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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

In the Matter of	)	
	)	Docket Nos. 50-424-OLA-3
GEORGIA POWER COMPANY, <i>et al.</i>	)	50-425-OLA-3
	)	
(Vogtle Electric Generating Plant	)	Re: License Amendment
Units 1 and 2)	)	(Transfer to Southern Nuclear)

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NRC STAFF PROPOSED FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND ORDER  
IN THE FORM OF AN INITIAL DECISION

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March 6, 1995

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I. PROCEDURAL BACKGROUND

1. This is an Initial Decision in the proceeding to determine whether an amendment should issue to transfer the Licenses for operation of the two units of the Vogtle Electric Generating Plant to a subsidiary of The Southern Company, the Southern Nuclear Operating Company, Inc. (Southern Nuclear), from Georgia Power Company, another subsidiary of The Southern Company and the present holder of the licenses.

2. On September 18, 1992, Georgia Power Company filed an application to amend its Licenses to transfer to Southern Nuclear its authority to operate the Vogtle facilities. Georgia Power Company would remain owner of the facility, along with the co-owners Oglethorpe Power Corporation, the Municipal Electric Authority of Georgia, and the City of Dalton, Georgia.

3. In response to the Notice of the proposed issuance of amendment in the *Federal Register*, 57 Fed. Reg. 47,127 and 47,135 (October 14, 1992), a petition for

leave to intervene was filed on October 22, 1992, by Messrs. Allen Mosbaugh and Marvin Hobby. Mr. Hobby was denied intervenor status for lack of standing in a Memorandum and Order issued November 17, 1992 (unpublished). Mr. Mosbaugh was admitted as an intervenor along with a single consolidated contention.<sup>1</sup>

4. Two bases were admitted for Mr. Mosbaugh's contention. One basis alleged that effectuation of the license transfer has already taken place because control of the operation of the Vogtle facilities had already been assumed by Southern Nuclear without written notice to the Nuclear Regulatory Commission (NRC). The second basis alleged that officials of the predecessors of Southern Nuclear, the SONOPCO Project, conspired to submit false information to the NRC concerning safety-related information resulting from a March 1990 Site Area Emergency. This basis specifically referenced alleged material false statements in a Licensee Event Report 90-006 and other documents. At the suggestion of the NRC Staff, discovery and hearing were scheduled separately on each basis.

5. Following lengthy discovery, Licensee filed a Motion for Summary Disposition of the Illegal Transfer Issue on August 24, 1994. In our *Memorandum and Order Ruling on Summary Disposition: Illegal Transfer Allegation*, we ruled that there were unresolved matters and limited the illegal transfer hearing to the issue of whether Georgia Power Company had misled the NRC with respect to the control of licensed operations at the Vogtle Plant. LBP-94-37, 37 NRC 288, 291 (1994).

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<sup>1</sup>Georgia Power Co., et al, (Vogtle Electric Generating Plant, Units 1 and 2), LBP-93-5, 37 NRC 96 (1993).

6. At the hearing on the illegal transfer issue, Intervenor provided the prefiled testimony of Messrs. Allen L. Mosbaugh and Marvin Hobby. Intervenor also provided a prefiled list of exhibits.

7. Georgia Power Company prefiled the testimony of Messrs. A.W. Dahlberg, R.P. McDonald, C.K. McCoy, W.G. Hairston, and J.M. Farley. The NRC Staff prefiled the joint testimony of Messrs. Frederick Allenspach, Darl S. Hood, and John Rogge. In addition to the prefiled written testimony, oral testimony was provided by William Shipman for the Intervenor, and Mr. Fred Williams (by telephone) as rebuttal testimony for Georgia Power Company.

8. Documents from a Department of Labor (DOL) proceeding concerning Mr. Hobby were admitted into this record. Tr. 10134-10166 (January 7, 1995), and 10170-10199 (January 9, 1995). The Board's rulings, we believe, have afforded the Intervenor a full and complete opportunity to air thoroughly his position with regard to the illegal transfer issue. It has generated a voluminous record from which to determine whether any material misstatements or omissions were made by Georgia Power Company to the NRC regarding who was in control of nuclear operations at the Vogtle facility during and after 1988.

9. An important part of this record is the Joint Stipulations of the parties, which demonstrate that there is no genuine issue in dispute with regard to the facts cited therein.<sup>2</sup> Our evidentiary focus at the hearing, and in this Decision, has been upon the admitted contention itself and the issue of whether the Intervenor has made even a prima

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<sup>2</sup>Admitted as GPC Exhibit 1 at Tr. 1252.

facie case that Georgia Power Company transferred control of the operation of the Vogtle facilities to the SONOPCO Project and its corporate successor, Southern Nuclear.

## II. STATEMENT OF THE ISSUE

10. The Licensing Board's Memorandum And Order (Admitting a Party), dated February 18, 1993, sets forth the only contention admitted in this proceeding. That contention, in its entirety, reads as follows:

The License to operate the Vogtle Electric Generating plant, Units 1 and 2, should not be transferred the Southern Nuclear Operating Company, Inc., because it lacks the requisite character, competence and integrity, as well as the necessary candor, truthfulness and willingness to abide by regulatory requirements.

LBP-93-5, 37 NRC 96, 110 (1993).

11. The Intervenor alleged two bases for his contention, i.e., two factual occurrences in support of his contention. Intervenor alleged:

The Southern Company (working in conjunction with its corporate affiliates and officers) effectuated transfer of control of the operation of the Vogtle Electric Generating Plant from the licensees [sic.] to a *de facto* corporation, known as the Southern Nuclear Operating Company, without the knowledge or consent of the co-owners of plant Vogtle.

37 NRC at 102. This aspect of the Intervenor's position has become known as the "Illegal Transfer Issue."

12. The Intervenor also alleged that the Licensee submitted material false statements to the NRC regarding emergency diesel generator starts following the Site Area Emergency which occurred on March 20, 1990. That false information was contained, in part, in Licensee Event Report 90-006, dated April 19, 1990. See

February 18, 1993 Order, 37 NRC at 104. This aspect of the Intervenor's position has become known as the "Diesel Generators Reporting" issue.

### III. HEARING SETTING ON ILLEGAL TRANSFER

13. On August 24, 1994, the Licensee filed a Motion For Summary Disposition Of Intervenor's Illegal Transfer of License Allegation. Licensee's Summary Disposition Motion. The Licensing Board issued an order dated November 8, 1994, upon that Motion, following receipt of filings by the Staff and Intervenor. LBP-94-37, 40 NRC 288, 1994, *petition for review denied*, CLI-94-25, 39 NRC \_\_ (1994). In our Order, we held:

[W]e also conclude that there are genuine issues of fact concerning whether Georgia Power may have misrepresented its relationship to SUNOPCO [sic.] and Southern Nuclear. These allegations require a hearing at which we can determine whether or not they are true.

40 NRC at 307. That Order also stated:

[W]e wish to caution Intervenor to be meticulous in presenting evidence about alleged omissions and misrepresentations, which are hard to prove even when they have occurred. For each allegation, we will need to know as precisely as we can: (1) what was said, (2) in what context the statement existed, (3) the proof that the statement was inaccurate or incomplete, (4) when (if applicable) the statement was corrected, and (5) why we should be concerned about the length of delay between the statement and when it was corrected.

40 NRC at 303.

14. The Intervenor appealed our Order.<sup>3</sup> The Commission denied that appeal and, *inter alia*, stated:

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<sup>3</sup>Intervenor's Petition For Appeal Of The Licensing Board's Decision To Grant Partial Summary Disposition Of The Illegal License Transfer Issue, dated November 21, 1994.

The contention relied upon has two bases. The first, alleged that in violation of Section 184 of the Atomic Energy Act, GPC transferred its control over the Vogtle facility to Southern Nuclear without first obtaining the written consent of the NRC.

CLI-94-15, 40 NRC \_\_\_, slip op. at 2 (December 21, 1994).

15. The Licensing Board recognized the Commission's apt phraseology and stated at the hearing:

What we're trying here is the allegation that there were false statements about the transfer of control. Not any 'se statements, just false statements over the transfer of control. Tr. 4400.

The Commission's statement of the issues and ours, identified immediately above, set the parameters for receipt of evidence at the hearing and for our Final Decision in this phase of the proceeding.

16. On November 16, 1994, an untranscribed conference call was held among the Board and the parties. Subsequent to that conference, the Board instructed the Intervenor to file a list of the issues to support his position upon which a hearing would be held. This conference and instruction resulted from the language in our LBP-94-37, quoted above, which required the Intervenor to identify the factual misrepresentations and omissions he alleges to have occurred which misled the NRC.

17. On November 17, 1995, Intervenor filed "Intervenor's List Of 'Phase 1' Issues." A further telephone conference, transcribed, was held on November 17, 1994. The Licensee (Tr. 759) and the Staff (Tr. 768) both strongly objected to the November 17, 1994, list of Issues of the Intervenor, on the basis that it did not comport with our November 8, 1994, Order cited and quoted, in part, above and that the "list"

provided by Intervenor did not put the parties on notice as to what factual matters in dispute would be litigated at the hearing.

18. On December 12, 1994, the Intervenor filed "Intervenor's Prehearing Statement Of Issues" which consisted of 28 purported "issues." The Licensee alleged that there was misrepresentation of facts, matters outside the scope of the contention, and an attempt to bring up matters already ruled upon. At the prehearing conference held on December 14, 1994, the Licensee argued that some of the Intervenor "issues" were not appropriate. Tr. 854. The Staff expressed the view that the "issues" did not relate to licensed activities, they were not relevant, and that the "issues" did not properly identify factual matters in dispute to be resolved at a factual hearing as specified in our Order, 40 NRC at 303. However, the Staff urged that discussion of the merits of the Intervenor's statement of "issues" be abandoned and that the evidentiary hearing should promptly commence. Tr. 860.

19. In January 1995, the Licensing Board issued a Notice to be published in the *Federal Register* scheduling a public evidentiary hearing. 60 Fed. Reg. 2,404. Our Notice stated:

Its purpose is to receive evidence concerning alleged misrepresentations about an alleged illegal transfer of operating authority for the Vogtle Plant.

The evidentiary hearing on the illegal transfer issue commenced on Wednesday, January 4, 1994, at the Commission's hearing room in Rockville, Maryland.

20. There may be merit to some of the arguments of the Licensee and Staff, that the Intervenor's "issues" dated December 12, 1994, did not comply with our

instructions in 40 NRC at 303 and in our Notice published in the *Federal Register*, quoted above. The Board considered the arguments of the Licensee and the Staff and determined nevertheless to hold a public evidentiary hearing, offering the Intervenor a full and complete opportunity to prove that Georgia Power Company transferred control of the operation of the two Vogtle nuclear power facilities in 1988 to persons (i.e., the SONOPCO Project) who were not licensed by the NRC to operate the facilities. Intervenor requested, and we issued, all subpoenas for witnesses and granted Intervenor's sequestration request with the exception of three lawyers, whom we excluded from Intervenor's witness list. Tr. 1032-33.

21. The Intervenor presented his position through the prefiled written testimony of himself, Allen Lee Mosbaugh, and Marvin B. Hobby; by direct examination of William Shipman, an employee of Southern Nuclear, and by cross-examination of witnesses appearing for the Licensee and the Staff.

22. The Licensee supported its position through prefiled written testimony of present and former corporate officers of The Southern Company and its subsidiaries.

23. The Staff supported its position through three witnesses who testified based upon their own observations and their institutional knowledge concerning Vogtle and the practices of the NRC.

24. Both the Intervenor and the Licensee extensively submitted exhibits which were admitted into evidence, many with reservations as to their relevance.

#### IV. FORMATION OF THE SONOPCO PROJECT

25. At the outset, it is useful to understand the relationship of the various corporations involved in this proceeding. Georgia Power Company is a wholly owned subsidiary of The Southern Company, a utility holding company formed pursuant to the Public Utility Holding Company Act of 1935, 15 U.S.C. § 79a, which also owns Alabama Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric & Power Co.

26. At the time of the creation of The Southern Company and its approval by the Securities Exchange Commission (SEC) in 1948 (at which time it received the common stock of Alabama, Georgia, Gulf and Mississippi Power Companies) the SEC also approved the creation of a service company known as Southern Services, Inc. Its name was later changed to Southern Company Services, Inc. (SCS). Its function from the very beginning was to supply load dispatch and power pool services (even including the operation of the throttle at all company steam plants), to supply engineering services, and to supply financial services and expertise. Its personnel, many of whom are officers of all system companies, prepare SEC filings, proxy statements and securities registrations for all the companies. It handles insurance and procurement and prepares federal income tax returns, and other matters. Farley Testimony, ff. Tr. 1708, at 6.

27. As time went by, SCS grew and developed the expertise to design all of the several companies' fossil plants and hydro plants. SCS does considerable work in transmission and substation design, as well, for some of the companies. In the nuclear area, SCS oversaw the preparation of the initial design and handled the competitive

bidding for equipment for the Hatch, Farley and Vogtle facilities. As in the case of fossil and hydro, it evaluated the several bids and recommended to the appropriate company the lowest and most desirable bid. It also served as architect engineer, along with Bechtel Corporation, for the construction of these nuclear projects. *Id.*

28. Many holding companies, going back to the early 1900s, had engineering and other support functions in a mutual service company. For example, Commonwealth and Southern, predecessor of The Southern Company and owner of a number of utilities including Alabama Power and Georgia Power Company, had a service company known as Commonwealth Services, Inc., which did many functions for the various operating subsidiaries. Within Commonwealth and Southern, the service company operated a load dispatch center in Birmingham, Alabama, for the Alabama, Georgia, Gulf and Mississippi affiliates from as early as the 1920's. *Id.* at 5.

29. Throughout the utility industry, other holding company systems have followed a similar pattern. American Electric Power Company has always been more centralized than The Southern Company. For many years, the CEO of American Electric Power was also the CEO of each subsidiary, Appalachian Power, Ohio Power, Indiana-Michigan Power, etc. The engineering and operating functions are far more centralized and actually, The Southern Company has followed that pattern in more recent years, all with the approval of the Securities and Exchange Commission ("SEC"). The Allegheny Power System, Entergy, General Public Utilities, Central and Southwest, and Northeast Utilities have followed similar patterns. All are subject to the Public Utility Holding Company Act of 1935 and all have gradually centralized their operations as time has gone

by, all with the approval of the SEC. Improved communications and information technology have made much of that centralization effective and available. Above all, the motivation has been and still is to improve performance, reduce costs and thereby benefit ratepayers and shareholders by taking advantage of economies of scale and avoidance of duplication and overlapping of work and overhead. *Id.*

30. In December 1990 Southern Company formed a new subsidiary, Southern Nuclear Operating Company, Inc., to provide management and technical services for the nuclear power plants in the Company electric system.<sup>4</sup> Georgia Power Company is currently licensed to operate both the Vogtle and Hatch nuclear facilities in Georgia. Alabama Power owns the Farley nuclear facilities in Alabama and was licensed to operate the facilities until December 1991, at which time its licenses were amended to make Southern Nuclear the operator of the facilities.<sup>5</sup>

31. We find the discussion, unchallenged by Intervenor, in Mr. Hairston's and Mr. Farley's testimony fairly defines the history and relationship of the various entities we are concerned with in this proceeding, and we base much of our discussion herein on that undisputed testimony. Where affiliated utilities operate a number of plants, service

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<sup>4</sup>The principal plants of the SOUTHERN system are owned in fee by the operating affiliates and SEGCO. SEGCO (Southern Electric Generating Co.) was organized in 1956, with the Alabama Power and Georgia Power companies each owning 50 percent of the outstanding common stock of SEGCO. Hence, the relationship among these corporate entities is long standing and predates the construction and operation of the nuclear units owned by these utilities. Moody's Utility Reports, 1992.

<sup>5</sup>Amendments to the Farley licenses were issued November 22, 1991 and the issuance of the amendment setting forth the change in operator for facilities was published in the Federal Register. 56 Fed. Reg. 64,649 (December 11, 1991).

companies have been commonly formed throughout the industry to provide technical, financial, and planning services, and share resources across corporate boundaries. SCS is such a service company within The Southern Company system. Hairston Testimony, ff. Tr. 1688 at 4.

32. SCS served as the architect-engineer (along with Bechtel Corporation) for the construction of the Farley (Alabama Power), Hatch and Vogtle (Georgia Power Company) Plants, and similarly provided nuclear services (in support of licensing, engineering, maintenance, outage planning, fuel-related services, and administrative support) to the operators of these nuclear units. SCS's services and expertise were described in the Preliminary and Final Safety Analysis Reports (PSAR and FSAR, respectively) for each unit and provided some of the technical qualifications supporting the licensing of each facility. *Id.*

33. A relationship such as that between SCS and the nuclear facilities in the parent holding company system is common in the industry. Yankee Atomic Electric Company has provided engineering and technical services for the Connecticut Yankee, Vermont Yankee, and Maine Yankee plants; American Electric Power (AEP) Service Company provides engineering and quality assurance support for the D.C. Cook plant, operated by its affiliate, Indiana Michigan Power Co; Northeast Utilities Services Co. provides operations support services for the Millstone Nuclear Plant, operated by Northeast Nuclear Energy Co; prior to the formation of GPU Nuclear Corporation ("GPUN"), GPU Service Company provided technical support for Three Mile Island and Oyster Creek, then operated by Metropolitan Edison Company (Met. Ed.) and Jersey

Central Power & Light Company (JCP&L), respectively, all subsidiaries of General Public Utilities ("GPU"). Additionally, prior to the recent reorganization of the Entergy (formerly Middle-South) system of companies, Middle South Services, Inc. provided support services to nuclear plants within that system. Hairston at 5.

34. The provision of support services by an affiliate is also consistent with industry standards endorsed by the NRC. ANSI/ANS 3.1-1981, endorsed by Regulatory Guide 1.8, states that technical support services may be performed either by the owner organization (i.e. the organization with all legal, financial and technical responsibility for the operation of the facility) or by individuals or organizations providing consulting or contract services. *Id.* at 6.

35. Although SCS allowed a limited sharing of resources and experience between the plants, there were essentially separate managements for each of the facilities, and, in fact, separate support organizations within SCS. Hence, in the 1980's there was considerable discussion in the nuclear industry regarding the benefits of forming nuclear operating companies to consolidate nuclear expertise and responsibility in single dedicated organizations. The formation of GPU Nuclear Corporation to operate TMI and Oyster Creek was approved by the NRC. *Metropolitan Edison Co.* (TMI Nuclear Station, Unit 1), CLI-81-17, 14 NRC 299 (1981). A nuclear operating company, consolidating the management of several nuclear plants, facilitates the sharing of expertise and experience, allows an exclusive focus on nuclear operations and safety, and is more efficient. *Id.* at 5-6. Georgia Power Company and Alabama Power were candidates

to form such an operating company because they operated six nuclear units between them.

36. In 1987, a task force of Georgia Power Company and Alabama Power personnel was established to consider whether such an operating company should be formed for nuclear plants in The Southern Company system. It was envisioned that the nuclear operating company would be the repository of the Southern systems's collective nuclear expertise and would thereby maximize the safe and efficient operation of the system's plants. That recommendation was tentatively accepted by Georgia Power Company and Alabama Power Company, and a second task force was formed to consider how the operating company should be implemented. Hairston at 7.

37. The "phase 2" implementation task force identified many action items which had to be accomplished or satisfied to form the proposed nuclear subsidiary. Initially, in late 1987 and early 1988, it was thought the necessary tasks could be completed quickly, with the incorporation of Southern Nuclear and the simultaneous transfer of NRC licenses for the six nuclear units of Georgia Power Company and Alabama Power Company over the course of several months. It was determined that a phased approach which took into consideration the issues raised by the co-owners of the Georgia Power Company plants was appropriate. The phased approach was refined and evolved, and took into consideration the "double-hatting" of various Alabama and Georgia Power Company executives, including Mr. McDonald and Mr. Hairston in April and May 1988. By June 1988, a three phase plan had been developed which was presented to the SEC in order to incorporate Southern Nuclear. *Id.*

38. In Phase I, the Southern system corporate nuclear support personnel from Georgia Power Company, Alabama Power Company and SCS were consolidated into a project organization referred to as the "SONOPCO Project" and located in a single, central location in Birmingham, Alabama. All SONOPCO Project personnel were employees of (or transferred among) Georgia Power Company, Alabama Power Company or SCS. Each officer who was responsible for both Georgia Power Company's and Alabama Power's nuclear facilities was employed by both Georgia Power Company and Alabama Power Company pursuant to a shared employment agreement. Several of the items that had to be accomplished for this phase were implemented prior to the consolidation of Georgia Power Company, Alabama Power Company, and SCS personnel in Birmingham. Hairston at 8.

39. In Phase II, after approval by the SEC, Southern Nuclear was incorporated as a wholly-owned subsidiary of The Southern Company and the SONOPCO Project personnel were transferred from Georgia Power Company, Alabama Power Company, or SCS, to Southern Nuclear. However, Georgia Power Company and Alabama Power Company officers retained their positions and responsibilities and all nuclear facility personnel performing licensed activities remained solely employees of Georgia Power Company or Alabama Power Company. All management personnel in the nuclear operations reporting chain above the facility General Managers are shared officers of Southern Nuclear and Georgia Power Company, Southern Nuclear and Alabama Power Company, or Southern Nuclear, Georgia Power Company and Alabama Power Company, such that the holder of an NRC operating license always has management control over

licensed activities and the operation of the facilities themselves. The Georgia Power Company and Alabama Power executive vice presidents for nuclear operations report directly to the presidents of Georgia Power Company and Alabama Power, respectively, on plant operations and all matters concerning Georgia Power Company and Alabama Power personnel, respectively. The Southern Nuclear Executive Vice President reports to the Southern Nuclear CEO concerning Southern Nuclear matters only. In this phase, Southern Nuclear has no management authority with regard to Georgia Power Company or Alabama Power matters under the NRC operating licenses. Hairston at 9.

40. In Phase III, which is now in effect with respect to Plant Farley,<sup>6</sup> and which is pending for NRC approval with respect to Plants Hatch and Vogtle, the NRC operating licenses for Plants Hatch, Vogtle and Farley are to be amended to designate Southern Nuclear as the exclusive operating licensee. Georgia Power Company and Alabama Power remain on their respective licenses as owners. No changes occur in the ownership of, or entitlement to power output from, the facilities. All plant personnel are to transfer from Georgia Power Company or Alabama Power to Southern Nuclear. All Southern Nuclear management personnel are officers of Southern Nuclear Company, which has exclusive control over licensed activities under the direction of the Southern Nuclear CEO. Southern Nuclear operates the plants in accordance with the NRC operating licenses and pursuant to operating agreements entered into with Georgia Power Company or Alabama Power. *Id.* at 10.

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<sup>6</sup>56 Fed. Reg. 64,649, *supra*.

41. This three phased approach was based principally on the "double-hatting" approach that was used by GPU when GPUN was formed.<sup>7</sup> Prior to the transfer of licensed operating authority from Metropolitan Edison (Met. Ed.) and Jersey Central Power & Light (JCP&L) to GPUN, GPU formed GPU Nuclear Group comprised of the nuclear personnel from Met. Ed., JCP&L, and the unlicensed GPU Service Corp. See, *Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1)*, LBP-81-32, 14 NRC 381, 404-05 (1981). During the transitional phase, the Senior Vice President of Met. Ed. and JCP&L was also Vice President of GPU Service Corp., head of GPU Nuclear Group, and President of GPUN. Hairston, ff. Tr. 1688 at 11. The Southern Company task force during Phase I reviewed license amendment applications for other "transfers" of operating authority, including Wolf Creek and Grand Gulf, to identify technical issues of concern to the NRC. The "double-hatting" used by GPU provided an important precedent since it had been previously accepted by the NRC. See CLI-81-17, *supra*.

42. "Double-hatting" (*i.e.*, persons who are officers of more than one corporation) is fairly common in the nuclear industry, particularly as a means of reinforcing a licensed utility's authority and control over the activities of a supporting service company. Examples of other licensee organizations employing this "double-hatting" approach include Maine Yankee (certain corporate officers of Yankee Atomic Electric Co. Nuclear Services Division are also officers of Maine Yankee Atomic Power

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<sup>7</sup>See paragraph 39. In "double hatting" persons were officers of more than one corporation.

Co.); D.C. Cook (certain executive officers of AEP Service Co. are also officers of Indiana Michigan Power Co.); and Millstone Unit 3 (certain executives of Northeast Utilities Service Co. are also executives in Northeast Nuclear Energy Co.). Hairston at 12.

43. The formation of SONOPCO got underway in early 1988, when the CEOs of Georgia Power Company, Alabama Power and SCS decided to move forward expeditiously with the formation of a separate operating company.

44. Thereafter, on April 25, 1988, Mr. R. Patrick McDonald (who was at the time an officer of Alabama Power), having been elected a senior officer of Georgia Power Company by the Georgia Power Company Board of Directors, became Executive Vice President-Nuclear Operations, Georgia Power Company. *Id.* at 14.

45. From that day forward, until his retirement on June 1, 1993, Mr. McDonald was the Georgia Power Company senior executive most directly responsible for nuclear operations. Mr. McDonald reported directly to Mr. Robert W. Scherer, Georgia Power Company's Chief Executive Officer, until December 1988, when he began reporting to Mr. A.W. ("Bill") Dahlberg, who succeeded Mr. Scherer as Georgia Power Company's CEO. *Id.*

46. On May 18, 1988, The Southern Company Board of Directors, the Alabama Power Board of Directors and the Georgia Power Company Board of Directors passed resolutions authorizing eventual formation of a new subsidiary to operate the nuclear facilities owned by subsidiaries of The Southern Company. On that same date, the Georgia Power Company Board of Directors elected George Hairston to the position

of Senior Vice President-Nuclear Operations of Georgia Power Company and Mr. C. Kenneth McCoy to the position of Vice President-Nuclear of Georgia Power Company. Hairston Testimony at 15, GPC; Exhibit 1 at 3 (Stipulation No. 8). Mr. McCoy reported to Mr. Hairston, who in turn reported to Mr. McDonald. Hairston at 15.

47. In June 1988, The Southern Company filed a Form U-1 "Application or Declaration" with the SEC to form Southern Nuclear as a wholly-owned subsidiary. Attached to that filing was a form of Agreement for Shared Employment which had been entered into by Mr. McDonald and Mr. Hairston with Georgia Power Company and Alabama Power on or about June 1, 1988. The form of Agreement provided, in part, that as employees of Georgia Power Company, both Mr. McDonald and Mr. Hairston would each "devote his time, attention, and energies in the performance of the duties designated by Georgia Power Company, and will, during such time, be under the sole supervision, direction and control of Georgia Power." *Id.* at 16.

48. Also attached to that Form U-1 was a copy of the Phase I, Phase II and Phase III organizational structures, as they were then envisioned. As stated in the SEC filing, control over actual plant operations remains with the licensed operators, *i.e.*, Georgia Power Company and Alabama Power, until the operating licenses are amended by the NRC to designate Southern Nuclear as the sole licensed operator, *i.e.*, until Phase III. *Id.* at 17; GPC Exhibit 1 at 3 (Stipulation No. 9); and GPC Exhibit No. 6.

49. Phase I began in November, 1988, when Georgia Power Company, Alabama Power, and SCS personnel who would be working within the SONOPCO

Project (the offsite organizations) physically consolidated in the Birmingham, Alabama offices of SCS. Hairston at 16; GPC Exhibit 1 at 4 (Stipulation No. 12). The SCS personnel in the Project continued to provide support services to Georgia Power Company and Alabama Power as before, pursuant to preexisting service agreements between SCS and the respective companies. Hairston at 16.

50. Organizational changes that took place included the "double-hatting" of Mr. McDonald and Mr. Hairston as elected officers of both Georgia Power Company and Alabama Power by May 1988, when the decision was made to proceed with the formation of Southern Nuclear. This was one step toward the formation of SONOPCO Project. *Id.*

51. The actual reorganization into a physically consolidated project organization, putting Phase I into effect, did not occur until November, 1988. Prior to that, other preliminary reorganization activities were completed, including the alignment of the Georgia Power Company corporate organization into a "support" role. *Id.* at 17.

52. The proposed formation of Southern Nuclear was discussed with the NRC even before the decision was made to proceed with the project. On February 16, 1988, Messrs. Farley and McDonald, accompanied by counsel, met with Commissioners Zech, Bernthal and Roberts separately. They also met with then NRC Executive Director for Operations, Victor Stello. The purpose of these meetings was to brief these officials about The Southern Company's plans to form a separate nuclear operating company. Hairston at 12; *see also*, Farley at 11-12; and McDonald Testimony, ff. Tr. 1249 at 5. It is clear that from the beginning, the NRC was fully informed about the proposal.

53. Again, on March 2, 1988, Georgia Power Company, Alabama Power Company, and Southern Company Services personnel met with the NRC Staff to discuss licensing considerations related to the formation of Southern Nuclear. Copies of the transparencies used during the meeting are attached to the March 9, 1988 meeting summary prepared by NRC. Hairston at 13; McDonald at 5; *see also* GPC Exhibit 1 at 2 (Stipulation No. 5) and GPC Exhibit 1. These show that Georgia Power Company informed the NRC of its intent to form a transitional "project" organization. As reported in the March 9, 1988 meeting summary, the NRC indicated that it was willing to support the effort to form a separate operating company. Hairston at 13.

54. On March 18, 1988, representatives from Georgia Power Company, Alabama Power and SCS met again with the NRC to discuss details of the NRC operating license amendments which would be required to properly transfer control of the operation of the nuclear plants to Southern Nuclear. The transparencies used during the presentation are attached to the meeting summary prepared by the NRC, dated March 25, 1988. *Id.*; *see also* GPC Exhibit 1 at 2 (Stipulation No. 6); and GPC Exhibit 2. The licensees requested that the Staff advise them on the level of detail that should be included in the application to amend the licenses. Hairston at 13.

55. Another meeting took place on May 3, 1988, when Mr. McDonald met separately with NRC Commissioners Roberts, Carr and Rogers and again with Victor Stello. The purpose of the meetings was to review the companies' plans for a phased formation of Southern Nuclear. *Id.* at 14; McDonald at 5-6.

56. Mr. Hairston also testified that he recalled periodic discussions with the NRC resident inspectors, NRC Region II personnel, and personnel from NRC's Office of Nuclear Reactor Regulation concerning the status of Plant Vogtle and the status of the formation of Southern Nuclear. Hairston at 14. He testified that the intent was to keep the NRC informed because any surprise to the Commission could delay the plans for formation of Southern Nuclear. *Id.*

57. Other communications with the NRC included the notification to the NRC of the appointment and double-hatting of Mr. McDonald and Mr. Hairston, which appeared soon after those appointments occurred. A letter advising the NRC of the elections of Mr. McDonald to the position of Executive Vice President of Georgia Power Company, and of Mr. Hairston's election to the position of Senior Vice President of Georgia Power Company, was also provided on June 1, 1988, to make sure correspondence and communications from the NRC were properly directed. Hairston at 17; GPC Exhibit 6.

58. On July 25, 1988, Georgia Power Company personnel met with NRC Region II staff to discuss Georgia Power Company's nuclear plant operations organization and the planned reorganization. Georgia Power Company provided the NRC with an organizational chart depicting the "Nuclear Operations - Transition Organization," headed by Mr. McDonald as the Executive Vice President-Nuclear Operations. Hairston at 18; GPC Exhibit 1 at 3 (Stipulation No. 10); and Exhibit No. 9. The NRC's August 11, 1988 follow-up letter stated that "this meeting was beneficial and has kept us apprised of your nuclear operations organization." *Id.*

59. Also, on August 12, 1988, Mr. Hairston wrote the NRC to inform them of the recent reorganization of the corporate office and to request that NRC distribution lists be revised so that Mr. J.P. Kane, rather than Mr. L.T. Gucwa, would receive copies of all correspondence related to Vogtle. Hairston at 18.

60. Subsequent to the implementation of Phase I, on November 23, 1988, Georgia Power Company submitted Amendment No. 39 to the Plant Vogtle Final Safety Analysis Report to the NRC. That amendment included changes to the Georgia Power Company organization and specifically described the Executive Vice President-Nuclear Operations position as "an officer of both Georgia Power Company and Alabama Power Company [and] is responsible to the chairman and CEOs of each company for all aspects of operation of the nuclear generating plants in the Georgia Power Company and Alabama Power systems, as well as technical and administrative support activities provided by SCS." Hairston at 18; GPC Exhibit 1 at 4 (Stipulation No. 13); and GPC Exhibit 12. In addition there was a meeting and correspondence with the NRC concerning an inspection of the Birmingham corporate offices in December 1988.

61. The NRC issued Inspection Report No. 88-33 with respect to the December 1988 inspection on February 7, 1989. See GPC Exhibit 1 at 4 (Stipulation No. 15). The inspection report states:

In preparation for combining the management of Vogtle, Hatch and Farley into one organization, Georgia Power has reorganized and moved the corporate nuclear operations to Birmingham . . . . Currently, the Executive Vice President and Senior Vice President for Nuclear Operations are officers of both Georgia Power and Alabama Power . . . . The Vice Presidents for each of the three projects (Vogtle, Hatch and Farley) report to the Senior Vice President of Nuclear Operations. Report Details at 2-3.

62. The inspection report also included the transparencies which were used in Georgia Power Company's presentation. With respect to the December 19 management meeting, the inspection report stated that "[t]he meeting provided information to NRC management regarding organizational changes that were made in anticipation of the formation of the operating company for management of Vogtle, Hatch, and Farley and also assisted in providing the NRC an understanding of how the new organization functions." Report Details at 2. Hairston at 22; GPC Exhibit 1 at 4 (Stipulation No 15).

63. The inspection report concluded that the corporate organization was functioning as described in FSAR Amendment No. 39 and that "[t]he philosophy of operations of the corporate staff functioning in a support role as opposed to an overview role appears sound." IR-88-33 at 11. Hairston at 22.

64. Thus, the NRC was aware from the conception of the idea to form a single separate nuclear operating company for Georgia Power Company and Alabama Power Company throughout the actual formation and implementation process.

## V. INTERVENOR'S POSITION

### A. Mr. Mosbaugh

65. The Prefiled testimony of the Intervenor, Allen Lee Mosbaugh, subject to certain passages having been stricken or withdrawn (Tr. 1908-1930), was received into evidence (Tr. 2126) and bound into the transcript. (Mosbaugh Testimony, ff. Tr. 1818).

66. During 1988 Mr. Mosbaugh was the Assistant Plant Support Manager at the Vogtle facilities. In January 1989, he became the Engineering Support Manager. From March 1989 to May 11, 1990, he was Acting Assistant General Plant Manager.

67. Mr. Mosbaugh testified that during 1988 a new executive management team was installed for the Vogtle facilities. "Ken McCoy became Vice President over Vogtle, George Hairston was Senior Vice President, and Pat McDonald was Executive Vice President. The new organization was called SONOPCO . . . ." Mosbaugh at 2. This, of course, goes to the very gravamen of this proceeding. If this testimony is correct, then the Licensee may well be in violation of the Atomic Energy Act and the Commission's regulations for having illegally transferred its nuclear power facility licenses.

68. Prior to this proceeding, Mr. Mosbaugh was involved in a Department of Labor proceeding, extensive parts of which have been included into the record of this proceeding by the Licensee and the Intervenor. During cross-examination by the Licensee it became clear that in the Department of Labor proceeding, Mr. Mosbaugh testified that Mr. McCoy reported to Mr. Hairston who reported to Mr. McDonald who reported to Mr. Dahlberg, the then president of Georgia Power Company. Mosbaugh, Tr. 2141. This is inconsistent with Mr. Mosbaugh's testimony before this Licensing Board that in 1988 SONOPCO personnel took over control of the Vogtle facilities.

69. Under cross-examination, Mr. Mosbaugh further testified that he had no first hand knowledge of the day-to-day interactions among Messrs. McCoy, Hairston, McDonald, and Georgia Power Company officers, and, further, that he (Mosbaugh) had never been in the Birmingham, Alabama offices of SONOPCO. Mosbaugh, Tr. 2128.

70. Mr. Mosbaugh's written testimony is that SONOPCO officers ran the Vogtle facility in 1988. His oral sworn testimony in this proceeding is that he became aware at the end of August 1990 that SONOPCO persons operated the Vogtle facility. Mosbaugh, Tr. 2146-47. His Department of Labor testimony is that Georgia Power Company officers controlled Vogtle. Tr. 2141.

71. A basic tenet of the Intervenor's position is that Joseph Farley was the guiding power of SONOPCO and that he (Farley), without the permission of the NRC, controlled the operation of Vogtle. Mosbaugh, Tr. 2149. However, in response to Board questions, Mr. Mosbaugh stated "I understood him [Joseph Farley] to be a senior vice president of Southern [Company], and that was probably as much detail as I knew as to his exact position." Mosbaugh, Tr. 2148. He further testified "I did understand Mr. Farley -- and it was my impression as a site person -- that Mr. Farley was highly influential over Mr. McDonald and Mr. Hairston . . . ." Mosbaugh, Tr. 2149. However, Mr. Mosbaugh's sworn testimony before this Licensing Board is that he did not comprehend this "Farley-SONOPCO" influence until the end of August 1990 -- not in 1988 when this influence is supposed to have occurred. The contradictions in Mr. Mosbaugh's present and past sworn testimony cannot be reconciled.

72. Under cross-examination by the Staff, Mr. Mosbaugh testified that the facilities' Technical Specifications and the Operations' Department operating procedures controlled the operation of the Vogtle facilities. Mosbaugh, Tr. 2155-2157.

73. In response to Judge Carpenter's questions, Mr. Mosbaugh testified, in regard to his site experience in 1988 to May 1990 "I recall . . . Farley involvement."

Mosbaugh, Tr. 2150. Following the Board's question Staff counsel asked, "Could you describe in detail to us each of Farley's involvement[s in] the operational procedures of the facilit[ies] while you were in your position that you've just described, one by one, if you please?" Mr. Mosbaugh replied, "I would say that Mr. Farley was not involved in the procedures I just described, and I would not expect him to be involved in the procedures that I just described." Mosbaugh, Tr. 2157.

74. The Staff pursued this line of cross-examination which goes directly to the Intervenor's position -- that Joseph Farley and SONOPCO controlled the operation of the Vogtle facilities beginning in 1988 and that Georgia Power Company and its corporate president were not involved. Some of the testimony in the transcript follows.

Q. [Barth]: Do you have any personal knowledge of Mr. Farley's involvement in the actual operation of the facilities?

A. [Mosbaugh]: An executive -- in general if you're again focusing on technical specifications and operating and maintenance procedures at that level of detail that I was discussing, an executive generally would not be involved with those.

Q. [Barth]: Your Honor, would you please ask the witness to answer the question? It was reasonably clear.

A. [Chairman Bloch]: It was. What I recall of your question was translated into my own mind. Let me ask it my way and hope that it covers it.

Q. [Chairman Bloch]: Do you know of anything that Mr. Farley did that in any way affected whether or not any of the plant procedures were followed?

A. [Mosbaugh]: I couldn't give you an example of that from my knowledge.

. . . .

Q. [Barth]: To the best of your knowledge, do you have any personal knowledge of Mr. Farley giving an instruction to Mr. McDonald regarding the operation of the Vogtle facility, sir?

A. [Mosbaugh]: I don't believe I have any personal knowledge. I assume that means firsthand knowledge of those. I wasn't involved in the communications between Mr. Farley and Mr. McDonald.

Tr. 2157-58. Mr. Mosbaugh further testified that he had no personal knowledge of Mr. Farley giving instructions to Mr. McCoy, Vice President Nuclear, or to Mr. Bockhold who was at that time the Plant General Manager. Mosbaugh, Tr. 2159. Mr. Mosbaugh had not visited the SONOPCO offices in Birmingham, Alabama, and he had not visited the offices of Georgia Power Company which were located there. Mosbaugh, Tr. 2160.

75. The Intervenor, by and through his counsel, averred that the Nuclear Operations Contract Administration (NOCA) "was the heart of Georgia Power Company's management control of its nuclear operations . . . ." Tr. 2399. The General Manager of NOCA was Mr. Hobby who testified, based on his NOCA experience, that Georgia Power Company had transferred operating authority for the Vogtle units to the SONOPCO Project. Hobby Testimony, ff. Tr. 2277 at 25, 31, 36, and 47; Tr. 2330, 2340. The Staff questioned the Intervenor on this averment. One of the functions alleged to have been performed by NOCA was to issue safety performance standards to the Vogtle facility personnel. Mr. Mosbaugh, who was highly placed in plant management, testified that he had no knowledge of NOCA's involvement in the issuing of safety performance standards to be followed at the Vogtle facility. Mosbaugh, Tr. 2160. The Chairman asked whether Mr. Mosbaugh was aware of any time that

NOCA issued reports evaluating the operation of the Vogtle facility. Mr. Mosbaugh replied "I don't think I'm aware of NOCA reports." Mosbaugh, Tr. 2161.

76. The Licensing Board has assessed the testimony of the Intervenor, Mr. Mosbaugh against the admitted contention, our Order of November 8, 1994, LBP-94-37, and the Commission's comments in CLI-94-15, *supra*. That testimony discloses no misrepresentations by Georgia Power Company to the NRC regarding "transfer of control of the operation of the Vogtle Electric Generating Plant from the Licensees [sic.] to a *de facto* corporation . . . ." as intervenor was required to in order to establish his position. (Order Admitting Intervenor, 37 NRC at 102). The Intervenor, Mr. Mosbaugh, has not identified "omissions and misrepresentations" (*see, e.g.*, Board Order November 8, 1994 at 26, 40 NRC \_\_\_, 1994) or "false statements over the transfer of control," Board, Tr. 2100. Mr. Mosbaugh's testimony makes clear that the so-called NOCA group had no relation to or effect upon the operation, or the safe operation, of the Vogtle facilities. NOCA and its role will be addressed more fully when the evidence of Mr. Hobby is reviewed and analyzed. The Intervenor provided no evidence that the Vogtle licenses to operate the facilities were transferred.

77. In our Order admitting the Intervenor and defining the contention, we stated, "Where the contention raised alleges, as here, that Southern Nuclear officials have intentionally withheld material safety information from the NRC, the issue is one that affects the safety of the entire plant." 37 NRC at 108. In the issue upon which evidence has been held, the basic allegation that the two Vogtle nuclear facilities are being operated by persons who are not licensed by the NRC pursuant to the Atomic

Energy Act, and further, that the named Licensee, Georgia Power Company, conspired unlawfully to transfer such operating authority, raises important considerations of public health and safety.

B. Mr. Hobby

78. Mr. Marvin B. Hobby was the principal support for the averment by the Intervenor that Mr. Joseph Farley and SONOPCO Project took over the operation of the Vogtle facilities in 1988. His prefiled testimony, with considerable parts stricken or withdrawn (Tr. 2193-2276) was admitted into evidence and bound in the record. Hobby Testimony, ff. Tr. 2277. In 1989 Mr. Hobby was General Manager, Nuclear Operations Contract Administration, Georgia Power Company. *Id.* at 19; Intervenor's Exhibit 15 (NOCA). Mr. Hobby's description of his position as General Manager, NOCA -- a description which he himself wrote -- makes it quite clear that NOCA had no connection at all with the operation of the two Vogtle nuclear facilities. Hobby at 20.

79. The first 25 pages of Mr. Hobby's prefiled written testimony concern his introducing Admiral Wilkinson to Georgia Power Company officials and his difficulties relating to filling a position for the NOCA group (*see also* Tr. 2352), both activities unrelated to the operation of the two Vogtle facilities pursuant to their NRC licenses and thus unrelated to the alleged "illegal transfer" issue. This matter of Mr. Hobby having difficulties in filling positions for the NOCA group is further discussed in his prefiled testimony, for example, at page 41. It was also discussed at the hearing where Mr. Hobby stated that Mr. McDonald, an officer of Georgia Power Company, held up interviewing persons for positions with the NOCA group.

80. The rest of the prefiled testimony concerns two matters. It questions to whom Mr. R. Patrick McDonald, Executive Vice President of Georgia Power Company, reported (Hobby at 44-47) and who was "in overall charge of the rate case." The "rate case" was injected into this proceeding, as Mr. Hobby alleges that Mr. Farley, who directed the SONOPCO Project, also directed the rate case for Georgia Power Company rather than Georgia Power Company. The "rate case" is Georgia Public Service Commission rate case 1989, Docket No. 3840-C. Hobby at 43. Mr. Hobby's testimony is that Mr. Dwight Evans, Executive Vice President of Georgia Power Company, was "in overall charge of the rate case." The Licensing Board does not find that an executive vice president of Georgia Power Company being in charge of a rate case involving Georgia Power Company before the Public Service Commission is probative evidence that Mr. Joseph Farley or the SONOPCO Project controlled the operation of the two Vogtle facilities as the Intervenor alleges. At this juncture, the Licensing Board notes that the Intervenor's Prefiled Statement of Issues at 7 states "Mr. Farley's control over GPC's nuclear operations extended to matters before the Georgia Public Service Commission." This Statement contradicts Mr. Hobby's testimony, cited immediately above, that Mr. Evans, a Georgia Power Company Officer, was in charge.

81. The "rate case", and who controlled it, is not relevant to the operation of the Vogtle facilities. There is no evidence in this record that the Public Service Commission ever issued an order regarding operation of the Vogtle facility to the Georgia Power Company's Vice President-Nuclear or to the General Plant Manager, nor would we expect them to do so. In a rate case, a utility commission would not ordinarily issue

orders which would affect or control the day-to-day operation of a nuclear facility and there is nothing in this record to indicate that in this rate case the Public Service Commission did otherwise. The Licensing Board finds that matters relating to assembling and presenting material and positions to the Georgia Public Service Commission by Georgia Power Company do not relate to, or affect, control of the operation of the Vogtle facilities and, therefore, are not related to the "illegal transfer" issue. We also find that the evidence relating to the Public Service Commission did not address or relate to misrepresentations to the NRC which were the subjects of the evidentiary hearing.

82. The Intervenor's Statement of Issues at 7 recites "Mr. Farley's control over GPC's nuclear operations . . ." is an important position for the Intervenor, and one to which the Board will return throughout this decision. This is the gravamen of the Intervenor's case and it is the factual matter which the Intervenor must establish by reliable and probative evidence.

83. At the hearing, while being a witness, Mr. Hobby provided additional information regarding the functions of NOCA. NOCA was to review operations of Georgia Power Company's nuclear units and inform management thereof. Hobby, Tr. 2291, 2295. NOCA existed for only four months. Hobby, Tr. 2293. Upon cross-examination, Mr. Hobby testified that he had no qualifications relating to the operation of a nuclear power plant. Hobby, Tr. 2324-27.

84. Mr. Hobby testified upon cross-examination as follows.

Q. [Withrow]: As a matter of fact, Mr. Hobby, you do not have personal knowledge of a single instance in which Mr. McDonald received his

management direction from Mr. Farley with respect to the operation of the Vogtle nuclear plant, correct?

A. [Hobby]: That's correct.

\* \* \* \*

Q. [Barth]: Can you think of any effect upon the safe operation of the Vogtle facility that occurred as a result of the formation of your NOCA group?

Tr. 2377.

\* \* \* \*

A. [Hobby]: Not that I can think of, no.

Q. [Barth]: Did you observe personally any false statements by Georgia Power officials to the Nuclear Regulatory Commission regarding the responsibilities under the licenses issued for the Vogtle facilities?

A. [Hobby]: No. . . . I . . . I did not issue instructions to people at Vogtle, no, sir.

Q. [Barth]: Did your NOCA group issue instructions to the operating people at Vogtle?

A. [Hobby]: No, sir.

Tr. 2380.

85. The Intervenor has alleged that the Nuclear Operations Contract Administration's function was "the heart of nuclear power's safety" (Tr. 2397) and that it "was the heart of Georgia Power's management control of its nuclear operations." Kohn, Tr. 2399. The evidence presented by the Intervenor and his principle witness, Mr. Hobby, does not support this thesis. We find that Mr. Hobby and NOCA had no relation to the safe operation of the Vogtle facilities. We further find that Mr. Hobby

has presented no evidence that the control over the operation of the Vogtle facilities was transferred in 1988 or thereafter to the SONOPCO Project or to its corporate successor, the Southern Nuclear Operating Company Inc.

86. Intervenor then called Mr. William Shipman as his next witness. Mr. Shipman was an employee of Georgia Power Company (Shipman, Tr. 1941) and is an employee of Southern Nuclear. Shipman, Tr. 1940. No testimony was prefiled by Mr. Shipman nor did the Intervenor prefile a proffer as to what Mr. Shipman would testify to. Nothing to support the Intervenor's position was disclosed on direct examination. On cross-examination by the Staff Mr. Shipman testified that during the relevant time period Mr. Farley never gave him an instruction or order regarding the operation of the Vogtle facility. Shipman, Tr. 1976. Mr. Shipman was then the corporate side general manager for support of the Vogtle facilities, i.e., he closely interfaced with the Plant General Manager but was located at the corporation's offices. He further testified that he had no knowledge of Mr. Farley ever giving Mr. McDonald an instruction regarding the operation of the Vogtle facilities. Shipman, Tr. 1976. In his interfacing with persons at the Vogtle facility, no one expressed to him that Mr. Farley had issued orders or instructions regarding operation of the facility. Shipman, Tr. 1977.

87. The Commission has addressed the responsibilities of Intervenor who raise public safety concerns. Where an Intervenor raises a contention challenging the safe operation of a nuclear power facility, that Intervenor necessarily assumes the burden of going forward with evidence to support that contention. *Metropolitan Edison Co.* (Three

Mile Island Nuclear Station, Unit 1), ALAB-772, 19 NRC 1193, 1245 (1984), *rev'd in part on other grounds*, CLI-85-2, 21 NRC 282 (1985). Mr. Mosbaugh testified that he knew of no operating directions given by Mr. Farley to Mr. McCoy, Vice President-Nuclear. Mr. Hobby testified that he knew of no instance where Mr. McDonald received his management direction from Mr. Farley, and, further, that the Nuclear Operations Contract Administration had no effect upon the operation of the two Vogtle facilities. By contrast, the evidence presented by the Intervenor does not meet this burden as it does not disclose any misstatements made by Georgia Power Company to the NRC regarding operation of the Vogtle facilities. There is no evidence that Georgia Power Company had, in 1988 or thereafter, transferred control of the nuclear facilities to "SONOPCO Project."

#### VI. GEORGIA POWER COMPANY'S POSITION

88. The Georgia Power Company presented its position through the testimony of its present and past officers and that of Mr. Joseph Farley.

##### A. William Dahlberg, III

89. Mr. Dahlberg's prefiled testimony was admitted at transcript page 1061. At the relevant time in 1988, he was President of the Georgia Power Company and now is President of The Southern Company. Dahlberg Testimony, ff. Tr. 1061 at 1. At the outset, Mr. Dahlberg testified that Mr. McDonald reported to him -- not to Mr. Farley -- regarding the operation of the Vogtle facilities. He testified that control over the licensed activities of the Vogtle facilities was with Georgia Power Company throughout the operating life of the facility. *Id.* at 2.

90. During 1988 Mr. Farley, then president of Alabama Power Company, was asked to head the group that was planning the organization and project which eventually would become the Southern Nuclear Operating Company, Inc. when incorporated, and which was designed to operate all nuclear power units of the subsidiaries of The Southern Company, Vogtle, Hatch and Farley. Dahlberg at 5; *see also* the section of this decision which addresses the formation of the SONOPCO project *supra*.

91. From the beginning of the planning phase for the Southern Nuclear Operating Company, Georgia Power Company officers were careful to ensure that control over licensed activities for the Vogtle facilities remained with Georgia Power Company personnel. Dahlberg at 7.

92. Each weekday Mr. Dahlberg received a report from a Georgia Power Company nuclear officer regarding the status of the nuclear facilities (Dahlberg at 16). All reports on the status of the nuclear units to the Board of Directors of Georgia Power Company from May 18, 1988 through 1990 -- the time period in question -- were made by Messrs. Dahlberg, Hairston, McCoy or Beckham, all of whom were officers of Georgia Power Company. *Id.* at 18. Nothing in the record of this proceeding contradicts Mr. Dahlberg's testimony.

93. In response to the 10 C.F.R § 2.206 Petition filed by Messrs. Mosbaugh and Hobby, Georgia Power Company stated that the Georgia Power Company Management Council consisted of the Executive Vice Presidents and Senior Vice Presidents of Georgia Power Company. Cross-examination of Mr. Dahlberg showed that this statement was not accurate. Dahlberg, Tr. 1076. The prefiled testimony of

Mr. Patrick McDonald corrects this misstatement. McDonald at 13. Mr. George Hairston was at that time a Senior Vice President of Georgia Power Company, but not a member of the Management Council. Intervenor has made this omission a matter of importance. Tr. 1076. The Licensing Board does not find this misstatement which was corrected to be material or that it tended to prove that SONOPCO or Mr. Joseph Farley controlled the operation of the Vogtle facilities.

94. We do not find in the record that the Intervenor has proved that the Georgia Power Company Management Council controlled or had influence upon, the operation of the Vogtle facilities. In the absence of such connecting evidence, who was on the Management Council in 1988, or whose name was omitted from a description of the Council, are of little moment and of no relevance to this proceeding. In the absence of evidence that the Management Council played a role in the operation of the Vogtle facilities, we find that testimony regarding its composition and who attended its meetings not to be relevant to this proceeding. See Tr. 1088-98. The Licensing Board Chairman asked Mr. Dahlberg to state the purpose of the Council. Bloch, Tr. 1098. Mr. Dahlberg's response was that the council provided a forum for Georgia Power Company officers to disseminate information to others regarding their responsibilities and to discuss company wide issues and problems. Dahlberg, Tr. 1099. We find that this is not directly related to control over the activities at the Vogtle facilities.

95. Further cross-examination of Mr. Dahlberg developed that in some statement made in a Department of Labor administrative proceeding, Grady Baker, an officer of Georgia Power Company said that Mr. Farley was an officer of Georgia Power

Company, a statement that was corrected in that Department of Labor proceeding. The record in this proceeding is unclear as to what occurred, and its context, in the Department of Labor proceeding upon this matter. See Tr. 1086-88. However that may be, our Summary Disposition Order provides the Intervenor with an opportunity to prove that Georgia Power Company officials made "misrepresentations in its presentations to the Nuclear Regulatory Commission," 40 NRC at 303. The error by Mr. Baker in the Department of Labor proceeding, corrected in that proceeding, is not within the scope of the issues in this proceeding, nor is it within the matters which the Intervenor is permitted to prove according to the cited portion of our Summary Disposition Order. We find this misstatement of Mr. Baker made in a different proceeding, which was corrected, to be not relevant to establishing Intervenor's position.

96. The Georgia Public Service Commission was concerned with "performance standards" and Mr. Dahlberg was questioned upon this matter. Tr. 1106 and 1137. It is clear from the hearing record that there was a difference of opinion among officers of The Southern Company and its subsidiaries regarding the propriety of performance standards. The position of Mr. Dahlberg, President of Georgia Power Company, prevailed and modifications to performance standards suggested by the Public Service Commission were made by Georgia Power Company. Dahlberg, Tr. 1106. The dissension among The Southern Company's officers and its subsidiary's officers is interesting. Three facts are clear. Mr. Dahlberg, president of Georgia Power Company, prevailed in this disagreement. Secondly, the performance standards recommended by the Georgia Public Service Commission do not control the operation of the Vogtle

facilities and are not relevant to this proceeding. And, thirdly, no where in this line of questioning did the Intervenor bring out any misstatements made by Georgia Power Company to the NRC, as required by our Summary Disposition Order so often referenced in this decision.

97. Mr. Dahlberg was questioned regarding the termination of Mr. Mosbaugh from Georgia Power Company. Tr. 1127-1135. No misrepresentations to the NRC by Georgia Power Company were elucidated by Intervenor, nor did he establish that termination of Mr. Mosbaugh indicates that Mr. Joseph Farley or SONOPCO had taken over control of the operations of the Vogtle facilities.

98. Mr. Dahlberg was questioned regarding the functions of the Nuclear Operations Contract Administration. Tr. 1190-1205, 1214, 1216, 1220-24; *see also* McDonald, Tr. 1466. Mr. Dahlberg's testimony did not impeach that of Mr. Hobby which is that the NOCA group had no affect upon the operation of the Vogtle facilities. Mr. Dahlberg testified:

Q. [Barth]: Did NOCA have safety responsibilities for the Vogtle facilities?

A. [Dahlberg]: No . . .

Q. [Barth]: Did they have any responsibilities at all for the operation of the Vogtle facilities of which there are two?

A. [Dahlberg]: No, sir.

Q. [Barth]: Did they have any influence upon the work orders in the facilities?

A. [Dahlberg]: No, sir.

Q. [Barth]: Did NOCA have any responsibilities for, or influence upon the judgement as to how the facilities should be operated?

A. [Dahlberg]: No, sir.

Tr. 1238.

99. Cross-examination in this area did not disclose that Georgia Power Company had made misrepresentations to the NRC about NOCA which were related to an illegal change of control of the operation of the Vogtle facilities.

100. The Intervenor brought out that an in-house publication, *Synopsis Magazine*, March 30, 1989, (Intervenor's Exhibit 89) stated that "On March 1, [1989] Joe Farley became Executive Vice President, Southern Nuclear Company, and assumed overall responsibility for providing technical services for nuclear power plants in the Southern Electric System." Dahlberg, Tr. 1224. Mr. Dahlberg characterized the article as going a little too far. Dahlberg, Tr. 1226. We do not find that this statement in a company in-house publication to be conclusive evidence that on March 1, 1989 Mr. Farley and the SONOPCO Project took over control of the operations of the Vogtle facilities. Nor was this a misstatement to the NRC.

101. In summary, we conclude that the weight of the evidence presented by Georgia Power Company supports the conclusion that the SONOPCO Project did not illegally take over control of the operation of the Vogtle facilities in 1989.

B. R. Patrick McDonald

102. Mr. R. Patrick McDonald, the former Executive Vice President-Nuclear for Georgia Power Company, appeared for the licensee. His prefiled testimony was

admitted at transcript page 1249. Mr. McDonald testified that he reported to the CEOs and presidents of Georgia Power Company and that he did not report to Mr. Joseph Farley after he, Mr. McDonald, became an officer of Georgia Power Company. McDonald Testimony, ff. Tr. 1249 at 2-3.

103. On February 16, 1988, Messrs. Joseph Farley and Pat McDonald met with Commissioners Zech, Bernthal, and Roberts and briefed them on the plans to form a separate corporation to operate the nuclear units of Georgia and Alabama Power Company within The Southern Company's system. *Id.* at 5. This testimony clearly shows that the NRC was informed early as to the proposal to consolidate nuclear operations within one corporation. This is addressed in Section IV of this decision where the formation of Southern Nuclear and its relationship to the NRC is discussed.

104. Mr. McDonald's testimony discussed the role of Mr. Farley in organizing what became Southern Nuclear. *Id.* at 3-10. He testified "I am not aware of a single instance where Mr. Farley controlled, or made, a Georgia Power staffing decision." *Id.* at 10. Mr. McDonald testified that in response to the 10 C.F.R. § 2.206 petition, which was prepared under his supervision, Mr. Farley was titled "Executive Vice President-Nuclear" when in fact he was "Vice President" of The Southern Company. *Id.* at 12. We do not find the omission of the adjective "Executive" supports Intervenor's position.

105. Mr. McDonald testified, as did Mr. Dahlberg, that the response to the 10 C.F.R. § 2.206 petition was not accurate when it stated that all senior vice presidents were members of the Georgia Power Company Management Council. *Id.* at 13. Mr. Hairston, a Senior Vice President, was not a member.

106. The decision making in regard to the nuclear budget for Georgia Power Company was with Mr. Dahlberg, its president. McDonald at 15. Other persons had input and expressed their views, among them being Mr. Farley. *Id.* at 14.

107. Mr. McDonald testified that Mr. Farley did not provide management direction or oversight concerning operation of the Vogtle facilities at SONOPCO staff meetings. *Id.* at 21. He was sensitive that since Mr. Farley was not an officer of Georgia Power Company, he could not be involved in Vogtle operating decisions. *Id.* at 24.

108. Mr. McDonald testified that Mr. Farley provided the leadership to get the SONOPCO project off the ground. McDonald, Tr. 1358-1371. Mr. McDonald's characterization of Mr. Farley's role, and that of Mr. Dahlberg as CEO, was as follows:

The fundamental position of a CEO who holds the license [for a nuclear facility] inexorably makes him a part of that licensed organization. But his responsibilities, as I've just attempted to explain, are not one to direct the day to day operations, but are one to set the environment, to set the integrity, to set the stage for people to do things in the right way and to be alert for problems and to handle them on a managerial high-level basis when they come about. (Tr. 1371) . . . . He [Farley] provided that environment as a prospective CEO [of Southern Nuclear] for the organization. However, he knew and we knew that leadership that we were living under by each one of those was not his to be the deciding factor. It was to be Mr. Dahlberg's in Georgia and Mr. Hairston's in Alabama. He never encroached upon those roles to try to be specific about a plant. He was only specific about the highest ideals for an overall organization.

McDonald, Tr. 1372.

109. Mr. McDonald testified that the presidents of both Alabama Power and Georgia Power reviewed the nuclear budgets for all nuclear units starting in 1989.

McDonald, Tr. 1392. Extensive questioning continued regarding the budget process through transcript page 1408.

110. The Licensing Board had several questions about the budget process. The NRC Regulations, in 10 C.F.R. Part 2, do not address budgets or the budgeting process. It is incumbent upon the Intervenor here to demonstrate that the budget process is significant to the Intervenor's position that SONOPCO Project controlled the operation of the Vogtle facilities. He must show that the facts of this particular situation make the budget process of regulatory concern to the NRC. The Intervenor has pointed to nothing that establishes how Georgia Power Company developed its budget which would support the Intervenor's position that the SONOPCO Project controlled the operation of the Vogtle facilities.

111. This proceeding involves the application of Georgia Power Company to transfer operating authority for the two Vogtle facilities to Southern Nuclear. Financial considerations which apply are set forth in 10 C.F.R. § 50.80(b) which refers to 10 C.F.R. § 50.33, qualifications of initial applicants. In short, to authorize a transfer of a license, the NRC must find that the prospective licensee is financially qualified -- a matter separate and apart from the budget process. The Commission's regulations do not prescribe a budget process by which adequate funds to operate the facility will be available. The budget process is left to the discretion of the license holding corporation. This is a matter in this case for Georgia Power Company to manage. If the facility is not operated in a manner commensurate with the public health and safety or not in conformity with the Commission's regulations, then the NRC will take appropriate

enforcement action authorized by the rules and the Atomic Energy Act. For these reasons, we find the specific budget process incurred for the Vogtle facilities do not support Intervenor's position. In addition, the Intervenor's cross-examination in this area did not disclose misstatements made to the NRC. And finally in this matter, we do not find that the cross-examination upon the budget process shows that Georgia Power Company transferred operating authority over the Vogtle facilities in 1988 or thereafter to Mr. Joseph Farley or to SONOPCO or its corporate successor.

112. Mr. McDonald was questioned regarding Intervenor's exhibit 126 (admitted, Tr. 1602) titled "Telephone List-On Call Project Managers." This is a listing of persons to be notified in the event of problems at the Vogtle site. Georgia Power Company persons are listed, and Mr. Farley as well, is identified as being with The Southern Company. The thrust of Intervenor's arguments here is that Mr. Farley's name on this paper is evidence that Mr. Farley, and SONOPCO, controlled the operation of the Vogtle facilities. We do not believe this evidence supports Intervenor's position.

Mr. McDonald explained:

Mr. Farley was added to virtually all lists for information flow within the SONOPCO Project because he had been designated as a prospective CEO of Southern Nuclear and, as is the custom in most organizations, when you have a designated person who will take over at some time in the future, you add him to the flow of information to bring him and keep him up to speed on what's going on.

McDonald, Tr. 1412. A great deal of hearing time was spent on telephone lists and related documents. The Board finds Mr. McDonald's explanation to be convincing. Putting Mr. Farley on distribution lists for information regarding the Vogtle facilities

does not indicate that Mr. Farley had taken over the license authority possessed by Georgia Power Company.

113. Mr. McDonald was also extensively questioned regarding NOCA. McDonald, Tr. 1468-1506. That cross-examination added nothing to the evidence given by Mr. Hobby and Mr. Dahlberg regarding NOCA. Mr. McDonald was asked the basic question:

Q. [Barth]: I put the bold question to you - it has been alleged that Mr. Farley, through you, controlled the operations of the Georgia Power Company's Vogtle facilities. Is this true to the best of your knowledge, sir?

A. [McDonald]: It is absolutely not true. My integrity in this business goes back to Rickover days . . . . I can say that -- and there's no way in any form that Mr. Farley at any time even influenced me on taking action on something that had to do with the actual operation of the Vogtle plants and vice versa for Mr. Dahlberg.

McDonald, Tr.1551. In this regard, Mr. Hobby, Mr. Dahlberg and Mr. McDonald all have identical testimony.

114. McDonald testified, as did all the Georgia Power Company witnesses, that the chain of command for the operation of the Vogtle facilities started with the President of Georgia Power Company, Mr. Dahlberg, and continued to officers of Georgia Power Company, Messrs. McDonald, Hairston, and McCoy. McDonald, Tr. 1515. This is the chain of command set forth in section 13 of the Updated Final Safety Analysis Report. See, Staff Testimony, ff. Tr. 2620, Attachment 1. The Intervenor did not impeach this described chain of command.

115. Intervenor alleges that Mr. Farley established the outage philosophy for the Vogtle facility, *see, e.g.*, Tr. 1518 and elsewhere, and thus Mr. Farley controlled the operation of the Vogtle facilities. Mr. McDonald testified that he (McDonald) developed this "philosophy" while he was at the Farley facility in 1983 and that it is known industry wide. McDonald, Tr. 1518-19. Mr. McDonald testified that he imposed this "outage philosophy" upon the Vogtle facilities as he had previously done at the Farley facilities. Nothing in this record indicates this is not correct or that Mr. Farley, in his SONOPCO role, imposed this outage philosophy upon the Vogtle facilities.

C. Charles Kenneth McCoy

116. Mr. C. K. McCoy appeared for the Georgia Power Company and his prefiled testimony and supplemental testimony was submitted and bound into the record at transcript page 1560, subject to certain motions to strike. *See* Tr. 1621-22. Mr. McCoy is Vice President-Nuclear for Georgia Power Company. McCoy, Tr. 2584. In his capacity as Vice President-Nuclear, Mr. McCoy has direct corporate responsibility for the operation of the two Vogtle facilities. The Technical Specifications which are a part of the license state: "The Vice President-Nuclear shall have corporate responsibility for overall plant nuclear safety and shall take any measures necessary needed to ensure acceptable performance of the staff in operating, maintaining, and providing technical support to the plant to ensure nuclear safety." T.S. Section 6.2.1 (c); McCoy, Tr. 2584. Mr. McCoy testified "he [Farley] had no authority or control over licensed activities at plant Vogtle." McCoy Testimony, ff. Tr. 1560 at 4. Further, "Mr. Farley had no authority or control over, and Mr. McDonald did not report to Mr. Farley, concerning

the operation of plant Vogtle." McCoy at 5. Further, "We were very much aware that Mr. McDonald was the senior nuclear executive in control of Plant Vogtle and that, in the case of licensed activities at Plant Vogtle and Georgia Power matters in general, he reported solely to Mr. Dahlberg, Georgia Power's President and CEO." *Id.* at 17. This testimony was not impeached, nor in any way denigrated by cross-examination. Mr. McCoy was questioned at length (*see*, Tr. 1505-1610), regarding the telephoning procedure in the event of an emergency or other problem at Vogtle. The papers designating the persons to call list Mr. Farley as one of the persons to be called. We see nothing inconsistent with Georgia Power Company's position with notifying Mr. Farley of untoward events at Vogtle after he was designated to head the SONOPCO project. *See* Mr. McDonald's explanation cited *supra*.

117. The Board questioned Mr. McCoy regarding the operation of the Vogtle facilities and the Farley facilities, the licenses for which have already been transferred to Southern Nuclear. The differences would be administrative, *i.e.*, different payrolls, different union contracts; but actual operation and safety considerations would be similar among all the nuclear units. McCoy, Tr. 1642-47.

118. Mr. McCoy reported regularly to the Georgia Power Company Board of Directors regarding the performance of the Vogtle units. McCoy, Tr. 1653. If he was not available, the Plant General Manager would make such reports.

119. There are nonlicensed corporations which have personnel on the Vogtle site performing work: Southern Nuclear, Bechtel, Westinghouse, and CIMO. The work is

performed pursuant to formal contracts with Georgia Power Company and under the direction and control of the licensee, Georgia Power Company. McCoy, Tr. 1657-62.

120. The cross-examination of Mr. McCoy did not disclose that Georgia Power Company had made misrepresentations to the NRC regarding the operation of the Vogtle facilities, nor did it disclose that control of the facilities had been transferred to SONOPCO or its corporate successor. Mr. McCoy's testimony is quite persuasive that, as Mr. McDonald also testified, the persons and corporations involved carefully maintained the legal chain of command authorized by the NRC licenses.

D. W. George Hairston, III

121. Mr. Hairston is Executive Vice President-Nuclear Operations for the Georgia Power Company. His prefiled testimony was admitted and bound into the record. Hairston Testimony, ff. Tr. 1689. Much of Mr. Hairston's testimony concerns the formation of the SONOPCO project and was unchallenged by Intervenors. It is addressed in section IV of this decision. It is sufficient to note here that the NRC was notified early in 1988 of the intention to form a separate subsidiary of The Southern Company which would hold all licenses for nuclear units and would operate all nuclear units owned by the subsidiary corporations of The Southern Company. *Id.* at 6-20.

122. Mr. Hairston testified that Mr. Farley exercised no line authority over the operations of the Vogtle facilities. *Id.* at 29.

123. The NRC inspected the Birmingham, Alabama offices of SONOPCO in 1988 and their inspection report clearly shows that the NRC was cognizant of the efforts

underway to bring operation of all nuclear units into one corporation. Hairston at 22, citing NRC Inspection Report IR-88-33, February 1989.

124. Mr. Hairston testified that he wrote the letter to the NRC dated May 1, 1989 which corrected an omission of Mr. Hairston's name in the chain of command at a presentation by Mr. McDonald to the NRC Commissioners. Hairston at 29.

125. Mr. Hairston testified that he reported to Mr. McDonald and not to Mr. Farley as alleged by the Intervenor, that Mr. McDonald reported to Mr. Dahlberg, and that Mr. Dahlberg reported to the Board of Directors of the Georgia Power Company. *Id.* at 35.

126. When Southern Nuclear was incorporated, Georgia Power Company entered into a formal contract for services from Southern Nuclear. *Id.* at 36; GPC Exhibits 20 and 21, admitted Tr. 1692.

127. The cross-examination of Mr. Hairston did not disclose that Georgia Power Company had misled the NRC in respect to the operation of the Vogtle facilities. We also note that no cross-examination question showed any error in Mr. Hairston's recitation of the history of the SONOPCO project or Georgia Power Company's keeping the NRC informed as to what was occurring.

128. Mr. Hairston's uncontradicted testimony sets forth the formation of the SONOPCO project and how the NRC was informed. It is clear that very early on, in 1988, the NRC was informed that plans were being made to form a separate corporation to operate all the nuclear units owned by the subsidiary corporations of The Southern

Company, and the NRC was kept informed as progress, or lack thereof, as the case is, was incurred.

E. Joseph M. Farley

129. Mr. Farley's prefiled testimony was received and bound into the record at transcript page 1743. He testified:

Contrary to Intervenor's assertions, my role in the SONOPCO Project did not involve control over licensed activities at Vogtle . . . . Mr. McDonald and I were very much aware that, until the time that Southern Nuclear became the licensed operator of Plant Vogtle, I could not legally provide any management direction to the line management of Georgia power, the NRC licensee of Plant Vogtle.

Farley Testimony, ff. Tr. 1743 at 3.

. . . Nor did I ever exercise any decision-making authority regarding any Georgia Power matters relating to those plants [Hatch and Vogtle]. Specifically, I never gave management direction to Mr. McDonald, or any other Georgia Power officer or employee, regarding the operation of Plant Hatch or Plant Vogtle. To my knowledge, Mr. McDonald reported to and received all of his management direction concerning Georgia power's nuclear plants from either Mr. Scherer or Mr. Dahlberg.

*Id.* at 19.

130. Mr. Farley called attention to other utilities forming separate corporations to operate nuclear units, such as Northeast Utilities and Entergy (Farley Testimony, ff. Tr. 1743 at 4), and generally set forth current industry views on the operation of nuclear units (*Id.* at 13) and the purposes of the Public Utilities Holding Company Act of 1935 (*Id.* at 27-28).

131. Cross-examination of Mr. Farley by the Intervenor did assist in resolving any question as to why Mr. Farley was to be notified in the event of mishaps at Vogtle - the so called on duty call list and the telephone book.

Q. [Kohn]: Mr. Farley, isn't it true that the SONOPCO project staff know that they had to keep you informed - currently informed on everything important going on?

A. [Farley]: They knew I wanted to be.

Farley, Tr. 1849. The dialogue that followed this exchange makes it clear that Mr. Farley was to be informed about everything of importance that occurred at any of the nuclear sites. Farley, Tr. 1849-1855; Farley Testimony at 21. This comports with Mr. McDonald's explanation as to why Farley's name appeared on a call list for problems at Vogtle.

132. Given his position and duties within the Southern Company, Mr. Farley acknowledged that he needed to interact with GPC management personnel. Tr. 1882-83. Mr. Farley further testified that he was mindful of the need not to intrude upon GPC management decisions involving licensed activities, and that he was careful not to do this. Tr. 1884-85. The fact that Mr. Farley's telephone number was listed in a GPC document (*see* Intervenor's Exhibit 126) is not evidence that Mr. Farley improperly interfered with GPC's licensed activities during the 1989-1992 time frame.

133. Our review of Mr. Farley's prefiled testimony and questioning by the parties and the Board does not establish any misrepresentations to the NRC by Georgia Power Company regarding the operation of the Vogtle facilities. The testimony and questioning of Mr. Farley has provided no probative evidence that in 1988 or thereafter,

Mr. Farley or the SONOPCO project or its corporate successor took over control of the operations of the Vogtle facilities.

#### VII. NRC STAFF POSITION

134. The NRC Staff set forth its position through the testimony of a panel. The panel consisted of Messrs. Frederick F. Allenspach, whose first experience with Vogtle dates back to 1987 when he worked with reviewing the Administrative Controls for the Vogtle Technical Specifications; Darl S. Hood, who is presently the Licensing Project Manager for the Vogtle facilities and has been since August 1990; and John Frederick Rogge, Jr., who was the senior resident inspector at the Vogtle site during the time that SONOPCO is alleged to have taken operating control of the Vogtle facilities.

135. The Staff's prefiled testimony was admitted into evidence at transcript page 2620. We find the Staff witnesses qualified to provide evidence based upon their own personal knowledge and based upon their institutional knowledge derived from their work and their relation to other members of the Staff who perform activities relating to the Vogtle facilities. The individual qualifications of the Staff witnesses are appended to their testimony. NRC Staff Testimony of Frederick R. Allenspach, Darl S. Hood and John F. Rogge, ff. Tr. 2620.

136. The Board gives special weight to the evidence presented by Mr. Rogge, as he was the Staff's principal representative at the Vogtle site during the time period that SONOPCO is alleged to have taken over the operation of the Vogtle facilities. Mr. Rogge's testimony that Georgia Power Company officials operated the Vogtle facilities (Staff at 6) is consistent with that of Intervenor Mosbaugh who testified that he

knew of no instances where Mr. Farley directed operations at the site. Rogge, Tr. 2159. Of the witnesses who appeared, Messrs. Rogge, Mosbaugh, and McCoy have the most personal familiarity of what actually occurred at the Vogtle sight in relation to its operation during 1989-1990.

137. On April 23, 1993, a Partial Director's Decision, DD-93-8, was issued pursuant to 10 C.F.R. § 2.206. That decision concluded, in response to a § 2.206 petition filed by Messrs. Hobby and Mosbaugh, that no illegal transfer of the operating licenses had occurred. Staff at 10. That Director's Decision was vacated by the Commission upon other grounds, CLI-93-15, 38 NRC 1 (1993). Mr. Hood managed the preparation of that Director's Decision. Staff at 3.

138. The Staff witnesses sat throughout the entire evidentiary hearing and listened to all the evidence presented by all of the witnesses. They testified that nothing presented at the hearing indicated that the operating licenses for the Vogtle facilities had been transferred by Georgia Power Company to the SONOPCO project or to its successor, the Southern Nuclear Operating Company Inc. Allenspach, Hood, Rogge, Tr. 2734.

139. Mr. Rogge participated in an inspection of the corporate offices in Birmingham, Alabama in 1988 and no irregularities were noted regarding Georgia Power Company and SONOPCO [which was still not a corporation at that time]. Staff at 5.

140. In preparation for the hearing Messrs. Allenspach and Hood visited the Vogtle and corporate sites and consulted with persons there. The Staff testimony on this is set forth verbatim below:

On September 28, 1994, we visited the Vogtle site and, on September 29, 1994, we visited the corporate headquarters in Birmingham, Alabama, to see whether the paper descriptions set forth in the UFSAR are accurate, and to determine if GPC continues to be in charge of the operation of Vogtle. At both locations, we met with numerous managers of GPC, SNC, and Southern Company Services, and discussed their organizational responsibilities and structure, including details of their respective employments and their involvements with respect to Vogtle. While at the Vogtle site, we also met with the NRC's Resident Inspectors stationed full time at Vogtle and discussed their observations of the day-to-day control of the facility by GPC managers and the support provided to the facility by SNC and Southern Company Services employees. Our review at these sites confirmed that the positions described in UFSAR Chapter 13, Figures 13.1.1-1, 13.1.1-2 and 13.1.2-1 do exist at Vogtle, that they are occupied (except for the position of Assistant General Manager, Plant Operations), that the reporting chain of command is as set forth in the cited UFSAR figures, and that operations at Vogtle is under the control of GPC.

Staff Testimony, ff. Tr. 2620 at 9. We find the Staff's testimony probative.

141. Intervenor's questions of Mr. Rogge brought out that the 1988 inspection at Birmingham concerned Mr. McDonald and those below him, who were the persons concerned with the operation of the Vogtle facilities. In questions to Mr. Hood, Intervenor brought out that the NRC did not inspect or require to be reported, the number of times that the Executive Vice President-Nuclear communicated with the President of Georgia Power Company. Hood, Tr. 2656-57. This exchange brought out that the Staff's focus is nuclear safety:

And our focus is where nuclear safety has its immediate and greatest impact. It tends to center on the nuclear power plant itself and its immediate management . . . the instructions which guide us in our reviews which we call Standard Review Plans, the department is focused on that level where safety is most prominent.

Hood, Tr. 2657. The Chairman pursued this line of questioning:

Q. [Chairman]: But do you have any basis to know whether or not they did? [transfer control]

A. [Hood]: Well, I do feel that I have a basis.

Q. [Chairman]: Please explain.

A. [Hood]: I deal with people at the - what I'm referring to is the working level. Mr. McCoy's level, at the Barney Beasley [plant general manager] level. I visit the plant fairly frequently. I see how they all are working and I draw from my own experience base . . . . It's operated . . . as it was represented to me in the FSAR . . . . It's my own observations and the observations of my colleagues.

Hood, Tr. 2664.

142. Intervenor's questions brought out that Mr. Rogge's basis for concluding that Georgia Power Company was in control of the Vogtle operations were the FSAR, the Technical Specifications, and interviews with persons on site. Rogge, Tr. 2717. We find this supports Mr. Rogge's conclusions.

143. Midway through Intervenor's examination of Staff witnesses, the Board observed ". . . the allegation is that these people [NRC Staff] were misled. And so far, we haven't had any questions that might indicate that they were misled." Bloch, Tr. 2678. At the conclusion of Intervenor's examination there still had not been a question designed to indicate whether the NRC had been misled regarding the operation of the Vogtle facilities.

144. Much has been made throughout this proceeding, both in discovery and the hearing, regarding Mr. McDonald's presentation to the Commissioners where he omitted Mr. Hairston as being in the chain of command for Vogtle. Mr. Rogge attended that meeting in Washington and testified that at that meeting he was aware that Mr. Hairston

was in the Vogtle chain of command. Rogge, Tr. 2731. We find now that such omission did not mislead the NRC and also that omission did not mean that Mr. Farley and SONOPCO had taken over control of the Vogtle facilities.

#### VIII. CONTROL OF THE VOGTLE FACILITIES

145. During the course of the hearing, the Board inquired into what is meant by "control" and at other times inquired as to influence by The Southern Company, the holding company, over Georgia Power Company, the holder of the licenses from the NRC for the Vogtle facilities. *See, e.g.* Tr. 1050, 1260, 1265, 1655, 1796-99 and 2071-74. We had some concern as to what "control" means in the context of this proceeding. Sections 101 and 184 of the Atomic Energy Act, as amended, 42 U.S.C. §§ 2131 and 2234, prohibit the possession, use, or transfer of control of a nuclear power facility except in accordance with a license issued by the NRC, and require the Commission's prior consent. The legislative history of the Atomic Energy Act does not shed light on this matter. Likewise, the Commission's regulations provide that no license shall be transferred without the consent of the Commission, but nothing more is said about transfer nor is control defined in the Commission's regulations. *See* 10 C.F.R. §§ 50.10(a), 50.54(c), 50.80.

146. The Board in LBP-94-37, 40 NRC at 291, limited this hearing to whether Georgia Power Company "has misled the Nuclear Regulatory Commission with respect to the control of licensed operations" of the Vogtle facilities.

147. The license for Vogtle Unit 2, MPF-81, in section 1.D. provides: "There is reasonable assurance . . . (i) that the activities authorized by this operating license can

be conducted without endangering the health and safety of the public . . . ." The footnote to the license states that Georgia Power Company "has exclusive responsibility and control over the physical construction, operation and maintenance of the facility." Section 2.B.(1) of the license provides that "GPC, pursuant to Section 103 of the Act and 10 C.F.R. Part 50, to possess, use, and operate the facility at the designated location . . . ." Section 2.C.(2) of the license provides that "GPC shall operate the facility in accordance with the Technical Specifications . . . ." Read in *para materia*, the license for the Vogtle facility is helpful to our understanding of what is meant by control as used in this proceeding. "Control" in the context of the license issued by the NRC clearly means the ability to control operation of the facility to assure the safe operation of the physical reactor and its component parts. These license provisions comport with the Staff testimony of Mr. Hood who emphasized that the Staff inspections and interest focus on nuclear safety and concentrate on the power plant itself and its immediate management. Hood, Tr. 2657. Clearly, the Staff recognizes that control does not stop at the gate to the facility. However, the Staff concern for control would seem to diminish as control relates less and less to public health and safety as may be impacted by matters not concerned with the safe operation of the facility. See Hood, Tr. 2658.

148. The testimony of Mr. McCoy supports the conclusion that control of the facility was with Georgia Power Company personnel and not Mr. Farley or others outside the company. Section 6.2.1 (c) of the Technical Specification states: "The Vice President-Nuclear shall have corporate responsibility for overall plant nuclear safety and shall take measures necessary to ensure acceptable performance of the staff in operating,

maintaining, and providing technical support to the plant to ensure nuclear safety." Mr. McCoy, an official of Georgia Power Company, is the Vice President-Nuclear for the Vogtle facility. McCoy, Tr. 2584. Onsite safe operation of the facility is vested in the General Manager Nuclear Plant. See Technical Specification section 6.2.1 (b); McCoy, Tr. 2586. Consistent with this, the testimony of Mr. McCoy made it clear that, as also testified to by Mr. Hood, control of the facility does go beyond the plant itself. The President of Georgia Power Company could order the facilities to operate at a designated power level or determine even whether to operate, but the decision as to how and whether to implement those instructions resides solely with the Vice President-Nuclear. McCoy, Tr. 2588. The Intervenor's petition to intervene is fully in accord with this emphasis of construing control as relating to the safe operation of the facility itself. His contention three shows his intent: "such [illegal] transfer of the license represents an increased risk to the health and safety of the public and/or represents a potential unsafe operating condition which must be corrected before responsibility for operating plant Vogtle can be transferred to the Southern Nuclear Operating Company, Inc." 37 NRC at 104.

149. The Staff, the Intervenor, and Georgia Power Company recognize that the context of control which is at issue here relates to the safe operation of the reactor itself and its appurtenant parts. Both the Staff and the Georgia Power Company recognize that control does extend beyond the actual physical plant, but regulatory concern diminishes as the distance between control and safe operation grows. Certainly, officers of Georgia Power Company may make policy which determines the power level at which the units

operate, and policy as to whether the units should even operate. But this control is of little regulatory concern as long as it does not have an impact upon public health and safety.

150. A question arose regarding the relation of the holding company, The Southern Company, to Georgia Power Company or to the prospective licensee, Southern Nuclear. The Southern Company is a holding company and owned the common stock of Georgia Power Company when the Vogtle facilities were licensed, and owns the common stock of Southern Nuclear which now is the operator of the Farley facility. The Intervenor has provided no evidence which would indicate that there is a regulatory concern with The Southern Company owning such common stock. We do not discern that relationship between the holding company and the operating company will be any different than exists now between The Southern Company and Georgia Power Company or that existed when Vogtle Units 1 and 2 were licensed. We have been provided no evidence to the contrary. Therefore, we do not find that the relationship will be different than that which exists between Southern Company and Southern Nuclear which is now the license holder for the Farley nuclear facility, and that it is not a matter of concern in this proceeding.

#### IX. CONCLUSIONS OF LAW

The Licensing Board has considered all of the evidence submitted by the parties, as well as the entire hearing record. That record consists of the filings of the parties, the orders issued in this proceeding, the transcript of the hearing, and the exhibits received into evidence. Based on the findings of fact set forth above, which are

supported by reliable, probative and substantial evidence as required by the Administrative Procedure Act and the Commission's Rules of Practice, we conclude that:

1. Georgia Power Company has met its burden of proof with respect to the illegal transfer basis of the admitted contention.

2. With respect to the allegation that Georgia Power Company, in 1989, illegally transferred the operating license for the Vogtle facilities to SONOPCO, Georgia Power Company has not transferred control of the operating licenses for Plant Vogtle without prior consent from the NRC. Nor has Georgia Power Company misled the Nuclear Regulatory Commission in any material respect regarding control of the operation of the Vogtle facilities.

3. All issues, motions, arguments, or proposed findings presented by the parties but not addressed herein have been found to be without merit or unnecessary for this decision.

#### X. ORDER

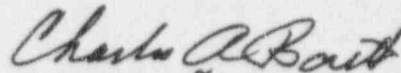
WHEREFORE, on the basis of the foregoing, in accordance with 10 C.F.R. § 2.760, it is this \_\_\_\_ day of \_\_\_\_\_, 1995 ORDERED:

1. The Director, Office of Nuclear Reactor Regulations, is *authorized*, upon making requisite findings with respect to matters not at issue in this Initial Decision, to issue the amendment proposed by Georgia Power Company in its application of September 18, 1992.

2. This Initial Decision shall become effective and constitute the final action of the Commission forty (40) days after the date of its issuance, subject to any review pursuant to the Commission's regulations.

3. In accordance with 10 C.F.R. § 2.786, any petition for review of this Initial Decision must be filed with fifteen (15) days after service of the decision. Any other party may file, within ten (10) days after service of a petition for review, an answer in support of, or in opposition to, the petition for review. The petition for review may be granted or denied in the discretion of the Commission, giving weight to the considerations of 10 C.F.R. § 2.786(b)(4).

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Charles Barth".

Charles Barth  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 6th day of March, 1995

DOCKETED  
USNRC

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

'95 MAR -7 A8:57

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

In the Matter of )  
GEORGIA POWER COMPANY, *et al.* ) Docket Nos. 50-424-OLA-3  
 ) 50-425-OLA-3  
(Vogtle Electric Generating Plant )  
Units 1 and 2 ) Re: License Amendment  
 ) (Transfer to Southern Nuclear)  
 )

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER IN THE FORM OF AN INITIAL DECISION" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or as indicated by an asterisk through deposit in the Nuclear Regulatory Commission's internal mail system this 6th day of March 1995.

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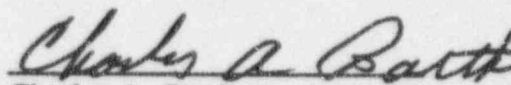
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