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December 22, 1994

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD '94 DEC 22 A9:35

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

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In the matter of

GEORGIA POWER COMPANY,
et al.

(Vogtle Electric Generating
Plant, Units 1 and 2)

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

Re: License Amendment
(Transfer to Southern
Nuclear)

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

MEMORANDUM AND ORDER
(Staff Witnesses)

Allen Mosbaugh (Intervenor) filed a "Request to NRC's Executive Director for Operations to Allow Testimony from NRC Personnel or in the Alternative Motion to the Licensing Board for Issuance of Subpoena" (Request). The Staff of the Nuclear Regulatory Commission (Staff) answered by a letter, "SUBJECT: NRC STAFF PERSONNEL AS WITNESSES" (Staff Denial), which we received by e-mail this morning. In response to the Staff Denial, Intervenor filed its own letter.

10 CFR § 2.720(h)(1) exempts "NRC personnel" from the subpoena power. A Staff witness may be called for

exceptional circumstances, such as a case in which a particular named NRC employee has direct personal knowledge of a material fact not known to the witnesses made available by the Executive Director of Operations 10 CFR § 2.720(h)(2)(i).

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Intervenor's request to call Mr. Ken Brockman and Mr. Stewart Ebnetter is based on their positions at the NRC. Mr. Brockman was Section Chief of the Vogtle Project in Region II in the relevant time, when Georgia Power is alleged to have illegally transferred licensed operating authority of Plant Vogtle to SONOPCO. Mr. Ebnetter was Regional Administrator for Region II during the same time. He is the person to whom Mr. Brockman reported. Intervenor states that

Testimony concerning the observations and knowledge of these individuals is essential to the issues set forth in Intervenor's Prehearing Statement of Issues. . . .

We are in a bit of a quandary. We note that Staff is providing two witnesses voluntarily, Mr. Darl S. Hood and Mr. Frederick R. Allenspach. It also is providing Mr. John Rogge voluntarily in response to Intervenor's request. On the other hand, Mr. Ebnetter and Mr. Brockman may have had direct communications with Georgia Power personnel. The nature of those contacts might be quite useful in examining the question as to whether there were material misrepresentations to the NRC about how management authority was exerted over licensed activities and whether an illegal transfer of licensed authority had occurred. For example, there may have been calls to the NRC either by Mr. Farley or by Mr. Dahlberg. In either instance, these calls may have revealed facts that would determine the illegal transfer issue one way or the other.

We recognize that the Board does not know what knowledge these two requested witnesses may have. From its filing, we infer that Intervenor also is ignorant of what they know. We are struck by the potential importance of these witnesses as well as by the possibility that they know nothing at all of importance. Some of this ambiguity may clear up during the hearing, as witnesses (including Staff witnesses) are examined.

In addition to issues that may be clarified, one will not be. This concerns whether Mr. Ebnetter or Mr. Brockman have helpful information that Mr. Hood, Mr. Allenspach and Mr. Rogge do not have. The best way for the Board to ascertain this is to ask some brief questions of them, which we have decided to do as part of this Memorandum and Order. With the exception of these questions, we shall defer the decision about whether to call these witnesses until after we have received their responses and have heard testimony.

The following text, including questions, should be presented to Mr. Brockman and to Mr. Ebnetter for their individual response:

The Licensing Board for the Georgia Power Company license amendment case is about to begin hearings concerning whether or not there was an illegal transfer of Georgia Power Company's authority to operate the Vogtle Plant and whether there were misrepresentations to the NRC concerning the allegedly illegal transfer. Intervenor's allegation is that the authority over nuclear operations passed to the SONOPCO project (or Southern Nuclear) some time in the 1988 to 1994 time frame as the result of the management practices and authority relationships among the individuals involved in the project. This phase of the proceeding now focuses not

only on whether an illegal transfer occurred but also on whether misrepresentations (including omissions concerning material facts) were made to the NRC concerning the way that authority was actually exercised over the Vogtle nuclear operations.

Your testimony has been sought by Intervenor, which seeks to explore the extent of your knowledge about the people and institutions that had influence over nuclear operations at Vogtle. To help the Licensing Board to determine whether you may be needed as a witness, please answer the following questions:

(1) Do you have any knowledge that might be directly or indirectly relevant and that might not also be known to at least one of the following scheduled witnesses: Mr. Darl S. Hood, Mr. John Rogge, and Mr. Frederick R. Allenspach?

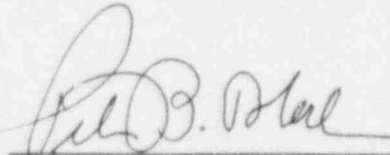
(2) Did you have any face-to-face or oral communications with Georgia Power or SONOPCO personnel when none of the following were present: Mr. Hood, Mr. Rogge and Mr. Allenspach?

(3) If your answer to question (2), immediately above, is "yes," did you received any information in these communications (including the demeanor of the people to whom you spoke) that affected in any way your opinions about the extent of the authority over nuclear operations that was actually exercised by Georgia Power (or Mr. Dahlberg or by a Georgia Power committee or group) or by SONOPCO (or Mr. Farley or by a SONOPCO committee or group)?

Answers to these two questions by both Mr. Ebnetter and Mr. Brockman should be received by December 29, 1994. Otherwise, our decision on the pending motion is deferred.

IT IS SO ORDERED:

FOR THE ATOMIC SAFETY AND LICENSING BOARD



Peter B. Bloch
Chair

Rockville, Maryland

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

GEORGIA POWER COMPANY, ET AL.

(Vogtle Electric Generating Plant,
Units 1 and 2)

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

CERTIFICATE OF SERVICE

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

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U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
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LB M&O (STAFF WITNESSES)

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

Dated at Rockville, Md. this
22 day of December 1994


Office of the Secretary of the Commission