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50-424/425-OLA-3

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'95 APR -7 P1:57

THOMAS L. PENLAND, JR.

April 6, 1995

OFFICE OF SECRETARY  
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DIRECT 404-885-3471

Administrative Judge Peter B. Bloch, Chairman  
Administrative Judge James H. Carpenter  
Administrative Judge Thomas D. Murphy  
Atomic Safety and Licensing Board (Georgia Power)  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Re: Vogtle Electric Generating Plant, Units 1 and 2 License Amendment (Transfer to Southern Nuclear) ASLBP No. 93-671-01-OLA-3.

Dear Sirs:

Please find enclosed a copy of an April 6, 1995, letter from Mr. H. Allen Franklin of Georgia Power Company to the Commissioners. Mr. Franklin's letter requests issuance of the license amendments for Plant Vogtle - Units 1 and 2 and Plant Hatch - Units 1 and 2, granting operating authority to Southern Nuclear Operating Company, at this time.

Very truly yours,

*Thomas L. Penland, Jr.*

Thomas L. Penland, Jr.

TLP:pcw  
Enclosure  
cc: Service List

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USNRC

H. Allen Franklin  
President  
Chief Executive Officer

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April 6, 1995

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

Ivan Selin, Chairman  
Kenneth C. Rogers, Commissioner  
Gail de Planque, Commissioner  
One White Flint North  
11555 Rockville Pike  
Rockville, Maryland 20852

RE: Vogtle Electric Generating Plant, Units 1 and 2; Edwin  
I. Hatch Nuclear Plant, Units 1 and 2 -- Request for  
Commission Action on Transfer of Operational Authority  
to Southern Nuclear Operating Company

Dear Chairman Selin and Commissioners Rogers and de Planque:

The purpose of this letter is to request that the Commission authorize the NRC Staff to take the necessary actions at this time to issue license amendments approving Southern Nuclear Operating Company's ("Southern Nuclear") becoming the exclusive operating licensee for the Vogtle Electric Generating Plant and the Edwin I. Hatch Nuclear Plant. The NRC Staff has made the requisite factual findings to take such actions at this time. Issuance of the amendments is permitted under NRC's rules even though there has been a request for a hearing and intervention has been allowed.

This matter has been pending before the NRC since September, 1992, and it is time to resolve it. We request the NRC Staff be directed to finalize its significant hazards determination and issue the amendments with the consent of the Commission, with the pending Atomic Safety and Licensing Board hearing on the amendments to continue after the amendments have been issued.

Background.

As early as May 1988, Georgia Power Company ("Georgia Power") and Alabama Power Company ("APC") began discussions with the NRC Staff concerning a proposal to consolidate the operations of the three nuclear plants (six units) within The Southern Company system (Plants Hatch, Vogtle and Farley) into a single

operating subsidiary of the Southern Company.<sup>1/</sup> Similar consolidations had taken place, or were underway, in other utility systems with operating nuclear power plants. The Southern Company and its licensees envisioned the combination of the personnel and other resources dedicated to nuclear operations within a single corporate team. An environment would be created to enhance the potential for continued improvement in the overall safety, reliability and cost-effectiveness of these facilities. A single purpose organization dedicated to excellence in nuclear power plant operations and less distracted by other electric utility operations, it was believed, would realize substantial benefits for the facilities' owners and the public.

On May 6, 1991, APC submitted an application to amend the Plant Farley license amendments to allow Southern Nuclear to operate those units. No one requested a hearing regarding that license amendment application. On November 22, 1991, the NRC Staff issued the Plant Farley license amendments authorizing Southern Nuclear to become the exclusive operating licensee of that plant.

With respect to Plants Hatch and Vogtle, Georgia Power and its co-owners submitted applications to amend the licenses of those plants on September 18, 1992, to transfer operational authority to Southern Nuclear. These requests are still pending. The proposed amendments would have no effect on the ownership of the plants. Southern Nuclear would, through contractual arrangements with Georgia Power, become the exclusive operator of the facility. On-site personnel would be transferred from Georgia Power to Southern Nuclear. Georgia Power officers responsible for licensed activities would become solely Southern Nuclear officers. For example, the current Georgia Power Executive Vice President would no longer be an officer of Georgia Power reporting directly to the Georgia Power Chief Executive Officer, but would, as President of Southern Nuclear, report to the Southern Nuclear Board of Directors relative to licensed activities.<sup>2/</sup>

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<sup>1/</sup>Plant Farley is wholly owned by APC; Plants Hatch and Vogtle are each co-owned by GPC, Oglethorpe Power Corporation, the Municipal Electric Authority of Georgia and the City of Dalton, Georgia.

<sup>2/</sup> Southern Nuclear currently provides nuclear support services to Georgia Power for Plants Hatch and Vogtle, pursuant to a services agreement. Operations personnel and officers responsible for the plants are employees of Georgia Power. These officers also are officers of Southern Nuclear.

Notice of the Application and proposed finding of no significant hazards considerations for each Plant's application was published in the Federal Register on October 14, 1992. 57 Fed. Reg. 47127, 47131 and 47135.<sup>2/</sup> On November 3, 1992, the NRC Staff noticed the issuance of an "Environmental Assessment and Finding of No Significant Impact" in connection with each of the proposed license amendments. 57 Fed. Reg. 49724. In those Environmental Assessments, the Commission, through authority delegated to the Staff, concluded that the proposed license amendments would result in no radiological or nonradiological environmental impact.

The license amendment applications for Hatch and Vogtle are patterned on and similar to the Plant Farley application. However, in the case of Plant Vogtle, an ex-employee filed a request for a hearing.<sup>4/</sup> By order dated February 18, 1993, the Atomic Safety and Licensing Board ("Licensing Board") granted standing to the petitioner and admitted one contention.<sup>5/</sup> Georgia Power's appeal of that order was denied. CLI-93-16, 38 NRC 25 (1993).

The Intervenor has asserted two factual bases in support of his contention. The first basis is an allegation that Georgia Power illegally transferred the Vogtle licenses to Southern Nuclear in the 1988-90 time frame. This allegation had been previously investigated by the NRC Staff in response to a September, 1990 Section 2.206 petition filed by the same individual. In a partial decision, the Director of the Office of Nuclear Reactor Regulation found that no unauthorized transfer of the Vogtle license occurred, that the Georgia Power nuclear

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<sup>2/</sup>The Staff also noted that the transfer of any right under the operating licenses is subject to NRC approval pursuant to 10 C.F.R. § 50.80(a), and that such approval was proposed to be given through an Order.

<sup>4/</sup> See Georgia Power Company (Vogtle Electric Generating Plant, Units 1 and 2) Docket No. 50-424-OLA-3/50-425-OLA-3, ASLBP No. 93-671-01-OLA-3. No intervention was sought relative to the Hatch amendments.

<sup>5/</sup> The contention admitted by the Board is:

The license to operate the Vogtle Electric Generating Plant, Units 1 and 2, should not be transferred to 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.



facilities are being operated in accordance with NRC regulations and do not endanger the health and safety of the public, and that none of the issues decided in his decision called into question the licensee's character, competence, fundamental trustworthiness, or commitment to safety.<sup>4</sup>

The Commission subsequently vacated this Partial Director's Decision. The Commission observed that the issues raised in the 2.206 petition generally concern the integrity of Georgia Power and Southern Nuclear officers and the corporation organization responsible for operation of Plant Vogtle and Plant Hatch and instructed the Staff to defer determination:

Under the peculiar circumstances of this case, rather than address the issues in the Section 2.206 petition in a piecemeal fashion, the Staff should reach a determination of all issues in an integrated manner after consideration of the remaining matters raised in the Section 2.206 petition and the outcome of the transfer proceeding. CLI-93-15, 38 NRC 1, 3 (1993).

However, the Commission specifically noted that it expressed "no view on the soundness of the Staff's analysis" of the illegal transfer allegation. CLI-93-15, 38 NRC 1, 3 (1993). After extensive discovery, a hearing was held before the Licensing Board on this allegation in January, 1995. At the hearing the Staff adopted and affirmed the earlier Director's Decision. The Staff concluded that Georgia Power did not transfer control of operating licenses for Plant Vogtle, nor mislead the NRC in any material respect regarding control of the operation of the Vogtle facilities. NRC Staff Proposed Findings of Fact, Conclusions of Law, and Order in the Form of An Initial Decision at 60 (March 6, 1995).

The second factual basis for the contention admitted by the Licensing Board involves a group of allegations which now have been the subject of exhaustive review by the NRC's Office of Investigations and Office of Enforcement. The allegations are that Georgia Power intentionally made various false or incomplete statements to the NRC concerning the Vogtle emergency diesel generators after a March 20, 1990 Site Area Emergency at the plant. The Intervenor initially submitted these allegations to the NRC in 1990 and 1991, before the license amendment applications were filed by Georgia Power. As a result, the alleged false statements which Intervenor has identified to support his contention are the same as the NRC Staff has investigated and resolved in an enforcement action (EA 93-304).

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<sup>4</sup> See Partial Director's Decision Pursuant To 10 CFR 2.206, DD-93-08, 37 NRC 314 (1993).

The Staff, in a letter dated February 13, 1995, from Mr. James L. Milhoan, stated that, upon payment of a proposed civil penalty, the enforcement action would be considered fully resolved.<sup>1/</sup> Georgia Power has paid the penalty. Additionally, the Staff concluded that, subject to commitments made by Georgia Power and one involved individual, the Staff has "no present concerns with the character and integrity" of the involved individuals or Georgia Power Company arising out of the events which gave rise to the enforcement action. On April 3, 1995, the NRC Staff prefiled testimony with the Licensing Board which presents the Staff's overall conclusion regarding the allegation of the intentional providing of inaccurate, incomplete or misleading information:

The NRC Staff concluded that inaccurate and incomplete information was provided to the NRC by GPC managers regarding the diesel generator testing after the SAE, and to this extent, the allegation is partially substantiated. These deficiencies resulted from the performance failures by various GPC managers who were notified of problems but failed to take steps necessary to assure that the requirements of 10 C.F.R. § 50.9 were met. The NRC Staff did not conclude that GPC intentionally provided inaccurate, incomplete or misleading information. Therefore, the allegation that senior GPC managers intentionally provided inaccurate and incomplete information to the NRC was not substantiated.

#### NRC's License Amendment Procedures

The NRC's well established practice on license amendments is to (1) consider any public comments, (2) review the licensee's safety evaluation (as it has in this case), and (3) make a decision on the amendment request.<sup>2/</sup> A formal "final determination" of no significant hazards considerations is

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<sup>1/</sup> The Commission apparently reviewed the Office of Investigations report and Office of Enforcement recommendation prior to making a decision on enforcement action. See, CLI-94-5, 39 NRC 190, 200 (...the Commission's decision on enforcement is imminent...), 202 (...the Commission's deliberations on possible enforcement action...) (1994)

<sup>2/</sup> There are some exceptions to this standard procedure, such as situations where notice and comment opportunities are curtailed due to exigent circumstances (e.g., a change clearly more reliable and safe and with a limited window of opportunity for installation). 51 Fed. Reg. 7767 (March 6, 1986).

normally not made, unless there is a request for a hearing. In that case, the NRC Staff prepares a "final determination" which considers the request and the public comments, makes the necessary findings, and concludes that the license amendment either does or does not constitute a significant hazards consideration. If a finding of no significant hazards consideration is made, any hearing required pursuant to a petition to intervene is then held after the amendment has been issued.<sup>2/</sup>

**Request for License Amendments Issuance and Commission Consent.**

Georgia Power requests that the Commission remove the ambiguity associated with the Commission's observations in the 2.206 proceeding quoted above. The Commission's observations could be misconstrued as instructing the Staff to defer issuance of a final "no significant hazards" determination until after the Licensing Board issues its decision in the amendment proceeding. The Commission's desire to defer Staff resolution on the 2.206 petition could not have been intended to preclude the Staff from exercising its separate and distinct responsibilities under Sections 50.92(c) and 2.105. Removal of the ambiguity would enable the Staff to complete the actions necessary to issue the Plant Hatch and Plant Vogtle license amendments at this time. The NRC Staff can and should now complete a final determination of no significant hazards considerations for the same reasons on which the Staff based its decision to issue the Plant Farley license amendments and on the basis of its review of the allegations which form the basis for the contention in the Vogtle proceeding. The Staff's review concludes that no basis exists for concluding that the proposed transferee, Southern Nuclear, lacks the requisite character, competence, integrity, truthfulness and candor to operate a nuclear facility. In the meantime, the deleterious impact of delay to the Company and its employees might not be quantifiable, but it is real. As the Licensing Board observed in November, 1993:

....further delay in the issuance of the license amendments will delay the realization of the benefits of the consolidation, including;

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<sup>2/</sup>A "transfer of control" of a license invokes only the hearing rights afforded by the first sentence of Section 189a(1) of the Atomic Energy Act. The Act does not require the offer of a prior hearing on an application to transfer control before the transfer is made effective. Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1) CLI-92-4, 35 NRC 69, 77 (1992).

- (a) a single-purpose organization dedicated solely to excellence in nuclear power plant operations, undistracted by the demands of other electric utility operations;
- (b) consistency in personnel policies resulting in cost savings and efficiencies;
- (c) the ability to attract and retain nuclear professionals by offering them an opportunity to build a career within an operating organization responsible for the operation and maintenance of multiple nuclear plants;
- (d) an increase in Southern Nuclear's effectiveness through recognition by the nuclear community of its responsibility as the exclusive operator of three nuclear plants.... (LBP-93-22 at 14, quoting an affidavit of Mr. W. George Hairston, III, Georgia Power's Executive Vice President-Nuclear)

Two and a half years have passed since the license amendments applications were filed. Virtually no change in the personnel and management who will control the day-to-day operation of Plant Hatch and Plant Vogtle will result upon the issuance of the license amendments. The NRC Staff has stated its views, which support amendment issuance.

In light of this substantial historic review by the NRC Staff and the Commission's deliberations on the now-resolved enforcement action, the Commission should now authorize the Staff to complete its action and issue the license amendments allowing the transfer from Georgia Power to Southern Nuclear. Georgia Power Company respectfully requests this action at this time.

Very truly yours,



H. Allen Franklin

HAL:jl



xc: Service List ASLBP No. 93-671-01-OLA-3

Georgia Power Company

Mr. J. Beasley, Jr.

Mr. M. Sheibani

NORMS

U.S. Nuclear Regulatory Commission

Mr. James Taylor, Executive Director of Operations

Mr. S.D. Ebnetter, Regional Administrator

Mr. D.S. Hood, Licensing Project Manager, NRR

Mr. B.R. Bonser, Senior Resident Inspector, Vogtle