at 9:30 by telephone.

MR. BARTH: He's had the case for two years, four years. He should know now.

MR. BLAKE: Now, Judge Bloch, just so there are no disappointments on Monday --

CHAIRMAN BLOCH: Yes?

MR. BLAKE: -- we're going to go down the witness list and we're going to hear from Mr. Kohn why he intends to call this witness, what the subject matters are of each of these individuals. It might be by reference to a particular portion of their response to the motion for summary disposition, it might be by reference to Mr. Masba's prepared testimony, but in any event on each, we're going to know when we come out of this call what the subject matter is that Mr. Kohn plans to call these people for.

CHAIRMAN BLOCH: I think that's what Mr. Kohn intends.

Is that correct?

MR. KOHN: That is correct with respect to the witnesses we intend to use in our case in chief.

CHAIRMAN BLOCH: Okay. Now, we don't expect to issue an order on this. It's in the transcript. I know you don't always get the transcript, but we expect it to

happen.

MR. KOHN: We get it, but only when it makes it to the public documents room.

MR. BLAKE: And, Judge Bloch, I would re-ask whether with some break we could even get a head start on this today by Mr. Kohn identifying with some of the people. It would sure shorten the call on Monday.

CHAIRMAN BLOCH: We may be able to, but we have quite a bit to cover yet for today.

MR. KOHN: Your Honor?

CHAIRMAN BLOCH: Yes?

MR. KOHN: I think if we look back at the proceeding we will see that all the parties were required to submit witness lists simultaneously. And to the extent that basically Georgia Power has already indicated they basically know what their witnesses are going to state, I think that Georgia Power during this 9:30 Monday call, when Intervenor is done, should also be in a position to give us a heads up at that same point, because it would be very helpful for our ability to prepare our case as well.

MR. BLAKE: They're going to have our's just like they always do with our pre-filed testimony. They'll know every single comma, every clause in our pre-filed testimony. We're in an awkward situation because of this adverse witness list because there are 60, 70, 80, 90, 100

people enumerated, where we deserve more, and we deserve it more than the length of time in advance of the hearing then we even have left now.

CHAIRMAN BLOCH: Can we on Monday though go over which documents you're going to need authentication on so that he can determine how many witnesses he'll need for that purpose?

MR. BLAKE: Sure, but I don't think authentication of documents is going to --

CHAIRMAN BLOCH: All right.

MR. BLAKE: -- I think we probably can, Your Honor, but that's never proved to be much of a problem.

CHAIRMAN BLOCH: Okay. You had raised it as a problem earlier in an argument and --

MR. BLAKE: Authentication?

CHAIRMAN BLOCH: How many witnesses he was going to call for that purpose. It's one of the numbers --

MR. BLAKE: Well, sure, because it's just an open-ended thing, but authentication generally hasn't proved to be much of a problem.

CHAIRMAN BLOCH: All right, let's go off the record.

(Whereupon, an off-the-record discussion.)

ADMINISTRATIVE JUDGE CARPENTER: Just to satisfy my curiosity, on Monday can we have at least for

the witnesses involved in your direct case, what percentage of the witness list do you expect that will be? Should I rent an apartment in Washington while we go through 90 witnesses or is there some realistic honest estimate of what the case is going to look like? If we're going to come to length of hearing here in a minute --

CHAIRMAN BLOCH: Yes, we are particularly interested in the length of time you expect to need for your direct case.

MR. KOHN: I would say you're probably looking at for our case in chief, I'd say at least a good percentage of these are actually rebuttal witnesses, and depending on -- I do not know what Georgia Power is going to say with respect to some of these issues.

CHAIRMAN BLOCH: Okay, the question is, how many days do you need for your direct case?

ADMINISTRATIVE JUDGE CARPENTER: How many witnesses might relate to how many days?

MR. KOHN: Our direct case right now we're looking at finishing up the week of the 4th, 5th, 6th and 7th, and we are anticipating working with the parties to conclude on the 14th. I mean it depends on availability of witnesses and to the extent we may have to take some witnesses out of time, who may not be available at that time, maybe later on. But we have, I'm looking at April

instead of January, at January 13th I guess is the next week. We would like to see the proceeding done in that length of time. Also a good amount of our witnesses may not be necessary if we go through the deposition very carefully, Georgia Powers agreed to submit those, and if they don't care to call to call the witness in rebuttal, then we've eliminated calling a live witness.

So I would actually like to know of the positions, whether if we submitted those witnesses as their deposition testimony, if Georgia Power intends to call those people. That I think would be very helpful to us in figuring out how long the hearing is actually going to be.

CHAIRMAN BLOCH: So are you suggesting that for some purposes you'd be willing to file portions of the depositions as your testimony and not bother calling the witnesses?

MR. KOHN: Yes.

CHAIRMAN BLOCH: These are all people that are Georgia Power employees so that if Georgia Power wants to it could call the witnesses, but it need not?

MR. KOHN: That's correct.

CHAIRMAN BLOCH: Would that be satisfactory?

MR. BLAKE: That's a fine process to look at, but I don't know what he's talking about. What's the excerpt, what's the witness?

MR. KOHN: Well, pretty much the excerpts already identified in our motion for summary disposition.

MR. BLAKE: I can't handle any more "pretty much identified" or "generally" or "we're considering," we've got to -- I've got to have some answers.

MR. KOHN: I'm committed to putting all, whatever additionals, in by the 23rd, so that's not an answered item.

CHAIRMAN BLOCH: No, but that's -- I can't see -- well, I can't say that. Since the witnesses are under -- when the witnesses are under Georgia Power's control, if they are able to call them themselves, I can't see any objection to using the depositions as testimony. They will have a chance at the hearing to present an objection. But that would give them the freedom either to call the person to rebut it or to accept it. And so I can't see a strategic problem with that.

MR. KOHN: I think I only raised it because it really affects the length of Intervenor's case.

CHAIRMAN BLOCH: It would save a lot of time. So that's something that you could discuss in terms of on Monday as to substituting portions of depositions for witnesses, and that might save a lot of time at the hearing.

MR. KOHN: I would suggest maybe we should wait

until -- there's a lot to discuss on Monday, and we're not filing the rest of our amendments to the previously identified transcripts until the 23rd, so it may make more sense to do that on the 23rd.

CHAIRMAN BLOCH: All right, we may need to have something on the 23rd --

MR. KOHN: Or if we have time on Monday, we could do it on Monday, and to the extent we then add things, we could then cover the stuff we added on the 23rd.

CHAIRMAN BLOCH: But you expect that the whole case for Intervenor is likely to take under two hearing weeks of about, what, eight hearing days, is that what we're talking about, or nine hearing days? I know that these estimates have to be approximate, but you expect you can finish?

MR. KOHN: Eight hearing days, and that's what we are hoping to achieve.

CHAIRMAN BLOCH: Okay, try to do it in eight hearing days.

And while we're on the record, what do the parties want to suggest about the location of these hearing days?

MR. BARTH: Before we go there, Your Honor, could I make another comment in this area before we leave it? For the Staff I really would appreciate it if the

Judges would issue an order summarizing what is to take place and what decisions have been made. I find that the Board's orders are well written and efficacious and easier to follow sometimes --

CHAIRMAN BLOCH: That's the first time you've ever complimented us, Mr. Barth.

MR. BARTH: Well, sometimes I'm not always myself.

Second, Your Honor, is there is then a large amount of talk about rebuttal and direct. Mr. Kohn knows what he is going to put on. Whatever his case is going to put on, he should identify for these witnesses what they will speak to.

Okay, that is a separate question than how long it will take him for his direct case, I agree with that. When we go over the witnesses we are not going to just go over direct witnesses, it is the subject matter that they are on the list for. That is why we like your order.

And the third thing that I would like to bring up at this time of course is that NRC witnesses are subject to 10CFR2.720H2I, and be mindful that the listing of a witness by Mr. Kohn such as Mr. Ebeneter with one "T" in his name, and NRC resident inspectors 1987 just will not quite fly at the moment.

CHAIRMAN BLOCH: Okay, so you will have to file

a motion that complies with the rules concerning Staff witnesses. And let's see, what's the timing of that. I guess that motion should be filed -- well, I guess you'd better look at the schedule for deciding motions because you need to have the witnesses by the time you put your case on.

MR. KOHN: I guess my general recollection in other proceedings was that, and I just wanted to see if I'm correct at this point, is that we file a request as to what the testimony area is going to be, but that can be filed directly with NRC, and whether they're going to produce the witness. I mean that's the proceeding that's been used in --

CHAIRMAN BLOCH: It's a motion before us that includes the grounds on which you're pleading for the purpose of calling staff witnesses.

Am I correct about that, Staff?

MR. BARTH: 99/44/100ths, Your Honor. He first has to --

CHAIRMAN BLOCH: File the --

MR. BARTH: -- director for operations --

CHAIRMAN BLOCH: Well, you can file this--

MR. BARTH: -- and he has to be turned down by the executive director for operations, then he must make his case before you that this is necessary because of the

unique knowledge.

CHAIRMAN BLOCH: And how quickly can the executive director of operations act. I suggest you do it simultaneously, and we'll find out how quickly the executive director can act on it.

MR. BARTH: Please do not act before he does.

CHAIRMAN BLOCH: Well, I think what we have to do is to decide. I think on Monday the Staff should be prepared to tell us how that can be scheduled. You should be filing this before Monday. And then the Staff will have an opportunity on Monday to tell us how long it will take. So the staff should receive before Monday, on Friday.

MR. KOHN: That would place extra requirements on Intervenor for Friday. I would suggest that we move the other conference call to Tuesday. I'd be much more producing having an extra day in between.

CHAIRMAN BLOCH: Okay, I'm willing to move it to 2:00 o'clock on Monday. That's 2:00 p.m.

MR. KOHN: I was hoping 2:00 a.m., but I guess that would be Tuesday.

CHAIRMAN BLOCH: That might be the closing time. Let's talk off the record for a moment.

(Whereupon, at 11:54 a.m., an off-the-record discussion until 11:56 a.m.)

CHAIRMAN BLOCH: In light of a substantial

portion of the agenda being left to be accomplished, we're going to continue working today. From now until 1:00 o'clock we'll take a lunch break. And the Board will take a recess from 2:00 o'clock for about 20 minutes for a telephone conference in another case. Then we'll continue until we have completed the agenda.

We're in recess.

(Whereupon, at 11:57 a.m., the proceedings in the above-entitled matter were adjourned to reconvene this same day at 1:00 p.m.)

A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

1:00 P.M.

CHAIRMAN BLOCH: The next issue on our agenda is Intervenor's issue on subpoenas for witnesses and documents. Would you like to lead off on that please, Mr. Kohn?

MR. KOHN: Thank you, Your Honor. We've had some discussion with respect to NRC. I guess Mr. Barth is not here. Is it all right?

CHAIRMAN BLOCH: Is Staff prepared to proceed?

MS. YOUNG: Yes.

CHAIRMAN BLOCH: Okay, okay.

MR. KOHN: With respect -- I think we've solved that issue. The other issue would be with respect to persons in control of Georgia Power Company. And based on Mr. Blake's statements, there may be some need for subpoena on some witness. I guess what our proposal at this point would be is to take the witnesses that Georgia Power intends to call and maybe we can jointly agree that we can do those witnesses first in Washington D.C. and then there would not -- there may not be a need for subpoenas on those witnesses.

There would be -- I would -- at this point, I think Intervenor will just file a request for a subpoena with respect to any witness or document. Hopefully we

won't have to file that many or any.

CHAIRMAN BLOCH: I'm not sure what action I'm supposed to take on that.

MR. KOHN: At this point, I don't think we need to take any action. We will try to see if NRC staff is prepared to produce their witnesses from staff, who we want, and whether Georgia Power and Intervenor can mutually come to an agreement on at least the first week of the hearing to avoid the issuing of subpoenas.

And if we can, then hopefully that process can go forward on the second week and then we'll not have to go through that.

CHAIRMAN BLOCH: Does anyone else have to speak on this issue?

MR. BLAKE: I think I should, Judge Bloch. Georgia Power expects, has expected, that there be some adjustment based on hearing the issue and determinations today. But we had expected to put on five witnesses: Mr. Dahlberg, Mr. Farley, Mr. McDonald, Mr. McCoy, Mr. Hairston. And we're preparing testimony for those which will be adjusted based again on what we've learned today about the issues.

Those five witnesses we're prepared to bring to Washington or bring to this area, Rockville, and prepare -- and have them available as well during the time that they

come for Mr. Kohn's use as an adverse witness.

We want very -- want to work very hard to have each of our witnesses only have to come once rather than two or three trips, one trip. And we'll pay for those people.

CHAIRMAN BLOCH: How would you propose that that be done? I mean, one way to do that would be --

MR. BLAKE: Here's the way I propose it. I propose that the Intervenor, as is the current schedule, go first with its case. And to the extent any of its case is to be made through one of those five individuals, when they came, they would also put on -- sponsor their pre-filed testimony.

I think that allows both Intervenor's case to be put on first and minimize the insult to each of the individuals. There are, beyond those five -- I don't know how to count them, but maybe somewhere around 90 individuals that the Intervenor has said they expect to call.

Georgia Power is not going to pay to bring 90 people to Washington. It is not going to pay to bring 90 people to Atlanta. So to the extent we're talking realistically about Intervenor expecting to put on 90 witnesses, we're simply not going to pay.

You might as well attempt to get subpoenas from

the Board if the Board is supportive of that sort of process, and we'll just have to deal with the subpoenas when we get them.

If it were a reasonable number of people, which we've had this conversation with Mr. Kohn some time ago, if it were some lesser number of people, some reasonable number -- I can't give you that number. I don't know exactly what it is. Then it would be a different game

We're simply not going to play in this game with the prospects of 90 people coming to a hearing that's supposed to last a couple of weeks.

CHAIRMAN BLOCH: Mr. Kohn, do you want to comment again?

MR. KOHN: I think with the witnesses identified that Georgia Power will make available, I think that that would probably take up the first week of the hearing, which would make it possible to have it in Washington D.C.

The remaining witnesses are predominantly all from Atlanta or within a few hours of the Atlanta area, which would probably -- Georgia Power's reluctance to produce these witnesses I think make the next week worth of hearing a requirement that they go forward in Atlanta in order to get the witnesses to attend.

We would not be opposed to the extent that

Georgia Power will not voluntarily produce any particular witness for the second week of the hearing, which we would give them notice of who we would want in advance, then I guess we'll have to see if the Board will issue a subpoena. We would explain the relevance of the witness and why that particular witness is sought.

CHAIRMAN BLOCH: Now all -- you said -- I wonder if some of these witnesses would be produced if they were closer to the site than Atlanta. Is that part of the problem, Mr. Blake?

MR. BLAKE: It's part of it, but we're not going to -- I can't commit to producing 90 in Atlanta, no.

CHAIRMAN BLOCH: So you wouldn't produce them in Augusta either?

MR. BLAKE: Correct.

CHAIRMAN BLOCH: Well, not 90 yes. All right, Mr. Kohn, it looks like we'll be receiving some subpoena requests. We'll have some more idea of that on Monday as to what they'll be, although I suppose we might receive some before Monday.

Mr. Barth, do you have any comments on this issue?

MR. BARTH: Not particularly, Your Honor. It really doesn't concern us.

CHAIRMAN BLOCH: Good.

MR. BARTH: I'm just surprised at the turn of things. I simply assumed that Mr. Kohn would ask Your Honor to start issuing subpoenas starting with Mr. Carey on page one and that he comply with 2.720D providing the mileage and the fees in advance and having them served by a process server. I'm really not out of -- out of this pretty much.

CHAIRMAN BLOCH: Yes?

MR. KOHN: For the -- we believe that the witnesses who are employed currently by Georgia Power Company, that the Intervenor should be allowed to subpoena Georgia Power's -- supply the subpoena to Georgia Power's counsel. I think that's the intent of the process.

ADMINISTRATIVE JUDGE CARPENTER: If I might as a question, Mr. Blake, if the witness list was the first part of the hearing, the second week, Mr. Kohn has made a suggestion that would perhaps be convenient for those witnesses if the hearing were in Atlanta.

If the witness list was justified, and of some reasonable length, would -- should this Board be influenced or not vis a vis it's a convenience for them to be in Atlanta vis a vis being up here? Would that be a consideration if the witness list were proscribed to some reasonable length?

MR. BLAKE: Yes sir. I think that should be a

factor. I want to give some sense to you, Dr. Carpenter, Dr. Bloch, Judge Murphy, of why I'm taking this position because you don't see that very often from us. We've tried to be totally cooperative all the way through.

But when I said we tried earlier to work this through, on November 11th -- on November first, we asked -- we said essentially the same thing. No, we're just not going to cooperate with 100 people. If you have a reasonable number, then we'd do it.

We got a list of 20 which we understood at that time to be all the witnesses they were anticipating. And we're faced today with -- I don't know how to count them, but it's 90 or 100 or something. And we're simply not going to play that game.

ADMINISTRATIVE JUDGE CARPENTER: I specified a reasonable length.

MR. BLAKE: I understood and I --

ADMINISTRATIVE JUDGE CARPENTER: But this consideration of holding the second week in Atlanta you think is worth our consideration.

MR. BLAKE: I do. I have a clear preference for having it, as I've expressed, up here where we know where we are, where we can leave documents, where we're all staying at the same spots, we all work at the same -- there's a lot of -- we know this room, we know what's

available to us to utilize here. This makes a lot of sense to try to do that.

All the counsel are from here. Most of the Board is from here. But I think it is a factor for sure where the witnesses are located, and I can't get around that.

ADMINISTRATIVE JUDGE CARPENTER: Well, I was asking you, which way is the balance?

MR. BLAKE: I don't even know who the witnesses are really going to be yet, Judge.

CHAIRMAN BLOCH: The parties should know that if it will assist them in reaching a resolution of the witness question, we'll go where it's necessary. So the next issue on our agenda is to finish getting estimates of the time for direct cases. And to the extent we can do that, we have an estimate from Mr. Kohn that his direct case will take eight hearing days.

MR. BLAKE: I'm prepared to say, based on what I've just indicated, we have five witnesses. We anticipate having prepared, written testimony submitted in advance of the hearing for all five. It's a matter of five, ten minutes.

CHAIRMAN BLOCH: Per person?

MR. BLAKE: Per person to put them on with just some brief summary of their testimony.

CHAIRMAN BLOCH: Thank you. And Mr. Barth, does the Staff have any idea of the length of its case?

MR. BARTH: Having gone through the issues by Mr. Kohn, I think we probably, only at the moment, would bring one witness. That's not a direct. It's a rebuttal that should only contemplate ten, 12 minutes.

It would be a very, very short testimony. We're talking three pages of testimony.

CHAIRMAN BLOCH: Okay. So Georgia Power Company asked about the order of witnesses. Is that relevant now or are we going to handle that on Monday?

MR. BLAKE: I've made what I think is a proposal on what is -- will be at least the start of the proceeding as Mr. Kohn goes forward with his case, and to the extent one of those people is being offered by us. We've prepared testimony. We do that at the same time they're here, but generally go right through whatever his order is for his case.

And as soon as he identifies who those people are that he wants to bring, then we'll check and double-check into availability. I think I know that each of those five people that I've identified is available from the fourth through the sixth.

I also know that a couple of them are not available the second week.

CHAIRMAN BLOCH: Yes?

MR. KOHN: We have no problem accommodating the witnesses who are definitely available the first week to call them that week.

CHAIRMAN BLOCH: Okay. When you heard the duration of the other two parties' cases, does that help you know whether some of the witnesses that you've listed might not be necessary?

MR. KOHN: To ar extent, it does. I think what we would then be looking rebuttal, and I think how we may end up structuring the case is call as adverse Georgia Power's witnesses. That way in the very beginning we will know what witnesses we ultimately will need on rebuttal.

We may know that just from the pre-filed testimony, and I think that we will still -- we will then try to keep our case and our rebuttal case basically completing at the same time, in the eight days, being the other parties are not taking up too much time in between. I think that's the goal we can -- we'll try to achieve.

CHAIRMAN BLOCH: Okay. It's certainly different than we thought it would be when we saw the witness list.

And number three, we didn't complete subpoenas for documents. Is that something that's going to be substantial, Mr. Kohn? What are we thinking about?

MR. KOHN: It would not be substantial. Right now, the only documents we have identified are the phone logs of Mr. Dahlberg, Mr. McDonald and Mr. Hairston covering 19 -- November '88 until either they left the company or present.

MR. BLAKE: Is this some late-filed discovery I'm hearing about?

MR. KOHN: No, it's just a document we need to present our case.

CHAIRMAN BLOCH: Well I think the point Mr. Blake is making is that the time you get documents to present your case is during discovery and the discovery is closed.

MR. KOHN: Your Honor --

CHAIRMAN BLOCH: So you'd have to file good cause for some exception. So the next issue is the sequestration order. Before we discuss that one, we would like to clarify the Board's interest in sequestration here.

MR. BLAKE: Judge Bloch?

CHAIRMAN BLOCH: Yes.

MR. BLAKE: Before we get to sequestration, can I just finish up a little bit on the --

CHAIRMAN BLOCH: Certainly.

MR. BLAKE: -- what the Board's expectations are now for the length of this hearing? Given --

CHAIRMAN BLOCH: My expectations? The parties have specified approximately eight days, and my expectation is that it will take from eight to ten days.

MR. BLAKE: If I divvy that into 100 perspective witnesses --

CHAIRMAN BLOCH: Well, I understand that, but Mr. Kohn is obviously not going to call all those witnesses. We'll find out a little bit more about it on Monday.

MR. BLAKE: Okay.

MR. BARTH: Your Honor, if it would be of any help on this witness thing, the Staff is quite prepared to sit here today with Mr. Kohn and go through this witness list rather than Monday, since it was due some time ago, so we can get as much accomplished as we can. I think that --

CHAIRMAN BLOCH: Well, we'll see what we can do. I'd like to see if we can finish the sequestration order business before two o'clock. Now I'd like to clarify the Board's interest in sequestration, but then allow the parties to argue this issue as they would like.

What we're most concerned about is that the witnesses not be in communication with one another. We think it may be easier to accomplish that if we ruled that on this particular issue, there would be no pre-filed testimony, and that during the trial of the case, or this

issue if it's separated -- I don't see that it can be separated -- that the witnesses for these issues not be permitted to hear one another or to get transcripts from one another, and that during the time that any one witness is providing testimony and cross, he will not be consulting with the attorney during that time.

But other than that, there may need to be no restriction on consultation with attorneys. It will be just during the time of the testimony. So if Witness A goes on, during that time that he's on direct through the time he completes cross, he would not be consulting about this issue with his attorneys.

MR. BLAKE: Can I have a moment, Judge Bloch?

CHAIRMAN BLOCH: Can I just briefly ask if that proposal is acceptable to the parties?

MR. BLAKE: Judge Bloch, I think since we're the ones that have raised the issue again with the Board, that we're probably the best to respond first. I appreciate the Board's further thought on this topic, which has been a difficult one for us as well. And the proposal is acceptable to Georgia Power to resolve this issue.

I want to just clarify with respect to one thing. We would expect under that proposal, as counsel, but not to be able to consult with the witness during the time he was under cross examination. And that would be the

sole limitation on counsel.

And I mean by that that we'd be allowed to consult at the completion of cross about the need for redirect. With that clarification, I'm prepared to abide. And I don't think we'd have a -- we hadn't anticipated problems in being able to separate sequestered witnesses, and we certainly think we can live up to that and have been willing to that all along. So that should not pose a problem.

CHAIRMAN BLOCH: I can imagine one further exception, and that would be if for some reason an issue of a witness's rights were to come up, obviously you'd have to consult about that.

MR. BLAKE: Yes sir.

CHAIRMAN BLOCH: May I ask if Mr. Kohn is satisfied with this resolution on this issue?

MR. KOHN: Your Honor, we believe that the licensee still should file -- pre-file testimony to the extent Intervenor was capable of doing it. We did file -- pre-file a testimony with respect to that issue.

CHAIRMAN BLOCH: If you'd prefer that they do that, the difficulty, of course, is that the sequestration is going to be incomplete so each will know what each other's testirony is.

MR. KOHN: Yes. The pre-filed testimony could

be filed with the parties in camera and not be released to the witnesses.

CHAIRMAN BLOCH: Okay. They will be able to consult with attorneys who, however, will endeavor not to discuss the facts of this issue.

MR. KOHN: I thought with respect to the pre-filed testimony, it would be, as you had indicated, the attorney would write questions to the witnesses and they could respond, and those answers could become the pre-filed testimony.

MR. BLAKE: Can I just have a moment? The reason that I asked for just a moment was it's not clear to me that we had intended to file pre-filed testimony on this topic.

CHAIRMAN BLOCH: It's not part of your direct case.

MR. BLAKE: Certainly --

CHAIRMAN BLOCH: It's not part of your direct case.

MR. BLAKE: Right.

CHAIRMAN BLOCH: In that case, you wouldn't be required to. Mr. Kohn, would they?

MR. KOHN: No. If they're not planning to -- if they are not planning to do so, then I guess it moots the issue. If I understand it correctly then, the counsel

and witnesses will not discuss this issue before they testify. Is that --

CHAIRMAN BLOCH: No, no. The only ban on discussion will be during the time of testimony of a particular witness. They're not to -- the witnesses are -- the witnesses are not to talk to one another about the issues and the counsel are not to communicate the witnesses' views to one another.

However, there's no restriction from consultation with attorney other than on the facts prior to the testimony. During the testimony, there will be no consultation with lawyers at all until cross is completed, with the possible exception if there really is a witness rights question that comes up, in which case we'll consider an exception.

MR. BLAKE: Judge Bloch, if we -- if we file pre-filed testimony on this, I don't anticipate a problem in our being able to meet the spirit of the Board's order with regard to the various witnesses. I think we're able to accomplish this.

CHAIRMAN BLOCH: Okay.

MR. BLAKE: Even if we -- even if we decide to put in pre-filed testimony.

CHAIRMAN BLOCH: What I hear is that Mr. Kohn is satisfied with that also; that if you keep the spirit of

the order on that, that he would just as soon have pre-filed testimony as not.

MR. KOHN: I can honestly state my reservation that deals with the communications with Mr. Mosbaugh during NRC proceedings where basically Mr. Mosbaugh was -- the communications from counsel caused us concern. And to the extent that as much -- as many Chinese walls as possible can be erected, it would greatly relieve Intervenor's counsel.

And what we are concerned of is you can have communications with a witness without telling them what any other witness has said.

CHAIRMAN BLOCH: That's what this -- that's the point. They're agreeing to that.

MR. KOHN: Yes. I guess my concern is you can also implant in a witness's mind what actually had occurred without -- and get someone to agree with it.

CHAIRMAN BLOCH: Well, what's your motion?

MR. KOHN: That the Licensee's counsel not suggest interpretation of documents or -- to a witness before they testify.

CHAIRMAN BLOCH: Would counsel for Georgia Power respond?

MR. BLAKE: Sure. We understand the Board's order on sequestration. We believe we know what is

appropriate and that we can abide by it with regard to the separation of the witnesses. And I mean to place no limitation on appropriate and a full preparation of witnesses.

CHAIRMAN BLOCH: So as I understand that, they can discuss documents with a witness. What they can't do is discuss what someone else, another witness, is going to say about the same document.

MR. KOHN: I think in real -- I think if we took a look at a real-life situation, if Georgia Power meets individual with each witness and gets an understanding of what each witness is going to say, you can then go back to your first witness --

CHAIRMAN BLOCH: I understand that, which is part of the rationale for what the order was that we had issued. But I don't hear you arguing that you want that to be maintained or that there's legal basis for maintaining it.

MR. KOHN: Yes. We want that to be maintained, Your Honor, and there is legal basis to the extent each individual believes they have a right to counsel. They have a right to counsel, but they don't have the right to a particular attorney.

CHAIRMAN BLOCH: So do you think that we could -- that they should be prohibited -- who should be

prohibited from using Georgia counsel -- Georgia Power's counsel, which people?

MR. KOHN: Any person who is going to testify on behalf of Georgia Power Company with respect to the emergency plan at issue.

CHAIRMAN BLOCH: So you want to go beyond the Federal Rule which we cited in our order?

MR. KOHN: I'm not -- I don't have the order in front of me, and I'm trying to recollect.

CHAIRMAN BLOCH: Well, Sections Two and Three of that rule, subsections two and three, provide for circumstances in which a company may consult with employees either if they are necessary to the presentation of the case or if they're basically designated as the people who are controlling the case for the client.

MR. KOHN: Your Honor, I would say that Georgia Power has indicated initially that they were not planning to file pre-filed testimony on it, so I do not believe it's necessary for the preparation of their particular case. I might be splitting hairs on that interpretation.

CHAIRMAN BLOCH: So you think that for the purpose of that Federal Rule, it's only the direct case that's involved?

MR. KOHN: No, that's why I said -- what I'm looking at and thinking about it, I wouldn't say it would

be for any portion of the case.

But number two requires designation of a company witness, or excuse me, a company representative. And the third is essential to the presentation of their case. If they are not planning to call -- put direct testimony on, then I don't see how it is essential to the presentation of their case.

It would be essential after cross examination of the witnesses that then, yes, they could communicate with the parties.

CHAIRMAN BLOCH: I can imagine an expert witness who wouldn't be called at all who would be essential to the preparation of a case. It seems to me that whether they call for direct doesn't matter.

MR. KOHN: An expert witness, yes, to the extent they needed an expert present, but I don't think we're talking abut more than one or two people. We're talking about a lot of individuals, particularly most --

CHAIRMAN BLOCH: I guess I need to know what position you're taking and then why you think it's supported by the law.

MR. KOHN: The Intervenor's position is that to the full extent possible, a person should be excluded on this issue for the rationale set forth by the Board in their earlier determinations.

CHAIRMAN BLOCH: What's the fullest extent possible?

MR. KOHN: That one person be designated as a representative and that person would presumably also have the -- and to the extent that they felt they needed an expert, that they notify the parties who they intend the expert to be and present the expert's qualifications. And that would be the extent.

CHAIRMAN BLOCH: Well, I don't think they're going to have an expert on this issue. That was a hypothetical. So you think just one person should be designated and no one else is necessary?

MR. KOHN: That's correct.

CHAIRMAN BLOCH: And will this interfere with the right to be represented by counsel of the witness's choice?

MR. KOHN: No, Your Honor. There is no Constitutional or civil right to being represented by counsel of your choice. If there's a conflict between counsel, you can not have that counsel represent you, period. It is -- and I don't think Georgia Power has even assumed, argued that there is some Constitutional right to counsel of choice, and --

MR. BLAKE: What is the conflict?

MR. KOHN: The conflict is that the Board has

determined for a fair and adequate record to be created, and it would like to proceed in a certain way. And I think that does create a conflict.

What is the right of the individual to be represented by Troutman Sanders? There is no specific right to that.

CHAIRMAN BLOCH: Okay. And are you citing any authority for this proposition since we asked that the argument be -- that the argument be informed by citations to legal authority?

MR. KOHN: We have not had an opportunity to find -- I know that there's no Constitutional right to counsel of choice. I don't have the specific authority to cite, Your Honor.

CHAIRMAN BLOCH: I can see you're relying on our opinion and on the Federal Rule.

MR. KOHN: Yes, Your Honor.

CHAIRMAN BLOCH: Mr. Blake, would you like to argue this point?

MR. BLAKE: I don't see it -- I don't see a need based on that argument to respond, Judge Bloch. We have set out in fact our legal positions and our justification for those. I was prepared to respond to the Board's questions about where I thought the errors were and what has -- and where we stand today and why. But I don't

see a need to respond to what Mr. Kohn -- he's advanced nothing other than what had been before at the Board's proposal and presumably was taken into account by the Board.

I didn't hear anything new today.

CHAIRMAN BLOCH: Well, my concern was that in your motion, there were no citations to legal authority at all. So I really didn't know what the authority was for this latest motion. In particular, it didn't mention the Federal Rule that we relied on.

MR. BLAKE: Well, I'm prepared, if you want to hear argument --

CHAIRMAN BLOCH: I guess I feel like I must because even though the Board is willing to modify its order, one of the parties is arguing that we shouldn't go so far.

MR. BLAKE: All right. I think that there are several factors which have led us to this position. I think we should take credit for being the cause of one of the problems. I assign another one to the Board, and a third I put in just new information. Let me go to the third first.

The fact that these individuals have now been given a choice and have now selected the counsel of their choice, I believe, is a new factor to be considered. And

despite Mr. Kohn's view, it doesn't present a conflict with the Board.

The conflict that would pose a problem and the reason that at Troutman Sanders or Shaw, Pittman would not be able to represent these people was because there might be a legal conflict, an ethical conflict. There is none that I'm aware of.

And I know of no obstacle for us to represent these individuals as well as Georgia Power as an entity. So that, I think -- that's the new factor which I think the Board needs to take into consideration.

CHAIRMAN BLOCH: Now the one that -- I want to ask a hypothetical about that. Under the Federal Rule where the Judge may sequester witnesses --

MR. BLAKE: Yes sir.

CHAIRMAN BLOCH: -- is it your position that there are no facts in which witnesses who are sequestered could not always select the same attorney?

MR. BLAKE: I don't know the answer to that, but I know of no instance and I know of no case, and I think we've looked very hard at this, where counsel were not allowed in advance of a hearing to work with those individuals who had selected them as their counsel for that proceeding. Now --

CHAIRMAN BLOCH: Does that mean actually that

the Federal Rule, as written, really has never been applied?

MR. BLAKE: Well, I don't think that the Federal Rule -- the Rule 615, is that what you're referring to?

CHAIRMAN BLOCH: Yes.

MR. BLAKE: You see, I don't think that that really applies to eliminating an individual's right to consult with counsel in advance of a hearing. I think it goes --

CHAIRMAN BLOCH: How would we know? I mean --

MR. BLAKE: Well, we've looked hard and we just can't find any instances where it's been applied that way.

CHAIRMAN BLOCH: Would it apply during a hearing?

MR. BLAKE: It could apply during a hearing in terms of potentially the cross examination which you've talked about. But we find nothing -- the third factor, and the one that I was going to say I -- what makes this different and I would assign as an error by the Board was in forwarding that, moving it up to before the hearing or the trial takes place, that's really where the difference comes in and where we can't meet our ethical obligations to prepare the client.

CHAIRMAN BLOCH: Now if it's forwarded to the

point at which the direct testimony has begun to be given --

MR. BLAKE: I can't differentiate between direct and cross, but I think it would apply to cross.

CHAIRMAN BLOCH: Written testimony. In other words, in our hearings -- start our hearings before our hearings.

MR. BLAKE: I don't know because it's such an unusual case. We found no cases with pre-file. I'm not aware of any cases with pre-file direct.

CHAIRMAN BLOCH: It's fairly unusual.

MR. BLAKE: Yes.

CHAIRMAN BLOCH: But there's a problem because if you can do it during a hearing without pre-file, you start with the direct.

MR. BLAKE: But we're not -- we are not -- we understand what a sequestration means between the witnesses, and I don't see that as a problem in terms of being able to keep the witnesses apart, but not showing the testimony of one to another, not telling one that this is what A is going to say and run over to B and say so.

I think we understand how to do that. I think each of us has been involved in the sequestration setting before. Let me say the one where I think we ought to take some credit, if you will, for having led the Board astray.

I don't think we did a good enough job in our early motions in alerting the Board to the fact that these were officers, not just officers but high-ranking officers, of the company, of the client, of the party in this proceeding. And the ability -- in the control either past or present, and the ability to try to separate those individuals from what, in fact, is the client or the party, I don't think is do-able.

And I don't think we did a good enough job in pointing that out to the Board from the earliest request that we made of the Board. So when you apply those, if you apply the fact that the individuals we're talking about are one -- have 1) requested these firms as their counsel, and 2) are also officers in the control group, those people responsible, and are in fact the client -- the client is simply is not just an entity. It is the highest individuals in the --

CHAIRMAN BLOCH: I guess I have a little problem with the part of this argument that says that the retired officers are still the client.

MR. BLAKE: Well, when you take a look at the time frame we're talking about, they were, in fact, the client corporate entity at that point in time.

CHAIRMAN BLOCH: But now they're not, and the question is whether they are necessary to control the

lawsuit for the client. Isn't that the question?

MR. BLAKE: Well, not only necessary to control the lawsuit, but were they the individuals who speak best for the client about that circumstance?

CHAIRMAN BLOCH: And if you had, let's suppose, six engineers --

MR. BLAKE: Yes.

CHAIRMAN BLOCH: -- who are alleged to have conspired to withhold information --

MR. BLAKE: Yes.

CHAIRMAN BLOCH: -- would it also be the case that those six people might be the best to speak for the client?

MR. BLAKE: I believe it would. I believe we were hit with a particularly easy decision in this instance because of their rank in the company. But I believe that would also apply. Now if you apply then the APA, which I believe this Board has to -- there are limitations on 2718 and what you can argue, and you're bound by the APA.

If you apply 6B of the APA, it says that the only time that you can interfere with a witness or the witness's right to counsel, and I believe that to be counsel of the individual's choice, is if there's some concrete evidence that that will pose a problem.

And that's not what the Board has found here

and not what the Board believes is the case here. So I think that the APA, I think that the consumer's power of decision on limitations, I think the -- is it off-shore?

CHAIRMAN BLOCH: Could you just, for my benefit, could you read the appropriate section of the APA into the record so I'll understand it? This is the first time in this proceeding that that section of the APA has been cited.

MR. BLAKE: Now, the things that we've relied are Section 6B of the APA, which is 5 U.S.C. 555B. The -- and the PROS case, the Professional Reactor Operators Society v. the NRC case, which came out of the DC Circuit in 1991 --

CHAIRMAN BLOCH: The --

MR. BLAKE: It's 939 F.2nd, 1047. The -- and it's that case which applied the APA's right to counsel.

CHAIRMAN BLOCH: And the date of that case?

MR. BLAKE: Ninety-one. I don't know the month.

CHAIRMAN BLOCH: That's okay. So is there a particular language in the APA?

MR. BLAKE: It is 6B which provides a person compelled to appear before an agency or a representative thereof is entitled to be accompanied, represented and advised by counsel or if permitted by the agency, by other

qualified representative.

I'm prepared to go through each of those clauses, phrases --

CHAIRMAN BLOCH: No, that's okay.

MR. BLAKE: -- to tell you why I think it applies here.

CHAIRMAN BLOCH: It's okay. Mr. Barth?

MR. BARTH: Thank you, Your Honor. This is a matter in which we have considered at great length and discussed among ourselves. And I think I should start off by telling you, Your Honor, that we find the Board's Danielesque resolution of this matter quite acceptable without further comment.

CHAIRMAN BLOCH: What part of Daniel are you referring to?

MR. BARTH: Where he became a judge, not with the lions. No, I think you've come to a proper and correct solution to the matter, Your Honor, to sequester the people from talking among themselves during the hearing.

This, of course, comports well with the Federal Rule you cited, 615, which says at the request of a party. I realize no party made the request. You can tell the witnesses they can't talk to each other.

I think that's what you've done. I think that's proper. I have no problem with that part of your

ruling, Your Honor.

CHAIRMAN BLOCH: Okay. Mr. Kohn, the PROS case and 6B of the APA were cited for the first time. Do you have any comment on that?

MR. KOHN: Well, I haven't seen the CROSS case, so I really can't comment.

CHAIRMAN BLOCH: I think it's PROSS, P-R-O-S-S?

MR. BLAKE: Yes, it stands for Professional Reactor Operators Society and that actually -- it isn't working too well.

MR. KOHN: Your Honor, it is cited on page date of Georgia Power's Motion for Reconsideration and the quoted portion is: "The Agency must come forward with concrete evidence that counsel's presence would impede its investigation." I believe that issue was considered by the Board in its earlier decisions, and I think that what we're looking at here is a very extraordinary request on the part of Georgia Power.

And a Board issue was -- order that was issued, Georgia Power requested reconsideration, reconsideration was granted. Georgia Power filed additional argument and now after a second Board order is out, which was basically a reconsideration, Georgia Power now says we want it to be reconsidered a second time. And I think it --

CHAIRMAN BLOCH: Well, not quite. They relied

on a section of the rules that permit them to move for a certification of an issue to the commission. And I don't think that our rule on reconsideration can overrule that portion of the procedures. I'm willing to hear your argument that I'm wrong about that, but I can't think of any argument to that effect.

MR. KOHN: I think that argument can be made that it was waived when -- while the original reconsideration -- that it should have been raised that that time, that they -- that if the Board was not going to grant their motion, that it be certified for the commission. The only other --

CHAIRMAN BLOCH: You said it. Can you argue it? I mean, what's the argument?

MR. KOHN: I guess under "black letter law" on latches. That's about it. It's about as much as I can argue at this point, Your Honor, without -- the only other point we'd like to make is Intervenor's original brief, we did cite two cases which -- that it can be inherently wrong for the same counsel to represent an employee and an employer, and that is the Davenport case at 478 F.2nd 203 on page 209.

CHAIRMAN BLOCH: What are the conditions, F.2nd 203?

MR. KOHN: Yes, at page 209, that it is

inherently wrong to represent both an employer and the employee if the employee's interests may and the public's interests will be advanced by the employee's disclosure of his employer's criminal conduct.

MR. BLAKE: A pure legal conflict. I understand that. Of course --

MR. KOHN: This represents a potential conflict of interest because we don't -- because there -- and you'd have to also look at it. If you look at the record and witnesses are shown to have made inaccurate statements to the NRC, what is Georgia Power's actual interest, to present that to the NRC, which is what we would expect it to be? Although there is a conflict at that point.

And a potential conflict is substantial enough for a disqualification if it's likely to come forward in this proceeding.

CHAIRMAN BLOCH: And what's the date of the Davenport case?

MR. KOHN: 1970 -- '73.

CHAIRMAN BLOCH: What were the circumstances under which the Court ruled that the disqualification of representation of both would occur?

MR. KOHN: I believe, my recollection is that the hearing was commencing and the witness was being represented by the attorney for the employer, and the Court

said no, you can't represent that witness.

CHAIRMAN BLOCH: Well, was there anything that the witness said that led the Court to do that?

MR. KOHN: No. I believe the witness was willing to be represented by their employer's counsel.

CHAIRMAN BLOCH: Well, this Court did it sua sponte, by itself?

MR. KOHN: That's my recollection, Your Honor.

CHAIRMAN BLOCH: All right. I guess we're going to have to look at those two cases during the recess. What I propose to do is to recess now and we'll reconvene after we're done with the telephone conference in the Western Electric case.

We should be able to consider this matter during the break as well. Thank you, we're in recess.

(Whereupon, the proceedings went off the record at 1:48 p.m. and resumed at 2:12 p.m.)

CHAIRMAN BLOCH: We have reviewed the Professional Reactor Operator Society vs. U.S. NRC case, and also the United States Exrel Heart vs. Davenport. We regret that we didn't read the PROS case more carefully in the first instance, because it is in point and it is controlling. There was something about the way it was cited that led me to think that it was not relevant initially.

But in that case, NRC enforcement counsel attempted to exclude counsel from an enforcement hearing. The rule was invalidated by the Court of Appeals on the grounds that while you can sequester witnesses, you cannot exclude counsel, unless there is concrete evidence that counsel's presence would impede the investigation.

We have no evidence like that in this case. Since there is not even an investigation, I would think that the factors are weaker.

As for the United States Exrel Heart vs. Davenport, it's a case involving an allegation of improper gambling in a bar.

It's a case brought up in a context of a habeas corpus petition. The court held that where counsel for the bar took positions at trial that were inconsistent with the best interests of his client, that there could be prejudice in a criminal case. There's nothing like that here.

The court also said that the right to counsel can be voluntarily waived. We have no reason to believe that anything other than voluntary waiver of separate counsel has occurred in this case.

Consequently, we will go to what Mr. Barth called the Danielesque solution, but which seems to me more Sullivanesque.

MR. BLAKE: This won't encourage Mr. Barth.

CHAIRMAN BLOCH: We will adopt the solution that we proposed before we had this discussion, which is that the witnesses shall be sequestered. That during the period of their testimony, they will not consult with counsel. But as soon as the cross is completed, the consultation can continue.

We also thought of the exception that if there was really a right of a witness at stake, there could be a conference about that right.

So why don't we go to Number Nine before we do Number Eight, since Eight will probably wrap it up. This is an intervenor issue?

MR. KOHN: Thank you, Your Honor. Basically, on December 6, counsel for licensee in a cover letter submitted substantial documentation which when reviewed was so relevant to the case, that the documents will be used in intervenor's case in chief.

The problem arises in that almost all the witnesses were questioned on the content of these very documents. Counsels at Georgia Power in his cover letter indicated that the documents were responsive to our interrogatory request.

Based on the type of documents, we believe that they were known to exist by the licensee before they were submitted on the sixth. That we did not have the use of

these during the discovery process. We believe that that intervenor has been prejudiced by this last minute submission, although we are very happy that the documents were tendered.

I think that what intervenor would be looking at, is to start with our affidavits from the persons whose files these documents were produced from saying that there are no other similar documents contained in these files.

In as much as these are responsive to interrogatory responses, I think --

CHAIRMAN BLOCH: Which interrogatories are they responsive to? The licensee said it was responsive? Is that the point?

MR. KOHN: Yes. They cited to interrogatories No. 10, 12, and 37, and document requests 33, 39 and 41, both of intervenor's first request of interrogatories and documents.

CHAIRMAN BLOCH: Okay. So what is the relief you seek as a result of this?

MR. KOHN: We request the right to have licensee submit affidavits from the individuals from whom these documents were obtained, that there are no other similar documents in their files and that to the extent that the intervenor be allowed to question the witness previously deposed on these very matters. A brief

opportunity to question them on the content to some of these documents.

CHAIRMAN BLOCH: When? You want another deposition?

MR. KOHN: Yes. One day scheduled to conduct depositions on the issues contained in these documents.

We would be willing to do that at any time between now and the hearing.

CHAIRMAN BLOCH: And you have questions that you want to ask about these documents?

MR. KOHN: That is correct.

CHAIRMAN BLOCH: Any other subject matter other than the documents?

MR. KOHN: The subject matter covered in the documents is what we are looking to question them on. I think that asking to do other issues that are not in the documents would not be in good faith.

Although I would certainly love to do other issues. We would be limiting it to what is in the documents.

CHAIRMAN BLOCH: All right. In terms of similar documents, you mean other documents responsive to interrogatories 10, 12 and 37?

MR. KOHN: Yes, and the document request 33, 39 and 41.

In other words, I believe that these documents came out of files. For instance --

CHAIRMAN BLOCH: So you would like to know what file they are located in, and whether there are other similar documents located in the same file?

MR. KOHN: Correct.

CHAIRMAN BLOCH: And you want affidavits. Now who are the individuals we need affidavits from?

MR. KOHN: From looking at these documents, I really can not necessarily tell whose files, or where they came from. It looks to me like some came from Mr. Louis Long's file. It seems like some of the memorandums were checked by --

CHAIRMAN BLOCH: So you want an affidavit from whatever person has custody of those files?

MR. KOHN: That is correct. Some were prepared by Mr. McDonald.

CHAIRMAN BLOCH: You want the person who has custody and who knows the content of those files?

MR. KOHN: Correct.

CHAIRMAN BLOCH: Licensee.

MR. BLAKE: Having just heard for the first time, we would like an opportunity to consult here and discuss before we respond, if we might.

CHAIRMAN BLOCH: Sure. You want a brief

recess?

MR. BLAKE: If we could have.

CHAIRMAN BLOCH: You want to estimate the time?

MR. BLAKE: I think five minutes would be adequate.

CHAIRMAN BLOCH: We'll take a five minute recess.

(Whereupon, from 2:20 p.m. until 2:25 p.m. the proceedings went off the record.)

CHAIRMAN BLOCH: -- good on his time as he makes other people be.

So how does Georgia Power respond?

MR. LAMBERSKI: Your Honor, let me first explain why these documents were not produced initially in response to Mr. Kohn's discovery request.

Those discovery requests, which I believe were filed in May of 1993, covered a broad range of questions on the illegal license transfer issue, to which Georgia Power filed extensive general objections and some specific objections.

Mr. Kohn did not file a motion to compel. Without waiving those objections, Georgia Power agreed to make certain documentation available and did so, based on a reasonable inquiry.

In the case of these sorts of documents that

went to communications, NRC, or the formation of Southern Nuclear or documents that we would use ourselves at the hearing. We were not aware of these documents at the time.

What we were aware of and what we produced or identified that Mr. Kohn had already in his own possession, were extensive documents that the company had collected and reviewed prior to responding to Mr. Kohn's 2206 petition which had this illegal license transfer allegation as one of the allegations.

So that is why, for example, our response to the 2206 and our proposed stipulations on illegal license transfer do not identify specifically some of these meetings with the commissioners that are identified in these documents that I have given to Mr. Kohn that took place between Mr. McDonald and Mr. Farley and some of the NRC commissioners in 1988 and in 1990 concerning the phased formation of SONOPCO.

So with that said, in response to Mr. Kohn's specific requests, we are willing to provide affidavits from the individuals from whose files these came, that there are no more documents available. Certainly if there are other documents, be produced.

We are also willing to --

CHAIRMAN BLOCH: Let me just clarify. The people whose files they are, are also the people

knowledgeable about what is in them? Sometimes that is not the case.

MR. LAMBERSKI: I don't believe that is necessarily the case.

CHAIRMAN BLOCH: So, we'd like the affidavits to be primarily from the people who actually know what is in those files.

MR. LAMBERSKI: Oh. I'm sorry. I misunderstood your question. I think that is the case.

CHAIRMAN BLOCH: Okay.

MR. LAMBERSKI: People from whom these documents came are familiar with the files.

CHAIRMAN BLOCH: Okay. Great.

MR. LAMBERSKI: In response to Mr. Kohn's request for depositions, we believe that there are two individuals that can speak to the matters addressed quite fully in these documents.

Those are Mr. Louis Long and Mr. Pat McDonald. We would agree to make Mr. Long available for deposition now at a mutually convenient date.

As to Mr. McDonald, he is going to be one of our witnesses. We request that he not be made available for another deposition. That Mr. Kohn will have the opportunity to question him on the stand at the hearing.

CHAIRMAN BLOCH: I guess if we were to do that,

it would be serving a dual purpose, which would be discovery and trial.

So if it led to further evidence, we would have to somehow arrange to be able to get that.

One of the counsel for Georgia Power is shaking his head yes.

MR. LAMBERSKI: Affirmative.

CHAIRMAN BLOCH: Okay. Is that an acceptable arrangement for Mr. Kohn?

MR. KOHN: Your Honor, I believe there are additional persons who would have to be included. Specifically, Mr. Farley.

I think the record should be clear that when we deposed the witnesses on the intervenor, we did ask them questions about these early meetings with the NRC. We had tried to find out, but the documentation concerning them was not produced.

So with respect to Mr. Farley, Mr. McDonald and Mr. Long, those three on that particular issue.

The other issue that comes up --

CHAIRMAN BLOCH: The only one you are mentioning that they did not already offer something about is Mr. Farley.

MR. KOHN: On that issue. Correct.

CHAIRMAN BLOCH: Are you willing to accept the

same kind of arrangement with Mr. Farley as with Mr. McDonald, that the discovery take place simultaneous with the trial?

MR. KOHN: No, Your Honor. I think that one day should be set -- it's not a situation where we would depose these individuals for long periods of time. I think the depositions would be rather short in length.

I think that it would be beneficial to the board to streamline the proceeding so we can stay within the eight days that we have already set aside. To do that most efficiently, the extraneous matters should be sifted through and only the important issues and information get before the board.

So I would propose setting aside a day between now and the hearing to accomplish that.

CHAIRMAN BLOCH: One day.

MR. KOHN: Yes.

CHAIRMAN BLOCH: And do you anticipate that the whole day would be needed?

MR. KOHN: No. I think that I would say we are probably looking at an hour to an hour and a half for each of the witnesses. We are not looking at an entire day, Your Honor.

But there are a few additional witnesses who I would also suggest.

CHAIRMAN BLOCH: Who are they?

MR. KOHN: The editor in chief, or the editor of the Synopsis publication. I think that's a Jane Henry or something.

CHAIRMAN BLOCH: There is a Jane Henry on your witness list.

MR. KOHN: I believe that is the person.

MR. LAMBERSKI: Your Honor, while Mr. Kohn is sifting through the documents, I will note that Mr. Mosbaugh had access to these Synopsis while -- in fact in discovery in a Department of Labor case, he produced one of these Synopsis. Kohn obviously was aware of this publication and could have -- Henry or whoever -- (inaudible) -- in the discovery phase of this proceeding.

CHAIRMAN BLOCH: Was it true? Is there anything new other than the fact that there was this publication that came from these new documents?

MR. KOHN: Yes. There is new information. There is specific internal memorandum that were not produced earlier.

The publications, Mr. Mosbaugh had not seen these or had copies of them or remembered seeing them. So it is not something that we could have done discovery on.

We did discovery. We asked for specific relevant documentation. It was not produced.

Also, a Charles McCrary is necessary. He produced a slide presentation dated 1989, it appears, where it goes through on top in handwriting, it says, "Speech outline for administrative service Vice President Charles McCrary for use at other system companies going forward." It is an outline going forward of what they were telling the other employees about the reorganization.

So Mr. McCrary would be a witness that we would need to depose, as well.

CHAIRMAN BLOCH: This could all be done in the one day?

MR. KOHN: Yes. I think it can all be accomplished in one day.

MR. LAMBERSKI: Your Honor, as to Mr. McCrary, Mr. Kohn was well aware of his role in the initial SONOPCO project organization. He chose not to depose him in this case previously.

I don't see why he should be allowed to call him now because he has found a document with his name in it.

MR. KOHN: It's not a document with his name in it, Your Honor. It is a detailed outline indicating that there were some 20 slide show presentation. It is an outline of entire presentation which we did not know existed.

The point of doing -- we filed our document request first and then did our depositions second, with the intent of using whatever documentation we needed to determine who we would depose and what we would depose them on.

Intervenor was not able to do that with respect to Mr. McCrary.

MR. LAMBERSKI: Mr. McCrary was the Vice President of Administrative Services. Obviously, he had the involvement in the reorganization.

CHAIRMAN BLOCH: But the cross examination will be limited to the new materials.

Mr. Barth, have you a comment on this discovery question?

MR. BARTH: (Inaudible.)

COURT REPORTER: Excuse me.

MR. BARTH: We have no comment. I think it's a matter best discussed between Mr. Kohn and the licensee.

MR. KOHN: I think the people I have identified would be the persons who we'd request for deposition. In addition, Mr. Meier. That would be the limit of our persons.

CHAIRMAN BLOCH: And what is the reason for Mr. Meier?

MR. KOHN: He was involved in the

presentations, I believe, to the NRC.

CHAIRMAN BLOCH: We grant intervenor's motion for these depositions.

We ask the parties to find a way to schedule this somehow, so it can be done in one day. It doesn't have to be the same calendar day. It could be one afternoon and the next morning. But some way, so that it will be consolidated for the convenience of the parties.

MR. LAMBERSKI: Your Honor, can we recite the list of names? I'm not sure I've captured everybody he has identified.

CHAIRMAN BLOCH: Yes. I think we can do that for you. You mentioned Louis Long and Pat McDonald. Those are two. Mr. Farley, Ms. Henry, and Charles McCrary and Mr. Meier.

MR. LAMBERSKI: Thank you, Your Honor. That's the list I had.

CHAIRMAN BLOCH: So that brings us to the question of scheduling. Does the party have a suggestion? Well, I guess I'd like to know if -- oh. We did rule that depositions should be limited to the new material, or I suppose, other material coming out of the questions asked about that material.

We'd like to know if anyone of the parties would like to suggest starting with the proposal for

schedule submitted by another party.

MR. BLAKE: I'm happy to lead off, having addressed schedule in several prior occasions.

CHAIRMAN BLOCH: I don't think you heard my question.

Would any party like to propose that we start with the schedule proposed by another party?

MR. BLAKE: I'm even prepared to do that, to take the first crack.

CHAIRMAN BLOCH: Whose proposal do you want us to start with?

MR. BLAKE: I'm prepared to go with the NRC's staff schedule, which is basically ours. Differs only in I think in a couple of dates. It gets to the same hearing schedule and differs substantially from the intervenors proposed schedule, which has a month or six weeks for attempts to sort through transcripts. A topic which we have been through before.

CHAIRMAN BLOCH: So the major difference is that there be no time set for sorting through transcripts?

MR. BLAKE: No additional time set that we didn't do anything else during. I don't think that's necessary.

We in fact have done a lot on transcripts. We have worked our way through 57. We have worked our way

through 58. We have provided to the other parties, all those additional excerpts from transcripts which we anticipate using.

We have heard from the staff on one of those. We have yet to hear from the intervenor on any of them.

We have yet to hear from the intervenor on transcript 58. I don't want to waste six weeks in the schedule trying to talk about transcripts with them.

We have been playing ball by what the Board asked us to do. We think that is sufficient.

CHAIRMAN BLOCH: May I ask on a side technical issue, have the parties decided the nature of the technical equipment we will have to play tapes in the hearing room if it's necessary?

MR. BLAKE: There has been no discussion that I am aware of specifically between the parties on that topic.

CHAIRMAN BLOCH: We would like to know who is going to provide the highest quality equipment we can have, because if there are debates about it, we would like to be able to have the best opportunity to be able to hear what is happening.

MR. BLAKE: This should be an area where Mr. Kohn will be expert.

MR. KOHN: I may be expert enough to identify the equipment. I don't know if I can provide it.

MR. BLAKE: I say that because I understand you used to sell such equipment.

CHAIRMAN BLOCH: So the proposal is that we adopt the staff's schedule. Are there suggestions for changes in it?

MR. KOHN: Your Honor, I have a either through administrative error of my office, I was not given a copy of this schedule. I don't know if NRC staff sent one to us or if that was an oversight on their side or our side. So I do not have their schedule.

CHAIRMAN BLOCH: Off the record.

(Whereupon, from 2:42 p.m. until 2:45 p.m. the proceedings went off the record.)

MR. KOHN: Your Honor, we believe that there is not enough time in the proposed schedule of NRC staff and licensee between now and the second week of January.

Intervenor has no capability of providing any resources towards the diesel generator issue. It's an incomprehensible position for us to be in.

In preparing for this next hearing that is coming up, it will require all our resources devoted to that issue.

I think it makes sense that once the hearing comes to a conclusion, the following day or day after, the parties sit down and re-look at the schedule to see.

If the hearing goes longer than anticipated then we are wasting our time now in coming up with a schedule. I find it counter productive at this point.

I think that all the parties are looking to get a hearing in a relatively short period of time following the close of the license transfer issue. The difference is a 30 day difference between the two proposed schedules.

I would suggest that the ultimate compromise will be suitable to all the parties, but I don't think it's really helpful to sit and come with concrete dates at this point, when we could accomplish the exact same thing following the close of evidence on the first phase of the hearing.

CHAIRMAN BLOCH: If we could accomplish exactly the same thing, except possibly for the need to amend the schedule because the hearing took a different amount of time, then why not do it now instead of later?

MR. KOHN: Intervenor's proposed schedule represents what we believe to be the least amount of time where we can put together and go to hearing on the issue.

We did not propose a schedule that gave us a lot of wiggle room here or there. It does represent what we would consider to be the minimum amount of time we would need to adequately prepare for the hearing.

I think that it should be considered that

resources are an issue in this proceeding. If Georgia Power is ready in a month, it doesn't preclude I think, intervenor's right to be ready in two months.

CHAIRMAN BLOCH: The principle difference though between the two proposals is whether or not to set aside a month for working out differences on the tapes.

The licensee does not think it needs to go through that. If you just take out that month, you wind up being about at the same time as they are.

MR. KOHN: I believe it's two weeks, but I might be wrong.

CHAIRMAN BLOCH: Well, it starts on February 6. Then it goes through February 24. All that is being done is tapes. Oh, it goes through March 1. So it is almost a full month.

They are saying, people know their position on the tapes at this point. Let's just put in the evidence and put in refuting evidence and if necessary, play tapes, rather than spend a month doing stuff that they do not believe will be productive.

MR. KOHN: Your Honor, if first licensee has given us transcripts they want us to review, we can't even start looking at reviewing those until we are done with this first phase of the hearing. That creates a problem.

It's not that we are dilatory in not trying to

meet our obligations. We are putting full resources available to Mr. Mosbaugh.

CHAIRMAN BLOCH: Well, there's no blame being affixed to you about when you are finishing with that assignment.

The only real question on scheduling, is whether to set aside a full month for that activity in the next phase. They are saying no. Why would you set aside the full month, or almost a month. It's not a full month.

MR. KOHN: The amount of time it took to do two transcripts for two tapes was a very lengthy process.

CHAIRMAN BLOCH: That's why they want to stop doing it. They don't think it's worth the process.

MR. KOHN: Then if we are going to stop doing it, then we'll stop doing it, and then we're looking at not stipulating to the rest of the tape transcripts that are remaining out there for either party. I don't think --

CHAIRMAN BLOCH: Is that what is being proposed?

MR. KOHN: No. Our proposal is we should go forward. We should identify the tapes. All the parties, now that the discovery is --

CHAIRMAN BLOCH: I was asking Georgia Power whether that was what they are proposing. Just stop the stipulation process or --

MR. BLAKE: No. We're proposing to continue with what was agreed to months ago on the schedule, which is when parties have -- you don't have to stipulate to everything. But you give it your best faith effort. We think we've hit everything.

There might be something else we come up with. You take your chances, however, if you don't have a stipulation on it, just like anything else.

CHAIRMAN BLOCH: Have you asked for stipulations from them, Mr. Kohn?

MR. KOHN: No. Not at this time, Your Honor. We need the time to sit down and look at the diesel generator case, all the transcripts that we want in.

We have been trying to juggle two things at the same time. We can only juggle one at a time. That is why we need the time when this hearing is closed, for us to sit down with Mr. Mosbaugh, and go through that time period to identify all the tapes that we want to include transcripts of.

There are a lot of them that the NRC has used in the OI report. None of those have been stipulated to at all. So there is a substantial amount of work out there that I know that there are transcripts that we want in there.

I can certainly tell you that the ones relied

on in the OI report, we would like to obtain stipulations to.

So to the best of our ability, we would like the parties to sit down over a course of time, identify the transcripts.

When we did tapes 57 and 58, the only process that worked efficiently was having a transcript in front of us, the three of us saying, all right, we disagree here, we disagree there. Over time, we basically came to a meeting of the minds on what was important and where we really disagreed.

It is not something that can happen through filing papers back and forth. It really requires sitting down and discussing the issues.

We've only had the opportunity to do that for two transcripts. Both of those transcripts will be exceedingly helpful to this proceeding.

We think that allowing that little additional time to do that is ultimately going to make the Board's job a lot easier. Because trying to deal with an untranscribed or partially transcribed tapes that neither party agrees to, is going to be a headache on all of our parts.

CHAIRMAN BLOCH: Would staff like to comment?

MR. BARTH: Your Honor, Mr. Kohn's comment that to set down a little time would help is, we've set down a

little time forever.

On Tapes 57 and 58, that was a process of months and months. It sounds nice, but it's not going to work. I think we should hold a more rigid schedule.

The idea of the parties sitting down among themselves with a box of tapes, and coming to conclusions of what they say, just in the cold terms reality of this world has not been successful.

CHAIRMAN BLOCH: Take a brief recess for decision purposes.

Does licensee have something else it wants to say?

MR. BLAKE: No, Judge, only that this is an old topic. We have had almost the identical discussion a number of times.

(Whereupon, from 2:54 p.m. until 3:00 p.m. the proceedings went off the record.)

CHAIRMAN BLOCH: Go back on the record. There's really two steps to this process here. We have determined that the hearing date will start on March 29. The hearing will start on March 29, but there must be a condition precedent for that to happen.

What we are doing is adopting the staff's schedule. We will meet on the 29th providing that intervenor files a reasonable adjustment of staff's

schedule on or before the beginning of this next license transfer proceeding.

So you can just adjust that schedule to meet your needs up to March 29.

If there are objections to the adjustments that the intervenor files, we will hear those. But I expect that -- what we were considering as most important as we heard that intervenor may need a little additional time to review the tapes and request stipulations of his own.

So we are going to allow those two additional weeks over the staff's schedule.

Is there any further new business?

MR. KOHN: There is one additional issue which concerns Georgia Power's response to the Board's request for documentation concerning the duty list and the emergency planning.

That is documents that were received by intervenor appear to -- if we are looking at the telephone list where it indicates Georgia Power Corporate, from the documents that we received, it looks like the earliest list that was included in there was the third quarter of 1989. I don't believe there were any for 1988 or the early quarters of 1989 produced.

So I would like the licensee to indicate whether they still intend to produce those or what the

status is.

CHAIRMAN BLOCH: The question is, did the procedures prior to -- what date was it? The first date you have it on?

MR. KOHN: Third quarter of 1989.

CHAIRMAN BLOCH: The question is, whether the procedures prior to the third quarter of 1989 had corporate telephone lists that should be produced.

MR. LAMBERSKI: Your Honor, I think the answer is, and I have to check with an associate in my office who has compiled these documents, requested them from the company. But I think the answer is, we have produced everything in response to the questions that we were able to locate. Beyond that, I just don't know right now.

CHAIRMAN BLOCH: Is there a reason from the documents themselves to believe that there is a telephone list being referred to in those earlier versions?

MR. KOHN: Yes. There is, Your Honor. I believe the third quarter 1989 document, if my recollection serves me correctly, indicates that it's a revision, which would indicate that there must have been an earlier one.

CHAIRMAN BLOCH: We'd want you to check your records to see about that, because it is strange that a formal procedure would be lacking a page that is referred to if Mr. Kohn is correct about this.

MR. LAMBERSKI: Well, I know, Your Honor, that there were some revisions of some procedures or emergency plan sections that we were unable to locate.

So it's not surprising to me that there are some documents that existed at one time that are no longer in the company's possession or they are no longer able to locate.

CHAIRMAN BLOCH: Is there an easy way of knowing which ones were unlocatable?

MR. LAMBERSKI: Can I have a moment?

CHAIRMAN BLOCH: Yes.

MR. LAMBERSKI: All I have to add, Your Honor, is that we will check. I don't believe that there are other documents available that Mr. Kohn is referring to. But I will check.

CHAIRMAN BLOCH: I guess it would be helpful if, just so that we will be able to understand the picture, if you could just very briefly summarize what is missing.

MR. KOHN: Yes, Your Honor.

CHAIRMAN BLOCH: If you can do it, Mr. Kohn, then they don't have to do it.

MR. KOHN: Oh, I'm sorry.

MR. LAMBERSKI: I can't, Your Honor. I don't have the letters in my hand.

CHAIRMAN BLOCH: I understand that the

telephone lists are missing. But they also said that there were procedures that they could not find.

MR. LAMBERSKI: Oh, and I didn't have an opportunity to respond to your statement earlier before we took a brief break.

I think the answer to your question, Your Honor, is that we have provided a table to the Board that identified which revisions we were able to locate and which ones we were not.

So that should be attached to the letter that you have.

CHAIRMAN BLOCH: We'll look for that. Is there any other new business?

MR. KOHN: No, Your Honor.

CHAIRMAN BLOCH: Any other party?

MR. BARTH: Your Honor, I think it would be appropriate if you would issue an order summarizing the change in your previous orders regarding sequestration.

CHAIRMAN BLOCH: Well, we will be issuing an order, a pre-hearing conference order following this pre-hearing. I think it's almost time to adjourn.

MR. BARTH: Again, Your Honor, before you adjourn it, we would like to again make the offer, and we'd sure like to help the Board, to go through these intervenor's witness list to find out who is a direct

witness, who is a rebuttal witness, and who these people are.

Ms. Young has been very diligent, and has managed to find for me the Carey Adams. There's a Kirby Adams, who is a Vice President for Hydro Power. I would like to know how the Hydro plant has some effect on the changing operation of Vogtle.

If it would give us this kind of an idea, we could better address is.

I don't mean to be flippant. I am dead serious. If we don't know what this is about, we're not going to go anywhere. We don't know at the moment.

CHAIRMAN BLOCH: Can we begin with this process of at least stating which of the witnesses are for which issues?

MR. KOHN: We can begin, but I think it is going to be sort of futile at this point. I'm more than happy to tell Mr. Barth that Carey Adams was Mr. Mosbaugh's boss after Mr. George Head retired. It is my understanding I believe he is also a member of the Georgia Power Management Council.

CHAIRMAN BLOCH: And the issue or issues?

MR. KOHN: Deal with the nuclear operation contract administration group in matters pertaining to the management council's oversight of Georgia Power's nuclear

plants.

CHAIRMAN BLOCH: Would he be a direct witness or a rebuttal witness?

MR. KOHN: He is a border line at this point. We would know as soon as we were done with the Georgia Power witnesses, whether we would be calling him.

So he would be a direct witness based on the first few witnesses we call from Georgia Power Company.

CHAIRMAN BLOCH: So he's a questionable direct witness?

MR. KOHN: Correct.

CHAIRMAN BLOCH: We prefer calling him questionable than border line.

MR. BARTH: Your Honor, in earlier discussions we had here when we discussed proffer, this does not tell us what this man is expected to testify to. That is essential. That is why we have pre-file testimony.

I understand that he is not within the control of Mr. Kohn. That's why courts require where a witness goes on, the counsel proffer what that witness will testify to, so the court can even determine whether it is relevant and permit him to testify.

Since the licensee and the staff are going to have to have some kind of direct case or response to this, we have to know with adequate notice what it is this man

will say.

Is he going to say that Mr. Hobby was a good man and always told the truth, as a character witness. Mr. Hobby dealt with contracts, which had nothing to do with the operation of the Vogtle facility, which is true. I just have to know what he is going to say, not the exact words.

CHAIRMAN BLOCH: So the question is, how should we proceed about getting the kind of specificity that will put people on notice as to what they need to prepare in their side of the case.

How would you propose we do that?

MR. KOHN: Identify which issue the particular witnesses pertain to. I think that will say as to which areas that they would be testifying to.

Then if there are any specific --

CHAIRMAN BLOCH: Was Carey Adams one of those people mentioned in the summary disposition motion?

MR. KOHN: I do not believe he is mentioned in summary disposition. He is mentioned in Mr. Hobby's direct testimony.

CHAIRMAN BLOCH: Is it about the matters that Mr. Hobby mentions that he would be called?

MR. KOHN: Yes.

CHAIRMAN BLOCH: Or is there additional stuff?

MR. KOHN: He will be called on information contained in Mr. Hobby's direct testimony.

CHAIRMAN BLOCH: Is that sufficient for you, Mr. Barth?

MR. BARTH: Your Honor, your an attorney. Put yourself in my shoes. You are going to try this case. What can you write testimony on for this fellow? Nothing. Absolutely nothing. This is a wash.

CHAIRMAN BLOCH: Well, you said that there is testimony in the direct testimony Mr. Hobby, he mentions Mr. Adams.

MR. KOHN: Yes. He does.

CHAIRMAN BLOCH: So your problem is, you don't want to have to look through all of Mr. Hobby's testimony?

MR. BARTH: I'm not certain that that is a fair characterization of it, having not done so at this moment, to find what Carey Adams or Kirby Adams are going to testify to. I don't know what page.

This is an obligation by the intervenor to do this. I remind you that the Commission's statement on a policy of the conduct of proceedings requires that an intervenor, regardless of his resources, meets his responsibilities. He has got to give his responsibilities by telling us what he is going to testify to.

He has done this in the form of Mr. Hobby's

testimony, and Mr. Mosbaugh's which he has pre-filed. Mr. McHenry, who is somewhat questionable, and Mr. Barker who is not. We understand that.

Now I want to be put in a position so that I can give you a cogent answer when we go to hearing, Your Honor, as to what is the staff's reflection upon Carey Adams or Kirby Adams or whatever this fellow's name who runs Hydro plants is going to say.

CHAIRMAN BLOCH: I hear what Mr. Kohn said. You have the wrong fellow. It's not a guy who runs Hydro plants.

MR. BARTH: That's what his title is given in the motion for summary disposition which Mr. Kohn has filed.

So he's someone's supervisor. What role does he play? Is he going to say, I saw SONOPCO take over the operation of Vogtle, and what are the facts that did that, or I didn't.

If you will recall, Your Honor, your order was very specific in the denial or granting of the motion for summary disposition.

You said that Mr. Kohn is going to have to show what fibs were told the NRC by the licensee or what truths were not told.

I want to know what truth is it that Mr. Carey

Adams is going to testify to, or what omission, in conforming with your order.

Your order is not bad, Your Honor. It really isn't. It's a good order. It's a cogent order.

If we could only get these people to follow Your Honor's lead, we are going to be a lot better off. They have missed every deadline you have given them.

We talk about diesel deadlines and diesel schedules, then here we are, two weeks after we are supposed to have this stuff. We have nothing, except a promise to get it sometime next week.

CHAIRMAN BLOCH: Mr. Kohn, how long would it take you to specify the truths or omissions that these people are going to testify about? Can you do that on Monday?

MR. KOHN: For our direct witnesses. Yes. Again, direct witnesses I would say we are probably looking at this point at 20. That is my guess.

CHAIRMAN BLOCH: And what, if anything, can we know about the rebuttal witnesses?

MR. KOHN: Well, Your Honor, with rebuttal witnesses, I think that we would like to file in camera, because it really I think tips the scales too far.

We don't have to call all the witnesses. We don't have access to the witnesses. The only thing we have

is some scant documentation to cross examine the witnesses on.

MR. BARTH: I'd like to point out, Your Honor, on the 14th of December at 3:15, we don't even know on the staff side who the direct witnesses will be for the intervenor. This is a very closely guarded secret.

CHAIRMAN BLOCH: Can you just list the ones that are direct?

MR. KOHN: I can give a preliminary list which will be fairly inclusive and then follow up in a few days after some more careful thought.

Direct witnesses going down it would be Mr. Addison, Mr. Baker, Grady Baker, Michael Barker, Ken Brockman.

MR. BARTH: Maybe.

MR. KOHN: Maybe.

CHAIRMAN BLOCH: What's the maybe there? I'm not in on this one.

MR. BARTH: He's got to apply to the Executive Director for Operations. The Executive Director for Operations has to turn him down. Then you have got to rule he knows special knowledge.

CHAIRMAN BLOCH: He's going to specify which ones he wants.

MR. KOHN: Ed Crosby, Mr. Dahlberg, potentially

Stewart Ebneter.

MR. BARTH: Your Honor, when we say potentially, this thing has been going on for two years. You gave him deadline after deadline. He has not met it. What do we mean potentially. He knows now what he is going to --

CHAIRMAN BLOCH: When he mentioned a staff witness two minutes ago, you objected to his saying he was going to be a witness. He means that there's a process he has to go through. He has recognized that.

MR. BARTH: Well, I apologize. I appreciate Your Honor's -- thank you.

MR. KOHN: Bob Edwards, Dwight Evans. William Evans is probably someone who can go in just through their deposition testimony.

Joseph Farley, Bob Gilbert. Lee Glenn is someone who can go in through deposition testimony. George Hairston. Elmer Harris we are still not sure of. He's a question mark.

George Head. We will know Jane Henry after we conduct her deposition. Marvin Hobby, who appears twice, also on number 30. We'll be calling him twice.

CHAIRMAN BLOCH: Well, we just eliminated a witness.

MR. KOHN: Yes. Gerald Johnson, Louis Long.

Potentially Charles McCrary and John Meier, again, depending on their deposition. Mr. Meier is highly likely, so I think we should include him.

Ken McCoy, Mr. McDonald, Mr. McHenry, Allen Mosbaugh, Don Proctor, John Rogge.

CHAIRMAN BLOCH: Potentially.

MR. KOHN: Potential. I wasn't sure which way to go on that one, Your Honor.

Jay Schaudies, Robert Scherer, William Shipman, Dan Smith, Frank Timmons.

CHAIRMAN BLOCH: That's number 31 out of the 20.

MR. KOHN: Potentially Admiral Wilkinson, Chuck Whitney. I think those are the individuals.

CHAIRMAN BLOCH: When you say those are the individuals, you mean you are going to call number 64 as a Board?

MR. KOHN: No, Your Honor. The individuals not specifically identified represent a category of witnesses. There is potential, I think more on rebuttal, because we have not really thought about it on a case in chief.

But there is a potential that we may want to. The fact is that some of the witnesses here are Board members, so it's duplicative.

So I think we can accomplish what we need for

those with the witnesses we have already listed, because they fill those positions.

CHAIRMAN BLOCH: Now, is there anything else that you could do at this point that would help the other parties in their case preparation before Monday?

MR. KOHN: I think at this point it would be helpful just to go through the issues and find out which ones appear to which issues. I think that requires a little time to sit down and do that. I don't think it's necessarily too helpful here.

If there's any specific other information that the parties are looking for, maybe I would accommodate. But I can't think of anything right now.

CHAIRMAN BLOCH: You say you could do that. You want to do that informally with the parties now? Is that what you are suggesting?

MR. KOHN: I am suggesting that we do it on our call on Monday. We have identified the witnesses.

That way, if the parties have specific questions on some of these witnesses, I can maybe answer those at this point. But just to go through each one --

CHAIRMAN BLOCH: What they want to know on Monday is how the testimony of the witness relates to specific alleged omissions or misrepresentations.

So they want to know the nexus between that

witness's testimony and the matter in question.

Is that a fair statement?

MR. BLAKE: Yes. I could start with Carey Adams, however you spell his names. It's spelled differently on this list of witnesses and in the pre-file testimony. But I would start with that one, because I don't understand even from reading the pre-file testimony, again here, how it relates.

I think we are going to run into that when we go through each of these witnesses, a fair number of times.

I also would note for the Board that a number of the people that the intervenor has said will be a part of their direct case, are not even mentioned in their issues list.

I would have expected to have seen a correlation, and I don't even see it now.

MR. BARTH: Your Honor, your statement was that he should show a nexus. You said was that a fair statement.

I think Your Honor is always fair, but I would phrase it differently. I am not interested in the nexus between the omissions and the commissions.

I want to know what that omissions are. What the omissions are and what the commissions are. I want to know what are the misstatements.

I'll worry about the connection some other time. That is a matter of --

CHAIRMAN BLOCH: Well, we're talking about witnesses. I want him to give you on Monday the connection between the specific witness and the alleged commission or omission.

MR. BARTH: I want him to say that Carey Adams, whether he is for Hydro or whatever he is, heard these people say SONOPCO ran the plan or SONOPCO didn't run it. I want to know what are facts which we have to address. I want to know what the omissions are.

This is your order. Don't side away from your order. It's a good order. I just want it held up.

I want to know what statement did Carey Adams make or hear that is a fib to the NRC or should have been told to the NRC. That is what your order states.

Then the licensee and the staff can address that. I will worry about the connection some other day.

I want to know what is the misstatement or omission.

CHAIRMAN BLOCH: Well, in fact, they may not be witnesses to a misstatement or omission, but we want to know what the relationship is between their testimony and a misstatement or omission.

MR. KOHN: That was my understanding, Your

Honor.

MR. BARTH: Thank you kindly, Your Honor, I think you well phrased it.

CHAIRMAN BLOCH: Thank you. Are there any other matters of new business?

MR. BLAKE: We have provided Mr. Kohn today with a list from his list of exhibits with those where we need additional identification by way of either information or in fact a copy of the documents, because we do not understand what he is talking about.

Hopefully, that will be resolved this week.

MR. KOHN: Based on the list, it looks like it should be able to be resolved this week, Your Honor.

CHAIRMAN BLOCH: Okay. There being no further business before the Board, we will adjourn. We will reconvene in telephone conference this coming Monday at 2:00 p.m.

MR. BARTH: The conference will be recorded, Your Honor?

CHAIRMAN BLOCH: It will be an on the record telephone conference. That is correct. So we are adjourned.

(Whereupon, at 3:25 p.m. the proceedings went off the record.)

C E R T I F I C A T E

This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission in the matter of:

Name of Proceeding: GEORGIA POWER CO., ET AL.
(Vogtle Electric Generating Plant, Unit 1 and Unit 2)

Docket Number: ASLBP No. 93-671-01-OLA-3

Place of Proceeding: Rockville, Maryland

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission taken by me and, thereafter reduced to typewriting by me or under the direction of the court reporting company, and that the transcript is a true and accurate record of the foregoing proceedings.

Karina Holyoak

KARINA HOLYOAK
Official Reporter
Neal R. Gross and Co., Inc.